

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 617 of 2013 (O&M)
Date of Decision : 19.02.2015

Bhanu Parkash

....Petitioner

Versus

Sharda and others

....Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Anil Kumar Gahlawat, Advocate
for the petitioner.

None for the respondents.

R.P. Nagrath, J.

Petitioner has invoked the revisional jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside the order dated 18.08.2012 (Annexure P-5) passed by the learned Rent Controller whereby the application to pass ejectment order against the respondents on account of failure to deposit the assessed rent within the statutory period has been dismissed.

2. The predecessor of the respondents was rented out two shops on a monthly rent of ₹ 250/- i.e. @ ₹ 125/- per month for each shop. The respondents have inherited the tenancy. The eviction of the respondents was sought on the grounds *inter alia*; that the respondents are in arrears of rent to the tune of ₹ 9000/- for the period from 01.09.2005 to 31.08.2008. The other grounds

of eviction were also taken. The eviction petition was filed in August, 2008. On 12.03.2011, learned Rent Controller made provisional assessment of the rent as under:-

“Heard on the application for assessment of the rent. Learned counsel for both the parties have stated that at this stage for the purpose of deciding the provisional assessment of rent, he has no objection if the rate of rent as alleged by the respondent/tenant is assessed. Admittedly, it is alleged by the respondent that the rate of rent is ₹ 125/- per month per shop in question and in total ₹ 250/- and period of arrears is from 01.09.2005. Ordered accordingly.

It is further ordered that the respondent shall continue to pay the assessed rent on or before 10th of every month during the pendency of the suit with interest @ 8%. Cost is also assessed at the rate of ₹ 500/-. Now, the case is adjourned to 26.03.2011 for payment of assessed rent.”

3. On 26.03.2011, the respondents did not make the tender of rent and adjournment was requested by them. The matter was adjourned to 31.03.2011 for payment of the assessed rent. On 31.03.2011, however, the respondents are stated to have made payment of rent alongwith costs and interest and the learned Rent Controller passed the following order:-

“Tenant has tendered the rent assessed as per

the order dated 12.03.2011. However, Sh. B.B. Jain, Advocate for the petitioner has made a statement that the rent assessed has been tendered after the expiry of 15 days and is invalid. So he does not accept the same. Now, the petitioner has refused to accept the rent assessed. The tenant-respondent is directed to deposit the same in the court before the date fixed i.e. 16.04.2011 and for filing the replication, if any, and settlement of issues.”

4. Thereafter, the petitioner filed an application with a prayer to learned Rent Controller for passing of the eviction order as tender of the rent has not been made within the statutory period. Learned Rent Controller decided the application on 18.08.2012 with the following observations:-

“Heard on the application dated 16.04.2011 filed by the petitioner stating therein that the provisional rent was assessed vide order dated 12.03.2011 and the case was fixed for tender/payment of the rent for 6.03.2011 but on that day, the respondent did not pay the assessed rent and the same was paid on 31.03.2011 after the expiry of statutory period of 15 days. It is stated by the learned counsel for the judgment debtor that the period was extended by the court and thus, there is no fault on the part of the respondent/tenant.

After hearing counsel for both the parties and going through the case file carefully, I am of the considered opinion that the application in hand is liable to be dismissed. Once the time had been granted to the respondent by the court while passing an order which was never challenged by the landlord before the competent court, now it can not be said that there was any fault on the part of the tenant. Hence, the application in hand is dismissed.”

5. Rest of the order dated 18.08.2012 passed by the learned Rent Controller pertains to the framing of the issues from pleadings of the parties and fixing the case for evidence.

6. I have heard learned counsel for the petitioner, perused the impugned order, also the paper-book and given my thoughtful consideration to the controversy and find no merit in the instant petition.

7. The bone of contention of learned counsel for the petitioner was that under the law the rent could be tendered within a period of 15 days as per proviso to clause (i) of sub-section (2) of Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, (for short to be referred hereinafter as 'the Act'). It was contended that learned Rent Controller fixed the date for making tender of the rent as per provisional assessment for 26.03.2011 but under the law the period of 15 days expired on 27.03.2011 and till then the tender was not made. Therefore, the eviction order

was bound to be passed.

8. I am of the view that on the subject of provisional assessment of rent, the law is well settled that when learned Rent Controller directs the tenant to deposit the same within a specified period and the tenant fails to deposit the amount, the order of ejectment has to follow and the Rent Controller has no jurisdiction to extend the time. The reliance in support of the above view can be placed upon the judgment of this Court in **Mrs. Birinder Khullar vs. Maninder Singh, 2011 (2) RCR (Civil) 751**. In the said case, learned Rent Controller made provisional assessment as under:-

“So, in view of these facts, the rent is provisionally assessed in this case w.e.f. 1.9.2008 till 31.1.2010 @ ₹ 14,500/- per month along with interest @ 6% per annum. The cost of litigation is assessed as ₹ 1000/-. However, it is made clear that any difference in the rate of rent shall be adjusted at the time of final order. Now to come up on 10.2.2010 for payment of rent provisionally assessed today and framing of issues.”

9. In the instant case, however, there was a serious illegality committed by the learned Rent Controller in not making the actual assessment of the amount. Principle No. 2 laid down by Hon'ble Supreme Court in **Rakesh Wadhawan and others vs. Jagdamba Industrial Corporation and others, 2002 (5) SCC**

440 is as under:-

“2. The proviso to Section 13(2)(i) of East Punjab Urban Restriction Act, 1949 casts an obligation on the Controller to make an assessment of (i) arrears of rent (ii) the interest on such arrears, and (iii) the cost of application and then quantify by way of an interim or provisional order the amount which the tenant must pay or tender on the 'first date of hearing' after the passing of such order of 'assessment' by the Controller so as to satisfy the requirement of the proviso.”

10. Therefore, the Hon'ble Supreme Court had laid emphasis on the quantification of the amount for the provisional assessment to be legal and binding. As already observed in this case, the learned Rent Controller simply observed that the rent was due w.e.f. 01.09.2005 but upto which date the respondents were liable to make tender of the rent has not been described. The amount of interest to quantify the amount due for being tendered has also not been stated. It would be appropriate to refer to the judgment of this Court in **Gurpreet Singh and another vs. Brijinder Bhardwaj and another, 2011 (2) RCR (Civil) 770**. In that case, the learned Rent Controller made the provisional assessment as under:-

“Accordingly, the provisional rate of rent to be paid by the respondent is assessed at the rate of

₹ 11,000/- per month and the period for which the respondents are to pay the provisional rent is w.e.f. 11.1.2007 till the month of passing of this order i.e. April 2010, the cost of the application is assessed at ₹ 500/- the provisional rent is to be paid alongwith interest at the rate of 6% per annum”.

11. On the date fixed i.e. 24.05.2010, the tender of rent was made as per calculation of the tenant but he missed to make a tender for the period of one year. Two days thereafter the tenant filed an application on 27.05.2010, seeking permission of the learned Rent Controller to tender some more amount of rent which was inadvertently left out at the time of tendering the provisional rent due to miscalculation. The application was dismissed by the learned Rent Controller. Thereafter, the landlord filed an application for passing of the eviction order and the learned Rent Controller allowed the same by relying upon the decision of ***Rakesh Wadhawan's case (supra)***.

12. It was held by this Court in ***Gurpreet Singh's case (supra)*** that the learned Rent Controller was obliged under the Act to assess the exact amount of arrears of rent, exact amount of interest accrued thereon, cost of the petition and the exact total amount which is liable to be paid by the tenants as the provisional rent on the date fixed by the Court. It was further observed that since consequence of non-tendering the exact amount of provisional rent on the date fixed is very drastic, therefore,

responsibility of the Rent Controller is equally very high and if there is any mistake in the calculation of the amount, if it is not properly assessed by the Rent Controller, the tenant cannot be held liable on the principle that “act of the Court should do no harm to the litigant”. This Court allowed the revision and it was directed that the learned Rent Controllers in the States of Punjab, Haryana and U.T. Chandigarh would assess the provisional rent by multiplying the rate of rent with the period for which it is due, calculate the exact amount of interest and after assessing the cost, give an accurate amount to the tenant which he is supposed to tender on the date fixed by the Court.

13. Learned counsel for the petitioner, vehemently, contended that the respondents were not at all under any misconception of the amount of arrears as per provisional assessment because the entire rent due alongwith costs and interest was paid on 31.03.2011. It was further submitted that the respondents even did not move any application before the learned Rent Controller seeking clarification of the order of provisional assessment to avoid confusion, if any. The details of such calculation and the proceedings relating to tender of the amount in the instant case, however, have not been placed on record. But I am of the view that since the assessment of the rent has not been according to the settled principle as discussed above, so there was no possibility of passing any eviction order because of the failure on the part of the learned Rent Controller to make

proper provisional assessment as per the settled principles. If that be so, I do not find any ground to interfere in the impugned order though for different reasons. Therefore, I do not find any ground to accept the instant petition to hold that the tenants have defaulted in making the payment in view of the defective assessment made by the learned Rent Controller in the first order dated 12.03.2011.

Dismissed.

February 19, 2015
jk

(R.P. NAGRATH)
JUDGE