

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 7326 of 2014 (O&M)
Date of Decision: 05.5.2015.**

Mohd. Salimudin and another

.....Petitioners

Versus

Somi Devi and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Ms. Naveen Malik, Advocate
for the petitioners.

Mr. D.S.Mittal, Advocate
for the respondents.

SABINA, J.

Respondents had filed the petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 as applicable to Union Territory, Chandigarh seeking ejectment of the petitioners from the premises in question. Learned Rent Controller vide order dated 12.8.2014 allowed the ejectment petition. Aggrieved against the said order, petitioners preferred an appeal and the same was dismissed by the Appellate Authority vide judgment dated 10.10.2014. Hence, the present petition by the petitioners-tenant.

Learned counsel for the petitioners has submitted that petitioners had already paid rent to the landlord upto July 2012. Receipt in this regard had been issued by the landlord. The Rent Controller had erred in assessing the provisional rent as the receipt dated 10.7.2012, had not been taken in consideration while

assessing the provisional rent.

Learned counsel for the respondents, on the other hand, has submitted that the receipt dated 10.7.2012, was not pleaded by the petitioners in their written statement. The Rent Controller had merely assessed the provisional rent in terms of the order passed by this Court dated 17.1.2014 in Civil Revision No. 4338 of 2013. Petitioners could have claimed adjustment in the provisional rent qua the amount already paid by them after leading evidence in this regard. The alleged rent receipt dated 10.7.2012 was prior to the filing of the ejectment petition but had not been pleaded by the petitioners in their written statement.

Respondents had sought ejectment of the petitioners on the ground of personal necessity. Vide order dated 4.4.2013, learned Rent Controller assessed the provisional rent and adjourned the case to 15.5.2013 for payment of provisional rent i.e. ₹ 1,47,632.50 P. On 15.5.2013, petitioners tendered ₹ 77,650/- towards arrears of rent, interest and costs and pleaded that they had already deposited ₹ 21,000/- in the treasury vide serial No. 258 dated 30.4.2012 and ₹ 49,000/- had been paid to the landlord as per receipt dated 10.7.2012.

Aggrieved against the order dated 15.5.2013, landlord approached this Court by way of Civil Revision No. 4338 of 2013. The said revision petition was allowed vide order dated 17.1.2014 and it was held as under:-

“Thus, in terms of the above order, tenant was required to pay ₹ 1,47,632.50 on 15.5.2013. At the time of determination of provisional rent, the tenant had not set up the receipt dated 10.7.2012, which had been taken in

consideration by the learned Rent Controller, while passing the impugned order dated 15.5.2013.

Accordingly, the appeal is allowed. Impugned order dated 15.5.2013 is set aside. Learned Rent Controller is directed to pass a fresh order in accordance with law.”

Learned Rent Controller vide order dated 12.8.2014 ordered the eviction of the petitioners from the premises in question as they had failed to deposit the provisional rent within the stipulated period. Learned Rent Controller rightly held that the receipt dated 10.7.2012 had not been pleaded in the written statement by the petitioners. Moreover, the rent petition was filed on 16.7.2012 whereas the alleged receipt was dated 10.7.2012. Thus, the receipt in question was in the knowledge of the petitioners but the same had not been pleaded by them in the written statement. The remedy available to the petitioners was to have deposited the provisional rent as assessed by the Rent Controller and could have led evidence, during trial, that the amount of rent, already paid by them as per receipt dated 10.7.2012, was liable to be adjusted against the provisional rent assessed by the learned Rent Controller. Since the petitioners had failed to deposit the provisional rent as assessed by the learned Rent Controller within the stipulated period, the Courts below rightly held that the petitioners were liable to be evicted from the premises in question.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

May 05, 2015
Gurpreet