

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.R. No. 3661 of 2014 (O & M)

Reserved on: 06.02.2015

Date of decision: 13.02.2015

Mahesh Kumar

....Petitioner(s)

Versus

Lokesh Bhandari

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Aman Chaudhary, Advocate,
for the petitioner.

Mr. Kunal Dawar, Advocate,
for the respondent.

G.S.SANDHAWALIA, J.

The challenge in the present revision petition filed under Article 227 of the Constitution of India is to the order dated 07.03.2014 (Annexure P-3) whereby, the warrants of possession had been issued by the Rent Controller in execution and the subsequent orders dated 19.05.2014 (Annexures P-11 and P-12) wherein, the objections filed by the tenant for the stoppage of warrants of possession were dismissed and directions to provide police help to get possession were ordered.

The reasoning which has been given by the Executing Court/Rent Controller is that a conditional order of eviction has been passed on 02.01.2014 and the arrears had to be deposited within a period of one month and there was violation of the terms and conditions since the amount had been deposited beyond the period of 30 days and the tenant had failed to approach the Court and warrants of possession had been issued and there is lack of bona fide.

Counsel for the petitioner has submitted that the orders are not sustainable keeping in view the fact that the demand draft was made and sent to the landlord, who happens to be an Advocate, and he refused to accept the same. The bonafides could not be doubted in any manner and the objections have been wrongly dismissed.

Counsel for the respondent, on the other hand, submitted that conditional order had been passed and, therefore, the impugned order was well justified.

A perusal of paper book would go on to show that while allowing the rent application of the respondent-landlord on account of non-payment of rent from 09.02.2008 while dealing with 3 rent applications, the Rent Controller directed the petitioner to deposit the arrears of rent including the house tax alongwith interest @ 6% within one month from the date of the order, failing which, the application stood allowed. The house tax was also to be paid for the years 2008-09 and 2009-10 to the tune of ₹3,386/-. The relevant part of the order dated 02.01.2014 reads thus:-

“In view of the findings returned on the above said issues, applications/petitions of the applicant-landlord succeeds and same are hereby allowed conditionally. The respondent is found to be in arrears of house tax to the tune of Rs.3386/- for the year 2008-09 and 2009-10 and he was liable to pay the same alongwith interest to the applicant-landlord. Therefore, the respondent is directed to deposit the arrears of rent including house tax alongwith interest @ 6% p.a. within one month from this order and if he fails to do so, the present applications shall stand allowed. If the arrears of rent including house tax and interest are deposited as directed above, all the eviction

petitions shall stand dismissed. In view of the peculiar circumstances of these cases, parties are left to bear their own costs. Separate Memo of costs be prepared. Ahlmed is directed to place the photocopies of the orders in the connected files. All the three files be consigned to the record room separately after due compilation within time prescribed as per rules.”

The respondent-landlord filed the application under Order 21 Rule 11 CPC on 25.02.2014 (Annexure P2) on the ground that the conditional order had not been complied with. Report of the Ahlmed was called for and on 07.03.2014, warrants of possession were issued for 19.05.2014 on furnishing of necessary warrant fees without issuing any notice to the tenant on the ground that the execution application has been filed within 2 years and there was no stay order. The tenant filed an application dated 13.05.2014 to stop the operation of warrant of possession on the ground that he had already deposited the house tax on 05.02.2014 with the Municipal Council amounting to ₹12,441/- and intimation had been sent to the landlord on 13.02.2014. Even a sum of ₹35,700/- had been sent by demand draft dated 12.02.2014 and the warrants of possession had been wrongly issued. An appeal was also pending before the Court of the Appellate Authority filed by the respondent.

Same was contested by the respondent-landlord on the ground that the order dated 02.01.2014 had not been complied with. It was mentioned that no appeal had been filed by the tenant and the deposit made was delayed, short and invalid and not within the stipulated period. The factum of any demand draft or receipt of Municipal Committee was denied.

In the rejoinder filed, it was submitted that house tax had been cleared upto

2013 on the deposit with the Municipal Council. The landlord had declined to receive the rent in cash from the tenant of the shop in question from October, 2011 to March, 2014 for 30 months and it had been sent through the demand draft on 12.02.2014 and the same had also been received by him and it was upto him to get it encashed. The order had been applied on 04.01.2014 and was prepared on 22.01.2014 and after keeping in view the provisions of the Limitation Act, 1963, the order had been complied with. The landlord had filed an appeal which is pending before the Appellate Authority and he was not satisfied with the order of the Rent Controller. The demand draft was lying with the landlord having been received on 28.02.2014. There was no delay on the part of the tenant and the matter was to be referred to this Court since the order in detail could not be obtained until the certified copy was received.

The landlord also filed an application for providing police help and for breaking up the locks for delivery of possession which was also contested by filing reply on the same set of allegations. The application was also filed for referring the matter to this Court as per Section 113 CPC as to whether the benefit of the time spent in obtaining certified copies of orders is to be granted. The tenant also filed objection under Section 47 taking the plea that he had deposited a sum of ₹12,441/- as house tax which included cess as well as late fee of ₹4,779/- as the landlord had refused to accept the same in cash. Rent from October, 2011 to March, 2014 plus interest @ 6% amounting to ₹2,700/- and totaling ₹35,700/- had been sent to the landlord by way of bank draft and was not delivered in spite of the postman repeatedly visiting on 17.02.2014, 18.02.2014 and 19.02.2014 at the chamber of the respondent. The said demand draft was remade on

24.02.2014 and was duly delivered on 28.02.2014. It was submitted that execution petition was filed and no notice had been given and it had been wrongly mentioned that the compliance had not been done. Since the warrant of possession had been issued and Bailiff came to take possession, the application was filed. Resultantly, it is prayed that the landlord was not entitled for possession since compliance had been done.

Keeping in view the above cumulative facts, this Court is of the opinion that the bona fides of the tenant cannot be disputed in any manner. Admittedly, the order was passed on 02.01.2014, as noticed above. The compliance was to be done within a specified time frame within one month. It is not disputed that copy of order/judgment was applied immediately after a gap of one day on 04.01.2014. It has already come on record that the certified copy of order was prepared and received on 22.01.2014. The tenant thereafter has deposited a sum of ₹12,441/- on 05.02.2014 as house tax from 2009 onwards to 2013 in spite of the fact that he was only required to deposit ₹3,386/- as house tax from the year 2008-09 and 2009-10 as per the order of eviction. Thereafter, he prepared a demand draft of the arrears of rent to the tune of ₹35,700/- and sent the same by registered post to the respondent-landlord on 13.02.2014 (Annexure P-10) which included the interest portion and the rent. In the said correspondence, it was also mentioned that he has deposited the house tax in full upto 2014 with the Municipal Council. The registered A.D. showing the postman going repeatedly to the chamber of the respondent also depicts that the stand of the tenant was correct that on three occasions, the landlord could not be found. It is the categorical case of the tenant that thereafter, he sent the draft by way of registered letter on 24.02.2014 which has now been received on

28.02.2014. These facts were never disclosed at the initial stage at the time of filing of the application on 25.02.2014 under Order 22 Rule 11 CPC by the respondent-landlord, who only mentioned that the respondent had not complied with the order of the Court. The warrants of possession were issued without any notice and thereafter immediately the Court was approached bringing it to the notice of the Court that the amount stood deposited and a demand draft had also been sent. In such circumstances, Executing Court was not justified in coming to the conclusion that the order had not been complied with in letter and spirit while dismissing the objections and directing police help. The reliance upon judgment in ***Rakesh Wadhawan & others Vs. Jagdamba Industrial Corporation & others 2002 (5) SCC 440*** in such circumstances is without any basis. The conduct of the tenant had already been noted. The principle laid down in the said judgment rather provides that the conditional order has to be passed and compliance will save the tenant from eviction and a reasonable time is to be given to pay and tender the deficit amount. The purpose has been noticed by the Apex Court that there should be no uncertainty or obscurity.

The order, as noticed by the Court, might have been pronounced in Court but until a copy was in the hands of the tenant, it would not have been possible for him to comply with it in letter and spirit. The view, thus, that has been taken by the Executing Court, in the opinion of this Court, is very technical and does not serve the interest of justice. The landlord himself had filed an appeal before the Appellate Authority and was not satisfied with the judgment of the Rent Controller. It is the case of the tenant that the amount of rent sent on 24.02.2014 had also been received which had been sent by draft. In such circumstances, the tenant had

complied with the order in reasonable letter and spirit and it cannot be said that the landlord is also acting bona fide in the above facts and circumstances and had concealed some material facts by filing the execution. He was wanting to take a technical benefit of the ejectment order and not accepting the demand draft which has escaped notice of the Executing Court while commenting upon the conduct of the tenant and not noticing the mala fide conduct of the landlord.

In such circumstances, the order passed by the Executing Court cannot be held to be justified. Accordingly, orders dated 07.03.2014 issuing warrants of possession and the order rejecting the objections and granting police help to the respondent-landlord are quashed. It will be open to the landlord to file an appropriate application before the Rent Controller for revalidation of the demand draft if it has not been encashed or for issuance of a fresh demand draft on surrendering the original.

With the above said observations, the present revision petition stands allowed.

13.02.2015
shivani

(G.S. SANDHAWALIA)
JUDGE

