

CR No.686 of 2014

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

**CR No.686 of 2014
Date of decision:18.02.2015**

Gurinderjit Kaur and another ...Petitioners

Versus

Baldev Singh Boparai ...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Divanshu Jain, Advocate,
for the petitioners.

Mr. D.S.Kamra, Advocate,
for the respondent.

Rakesh Kumar Jain, J.

The petitioners have assailed the validity of the order dated 21.11.2013 passed by the Rent Controller, giving liberty to the respondent to tender the rent in Court.

The brief facts of the case are that the petitioners filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 [for short 'the Act'] for seeking eviction of the respondent from the ground floor of House No.59, Jal Vayu Vihar, Sector 44-A, Chandigarh, which is allegedly in his possession as a tenant since 2006 on a monthly rent of ₹4400/-. The eviction was sought on the ground of non-payment of arrears of rent @ ₹4400/- per month w.e.f. 1.3.2011 onwards. The respondent filed the reply/written statement to the eviction petition. On 27.9.2013, the Rent Controller passed the following order: -

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“This order shall dispose of provisional assessment of rent. It has been averred that respondent was inducted as tenant in the demised house (Ground Floor) at a monthly rent of ₹4400/- P.M. w.e.f. 1.3.2011.

2. On the other hand, while filing reply; relationship of landlord-tenant between the parties has been admitted. Rate of rent is also admitted.

3. Ld. Counsel for petitioner and respondent have been heard. Case file seen.

4. There is nothing on record to prove that rent has been paid by respondent/tenant after 1.3.2011. Evidence is yet to be adduced by both the parties. It is satisfied that respondent is in arrears of rent since 1.3.2011. Provisional Assessment is done as follows: -

Rate of Rent : ₹4400/- p.m.

(Total months=26)

(1.3.2011 till 1.5.2013)

Total Rent : ₹1,14,400/-

Interest : ₹7722/-

Cost : ₹500/-

Total outstanding : ₹1,22,622/-

Now to come up on 28.10.2013 for payment.

Pronounced in open Court this 27th September 2013.”

The respondent was to tender the rent on 28.10.2013 but on

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5.10.2013, he moved an application before the Rent Controller that he has no relationship of landlord and tenant with the petitioner rather he has relationship of landlord and tenant with one Sarabjit Singh, who is the care taker of the property in dispute. He also offered to tender the rent in Court instead of paying the rent to the petitioners. The Rent Controller passed the order on the said application "*file for date fixed*". Incidentally, the main file of the case was taken up by the Rent Controller on 27.10.2013, which fell on a Sunday, a day before the date on which the rent was to be tendered because the Rent Controller was to join his posting. The case was adjourned on 27.10.2013 to 19.11.2013 for the same purpose i.e. tender of rent and to file reply to the application filed on 5.10.2013. On 19.11.2013, the following order was passed: -

“Today the case was fixed for payment. Application has been moved by respondents for clarification of order. Ld. counsel for the petitioner stated that he does not want to file reply to this application.

Now to come up on 20.11.2013 for arguments on application.”

The case was adjourned to 20.11.2013 and it was argued on that day but the order was passed on the application dated 5.10.2013 on 21.11.2013 by which the respondent has been given liberty to tender the Rent in Court. The respondent allegedly offered the rent in Court to the petitioners, which was not accepted and the Court passed an order on the

next day to deposit the amount in the Treasury. The receipt of the Treasury challan is placed on the record of the case.

Learned counsel for the petitioners has submitted that the Rent Controller has erred in the exercise of its jurisdiction in allowing the respondent to tender the rent after 19.11.2013 because the Rent Controller has no jurisdiction to extend the time for tender of rent in any case much-less on the ground that the respondent had filed an application for clarification of the order dated 27.09.2013. In this regard, he has relied upon a judgment of the Supreme Court in the case of **Rakesh Wadhawan v. M/s. Jagdamba Industrial Corporation**, 2002(1) R.C.R. (Rent) 514. In this case, the following conclusions were drawn by the Supreme Court:-

“30. To sum up, our conclusions are:

1. In Section 13(2) (i) proviso, the words 'assessed by the Controller' qualify not merely the words 'the cost of application' but the entire preceding part of the sentence i.e. 'the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application'.
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.

3. Of necessity, 'the date of first hearing of the application' would mean the date falling after the date of such order by Controller.

4. On the failure of the tenant to comply, nothing remains to be done and an order for eviction shall follow. If the tenant makes compliance, the inquiry shall continue for finally adjudicating upon the dispute as to the arrears of rent in the light of the contending pleas raised by the landlord and the tenant before the Controller.

5. If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If, on the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount,

failing which alone he shall be liable to be evicted.

Compliance shall save him from eviction.

6. While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings.”

Learned counsel for the petitioners has further relied upon a Division Bench judgment of this Court in the case of **Rajan alias Raj Kumar v. Rakesh Kumar**, 2010(1) R.C.R. (Rent) 386 in which the following observations have been made:-

“13. This Court is of the view that the ratio of judgment in Rakesh Wadhawan's case (supra) leaves no manner of doubt that the provisional rent and other ancillary charges assessed by the Rent Controller had to be deposited by the tenant on the next date of hearing alongwith arrears, interest and costs etc., as may be determined by the above said authority. The ‘first date of hearing’ has also been interpreted to mean, the first date of hearing after determination of provisional rent and other expenses by the Rent Controller. A reading of conclusions drawn in para No. 30 of the judgment in

Rakesh Wadhawan's case (supra) leaves no doubt that if after determination of the provisional rent, a tenant fails to deposit the same, nothing remains to be done and an order of ejectment of a tenant has to be passed. The language of conclusion No. 4 in the said para is very clear and needs no further interpretation. The Court is further of the view that the benefit of conclusions No. 5 and 6 would become available to a tenant only on his making a deposit of the provisional rent and other ancillary charges determined by the Rent Controller and not otherwise. It was implicitly made clear that it is the bounden duty of the tenant to deposit the provisional rent determined by the Rent Controller, otherwise it will entail the tenant's ejectment from the premises in dispute. This Court feels that if a tenant is dissatisfied with the interim order passed by the Rent Controller, he has an opportunity to challenge the same before the date fixed for payment, in the higher forum.

14. We have gone through the findings given in Rajinder Lal case (supra). We respectfully are unable to agree with the proposition of law laid down therein. The rationale of the assessment as laid down in Rakesh Wadhawn's case (supra) is to be discerned from the view as expressed in para No. 29 of the said judgment because

the Hon'ble Supreme Court has balanced the interests of the landlords and tenants so as to ensure that the tenants get an adequate opportunity to deposit the rent consequent upon determination of the provisional rent. Whatever may be the extent of emphasis, which have been put on the view taken in the judgment relied upon by the petitioner, this Court is bound by the conclusions arrived at by the Supreme Court in Rakesh Wadhawan's case (supra) wherein it has been held that if a tenant does not comply with the order on the first date of hearing after determination of the provisional rent and other ancillary expenses by the Court, then eviction has to follow."

Learned counsel for the petitioners has further relied upon a decision of this Court in the case of **Parshotam Das Goel v. Rajender Jain**, 2012(3) PLR 60 to contend that if the respondent was not satisfied with the order of the Rent Controller dated 27.09.2013 in which categorical observations have been made about the relationship of landlord and tenant between the parties and that the rate of rent has been admitted by the respondent, which has otherwise been challenged by him by filing the application dated 05.10.2013, should have been challenged before the higher forum, before the date fixed in the order, for its compliance.

Learned counsel for the petitioners has further relied upon various judgments in the cases of **Anil Kumar v. Ghanshyam Dass**,

2012(1) R.C.R. (Rent) 153, **Mrs. Birinder Khullar v. Maninder Singh**, 2011(3) PLR 38, **Dharam Vir v. Raj Kumar Book Binder**, 2012(2) PLR 360, **Chand Kumar Ahuja v. Gurdarshan Singh Gill**, 2012(3) R.C.R. (Civil) 530 and **Sudhir Kumar v. Kuldip Singh Malhotra**, 2010(4) PLR 658 to contend that after the assessment of provisional rent, if the tenant fails to deposit the same on the first date of hearing, then no further order is required to be passed by the Rent Controller except for the order of eviction.

Learned counsel for the petitioners has further argued that the Rent Controller had no jurisdiction to review its own order in order to entertain an application filed by the respondent on 05.10.2013 and has relied upon a judgment of this Court in the case of **Sat Paul Jindal v. Smt. Sushma**, 2011(2) RentLR 451 in which it has been held that the statutory authority cannot review its own order in the absence of specific provision of review and under the Rent Act, no power to review its own order is conferred on the statutory authority, therefore, the only remedy available to the respondent-tenant was to challenge the assessment order before this Court by way of revision petition which has not been filed by the respondent.

He has further submitted that the rent tendered by the respondent on 21.11.2013 is inconsequential as he had not made the payment of provisionally assessed rent on 19.11.2013. In this regard, he has relied upon a judgment of this Court in the case of **Rajesh Thakur and others v. Jangi Lal**, 2011(3) R.C.R. (Civil) 312.

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On the other hand, learned counsel for the respondent has submitted that the Rent Controller, vide its order dated 27.09.2013, fixed the date for tender of rent as 28.10.2013, the application was filed by him much earlier on 05.10.2013 and it was the fault of the Court that the said application was to be decided by it before 28.10.2013 for which he should not be penalized. It is further submitted that had this application been decided before 28.10.2013 and the Rent Controller had clarified his order dated 27.09.2013 that there is no relationship of landlord and tenant between the parties as the relationship of the respondent of the landlord and tenant was with one Sarabjit Singh, the provisional rent would not have been assessed as in the case of denial of relationship of landlord and tenant between the parties, the Rent Controller is not obliged to assess the provisional rent. It is also submitted that if any error is committed by the Court in recording the order, an application can always be filed for its clarification to the same Court and there is no need to challenge that order in the higher forum.

I have heard learned counsel for the parties and examined the available record with their able assistance.

In the order dated 27.09.2013, a specific observation has been made by the Rent Controller that the respondent has admitted the relationship of landlord and tenant between the parties and also the rate of rent. On that premise, the Rent Controller assessed the provisional rent and fixed the date for tender of rent as 28.10.2013 for the purpose of payment. Admittedly, on 05.10.2013, the respondent moved the application for

clarification of the order dated 27.09.2013 but the said application was not decided on that day rather it was ordered to be taken up on the date already fixed. However, the case was taken up on 27.10.2013, though the date fixed for tender of rent was 28.10.2013, and the Rent Controller adjourned the case to 19.11.2013 for the same purpose i.e. tender of rent. On that date, the tender was not made and the application filed by the respondent was adjourned to 20.11.2013 for arguments and the order was pronounced by the Rent Controller on 21.11.2013 asking the respondent to tender the rent on that date which in fact has been tendered.

In the background of these facts, the question which arises for consideration is “whether such an application filed by the respondent is maintainable?”

It has been held by this Court in **Sat Paul Jindal's case (supra)** that the Rent Controller has no jurisdiction to review its order.

In **Parshotam Das Goel's case (supra)**, this Court has held that if any of the parties is not satisfied with the assessment of provisional rent, it can be challenged before the higher forum as the Rent Controller would not have the jurisdiction to re-assess the same.

Since no contrary precedent has been cited by learned counsel for the respondent, I am of the considered opinion that once an order for assessment of provisional rent has been passed by the Rent Controller, the only remedy available with the party, who is not satisfied with the assessment, is to challenge that order by way of revision before this Court and not by way of an application before the same authority.

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In the present case, the Rent Controller, in its order dated 27.09.2013, has clearly observed that there is an admitted relationship of landlord and tenant between the parties and if the respondent was aggrieved against those observations, he should have challenged that order before this Court as there is no jurisdiction with the Rent Controller to review its order to give a contrary finding of there being no relationship between the parties of the landlord and tenant.

Thus, the application filed by respondent no.1 on 05.10.2013 before the Rent Controller was not maintainable.

Moreover, the Rent Controller had no jurisdiction to extend the time for tender of rent beyond 19.11.2013. Since the rent was not tendered on that date by the respondent, though it was fixed for tendering provisional rent, the judgment of the Supreme Court in **Rakesh Wadhawan's case (supra)** and a Division Bench judgment of this Court in **Rajan alias Raj Kumar v. Rakesh Kumar**, 2010(1) R.C.R. (Rent) 386 would apply with full force besides the other judgments of the Single Bench of this Court, cited by learned counsel for the petitioners.

Thus, the cumulative effect of the aforesaid discussion is that there is a patent error in the exercise of jurisdiction by the Rent Controller in allowing the respondent to tender the rent after 19.11.2013.

Resultantly, the present revision petition is hereby allowed and the impugned order dated 21.11.2013 is set aside.

February 18, 2015
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(**Rakesh Kumar Jain**)
Judge