

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 5823 of 2014 (O&M)
Date of Decision: 11.5.2015.

M/s Desire Clothing

.....Petitioner

Versus

Sarvesh Kumar Jindal

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Atul Goyal, Advocate
for the petitioner.

Mr. Vikas Mehsempuri, Advocate
for the respondent.

SABINA, J.

Respondent had filed the petition seeking ejectment of the petitioner from the premises in question. Learned Rent Controller vide order dated 15.11.2013 allowed the ejectment petition. Aggrieved against the said order, petitioner preferred an appeal and the same was dismissed by the Appellate Authority vide judgment dated 5.8.2014. Hence, the present petition by the petitioner-tenant.

Learned counsel for the petitioner has submitted that the Appellate Court had held that the Rent Controller had not assessed the provisional rent correctly but had erred in dismissing the appeal filed by the petitioner. In support of his arguments, learned counsel for the petitioner has placed reliance on '**Harjit**

Singh Uppal versus Anup Bansal, 2011(3) R.C.R. (Civil) 247',

wherein it was held as under:-

“The High Court, however, held that as tenant did not avail of his remedy to challenge the order fixing provisional rent during the period between the date of the order and date fixed for payment, the Appellate Authority could not have gone into the merits of such determination and, accordingly, set aside the order of the Appellate Authority. In our view, the High Court fell into grave error in what it held. The legal position, in our opinion, is this: Where a tenant does not challenge the order of the fixation of provisional rent passed under Section 13(2)(i) proviso in appeal under Section 15(1)(b) and also fails to comply with that order, the order of eviction must follow as per the provisions contained in the 1949 Rent Act but when the tenant challenges the order of eviction in appeal and therein also challenges the order determining the provisional rent, it is not open to the Appellate Authority to refuse to consider the legality and validity of the order determining the provisional rent on the ground that the correctness of such order cannot be examined as no appeal was filed from that order though an appeal lay therefrom.”

Learned counsel for the respondent, on the other hand, has submitted that the petitioner was liable to tender the provisional rent as assessed by the Rent Controller and could have later sought adjustment qua the excess amount, if any. Further, the cheques handed over by the petitioner qua arrears of rent, had been dishonoured.

Respondent had sought ejectment of the petitioner from the demised premises on the ground of arrears of rent. The Rent

Controller vide order dated 20.7.2013 assessed the provisional rent along with interest and costs to ₹ 4,98,558/- and adjourned the case to 3.8.2013. Petitioner tendered ₹ 1,50,000/- towards arrears of rent and on its request, case was adjourned to 6.9.2013 for tendering the remaining amount of arrears of rent. On 6.9.2013, petitioner tendered ₹ 3,48,000/- by way of two cheques. However, when the said cheques were presented for encashment, the same were dishonoured. The case was adjourned on 6.9.2013 to 9.10.2013 and was again adjourned to 6.11.2013 for tender of arrears of provisional rent. However, the petitioner failed to tender the arrears of rent and, consequently, the Rent Controller passed the ejectment order.

The case of the petitioner is that the provisional rent had not been correctly calculated by the Rent Controller as the petitioner was not required to pay 5% increase every year. However, admittedly the rate of rent was ₹ 12,000/- per month and the petitioner was in arrears of rent for 35 months prior to the filing of the ejectment petition. The learned Appellate Court rightly held that the petitioner was, thus, required to tender at least ₹ 4,20,000/- towards arrears of rent even if the enhanced rate of rent of 5% every year was deducted from the provisional rent. Petitioner had, however, failed to deposit the arrears of rent as per the admitted rate of rent. Rather, the cheques given by the petitioner towards arrears of rent, were dishonoured. This shows that the intention of the petitioner was never good/clean.

In the facts and circumstances of the present case, the Courts below had rightly ordered the ejectment of the petitioner from the demised premises. The judgment relied upon by the

learned counsel for the petitioner fails to advance the case of the petitioner as it is based on different facts.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

May 11, 2015
Gurpreet