IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.7648 of 2013
Reserved on:05.02.2015
Date of decision:25.02.2015

Bakshi Mohd. Shafi

.....Petitioner

Versus

Mohd. Riaz

.....Respondent

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

Present: Mr.G.N.Malik, Advocate, for the petitioner.

Mr.Jai Bhagwan, Advocate, for the respondent.

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G.S.Sandhawalia J.

Challenge in the present revision petition, filed by the petitioner-tenant, is to the order dated 03.12.2013 (Annexure P5), whereby the Rent Controller, Malerkotla, has held that the order of the Appellate Authority dated 29.10.2013 (Annexure P1) was a conditional one, upon the deposit and clearing the arrears of rent upto date and the mesne profits @ ₹3000/- per month, from the date of the order. The same having not been complied with by the tenant, the warrants of possession were issued by holding that the stay no longer operated since interest and the costs of the application along with house tax have not been paid, by placing reliance upon the judgment of the Apex Court in ***Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation 2002 (5) SCC 440***.

Eviction was ordered in the petition filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act') by the Rent Controller on 06.08.2012, from the shop bearing Municipal No.B-

IX/477, located in Malerkotla, on the ground that rent had been demanded from 01.04.2000 and the tenant had not produced any proof for the rent paid till 31.03.2007.

An appeal was filed by the tenant-petitioner along with the stay application whereas the landlord-respondent filed an application for mesne profits, claiming ₹8000/- per month for the shop measuring 9 ½'x20'. The Appellate Authority, vide order dated 29.10.2013, assessed the mesne profits @ ₹3000/- per month and directed the payment of the same at the said rates, from the date of the order and the arrears were to be cleared by 27.11.2013. The execution of the order of the Rent Controller was conditionally stayed. The relevant part of the order reads as under:

> "In view of my above discussion, the execution of order under appeal is stayed subject to the appellant clearing the arrears of rent up to date of order and payment of mesne profits at the rate of Rs.3000/- per month from the date of order. The arrears be cleared on or before 27.11.2013 date already fixed. File be put on 27.11.2013."

Accordingly, the petitioner filed an application dated 22.11.2013 (Annexure P2), for depositing the arrears of rent @ ₹200/- per month from 01.03.2009 to 31.07.2012, for 41 months, amounting to ₹8200/- and mesne profits @ ₹3000/- per month, w.e.f. 01.08.2012 to 31.12.2013, for 17 months, amounting to ₹51,000/-. The interest element was not mentioned in the said affidavit. The total amount of ₹59,200/- was deposited on 26.11.2013, in the Treasury after getting due permission from the Rent Controller, as per the challan (Annexure P3). It was, accordingly, submitted before the Executing Court that the stay order was conditional and the arrears of rent included the interest element and the amount of house tax which had not been deposited by the judgment debtor. Resultantly, the impugned order has been passed on the ground that interest has also not been included and the costs of application along with house tax.

Counsel for the petitioner has vehemently submitted that the version of the tenant cannot be disputed that he has deposited the amount due on 26.11.2013 and there was no specific direction by the Rent Controller regarding the interest element and the house tax and neither the Appellate Authority had directed, as such. It was, accordingly, submitted that the Rent Controller was not justified in directing possession to be handed over by issuing warrants of possession.

Counsel for the respondent, on the other hand, has relied upon the judgment of **Rakesh Wadhawan** (supra) and the principles laid down in it to submit that the tenant was under an obligation to pay the interest on the arrears and the cost of application and therefore, the interest @ 6% per annum have not been paid, the warrants of possession had rightly been directed to be ordered.

After hearing counsel for the parties, this Court is of the opinion that the principles as laid down in the case of **Rakesh Wadhawan** (supra) are regarding the procedure to be followed under Section 13 of the Act on the ground of non-payment of rent and as to how the Rent Controller has to provisionally assess and give an opportunity to the tenant at the first instance. On non-payment, the landlord is entitled for the provisional assessment and on non-compliance, ejectment has to be ordered.

Similarly, it has been held that there is an obligation upon the Rent Controller to make an assessment of the arrears of rent, the interest on such arrears and the cost of application and if the amount deposited by tenant is found to be in excess, refund is to be granted and if the amount deposited is found to be short or deficient, the conditional order is to be passed, directing the tenant to tender the deficit amount, failing which, he shall be liable to be evicted. Relevant part of the principles laid down read as under:

> "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.
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> 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."

In the present case, as noticed above, the stay was conditional regarding clearing the arrears of rent upto date and the payment of mesne profits at the rate of ₹3000/- per month, from the date of the order, i.e. 06.08.2012. A perusal of the eviction order dated 06.08.2012 would go on to show that the claim was from 01.04.2000 to April 2007 besides house tax @ 15% per annum and interest as well and admittedly, the application filed for depositing the rent was only from 01.03.2009 and the interest element was missing. Thus, the tenant failed to comply with the conditional order dated 29.10.2013 and chose to take the risk of violating the conditional protection granted by non-depositing the rent from 01.04.2000, as claimed and the interest element which he was supposed to pay. The landlord, in such circumstances, was well justified in objecting before the Executing Court that the order was not complied with. In such circumstances, once the rent has only been deposited for the period from 01.03.2009, without the element of interest, in the opinion of this Court, the Executing Court was well justified in issuing warrants of possession on account of the violation of the conditions of stay. The petitioner-tenant was well aware of the order which he had to comply with but has chosen to restrict the amount of deposit at his own risk and has, thus, invited the warrants of possession, which have been issued.

In such circumstances, the impugned order does not suffer from any infirmity or illegality which would warrant interference in the revisional jurisdiction of this Court. Accordingly, the present revision petition is dismissed.

25.02.2015 **(G.S.Sandhawalia)**
sailesh **JUDGE**