

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No. 7716 of 2014 (O & M)

Date of decision: 13.02.2015

Devinder Kumar Sharma

....Petitioner(s)

Versus

Gurudwara Bud Sahib

...Respondent(s)

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

Present: Mr. APS Shergill, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

This judgment shall disposed of three civil revision petitions i.e. C.R. Nos. 7716 and 8848 of 2014 and C.R. No. 67 of 2015, as common questions of facts and law are involved in all the revision petitions. For dictating the judgment, ***C.R. No. 7716 of 2014, Devinder Kumar Sharma vs. Gurudwara Bud Sahib*** is being taken up.

Challenge in the present revision petitions by the tenants in this common issue which is arising in these 3 revision petitions, details of which have been given above, is to the eviction orders dated 25.04.2014 by the Rent Controller, Kharar which have been passed on account of the non-tendering of the rent. The appeals thereafter have been dismissed by the Appellate Authority at SAS Nagar, Mohali on 23.09.2014 keeping in view the binding precedent of the Apex Court in ***Rakesh Wadhawan and others vs. M/s. Jagdamba Industrial Corporation and others, 2002 (5) SCC 440*** and the Division Bench of this Court in ***Rajan @ Raj Kumar vs. Rakesh Kumar, 2010 (2) PLR 201***. It has also been noticed that the said view has consistently been followed by this Court in ***Chand Kumar Ahuja vs.***

Gurdarshan Singh Gill, 2012 (3) RCR (Civil) 530 and Mrs. Birinder Khullar vs. Maninder Singh, 2011 (3) PLR 38.

The petitioners, who are tenants with the respondent-Gurudwara Budh Sahib, had been arrayed as respondents in the eviction petitions filed on the ground that there was non-payment of rent. The rent was assessed vide order dated 25.03.2014 @ ₹1,300/- from November, 2011 till February, 2014 for the two shops in question bearing Nos. 4 and 5 and a sum of ₹80,078/- was the provisional rent which was to be paid on the date fixed i.e. 25.04.2014 in view of the law laid down in *Rakesh Wadhawan's case (supra)*. Counsel for the tenants was present on the said date as per the attendance marked. On the date fixed for tendering the rent, a proxy counsel had put in appearance and request was made that the tenant was not having sufficient amount and that he had filed a revision petition against the order which is pending for 07.05.2014. Accordingly, eviction order was passed giving 3 months' time to the tenant to vacate the premises on 25.04.2014.

The appeal was filed by the same counsel before the Appellate Authority taking the plea that the counsel was busy in Civil Courts at SAS Nagar, Mohali and had requested the Clerk to make a request to the Court for adjournment of the rent petition on 25.03.2014 and the date had been noted for 07.07.2014. It was pleaded that counsel had not appeared on the said date and resultantly, the order dated 25.04.2014 was illegal. It was averred that the appellant was always ready and willing to tender the arrears of rent and had never appeared before the Court on 25.04.2014. An affidavit was filed in support of the said averments. The Appellate Authority has dismissed the appeal by holding that the regular counsel had

not appeared and keeping in view the binding precedents, there was no scope for interference.

Counsel for the petitioner has raised the same argument that the case was noted for 07.07.2014. Even if there was a bona fide error, the tenant never made any effort to deposit the amount by furnishing the demand draft alongwith the appeal which was filed on 13.05.2014. It is strange to notice that if the date was noted as 07.07.2014, how the appeal was filed before 07.07.2014 or 13.05.2014 if the petitioners were not aware that the orders had been passed on 23.05.2014/25.04.2014. It is thus, apparent that a cock and bull story is being made up to avoid the inevitable eviction. The law has already been discussed by the authorities below, the reasoning being that the landlord is entitled to the rent for the period the tenant remains in possession and that it is the least the landlord is entitled to do. Reliance has also been placed upon judgment of this Court in *M/s. Nihal Singh Motors and others vs. Shama Malhotra etc., 2004 (3) PLR 389* to submit that if there is failure of tenant to comply with provisional order of assessment, nothing remains to be done and ejection has to be ordered and extension cannot be granted. In the said judgment, It has been held that until a valid justification is there that why the rent has not been tendered on the date fixed, the Rent Controller does not have any authority to extend the time which was initially granted.

Thereafter, in *Sanjeet Singh vs. Mohali Motor Finance Co. and another, 2011 (3) PLR 15*, it has been held that the Rent Controller has no jurisdiction to extend the period of time of the provisionally assessed rent without any reason and on failure, eviction would have to be automatically follow. The relevant observations read thus:-

“9. *It is now well settled by this Court that in view of the decision rendered by the Division Bench of this Court in Rajan alias Raj Kumar's case (supra), following the decision of the Supreme Court in Rakesh Wadhawan's case (supra), the Rent Controller has no jurisdiction to extend the period of time for tendering of provisionally assessed rent without any reason. In the present case, the learned Rent Controller has assessed the provisional rent on 22.01.2009 to be paid by the tenants on 24.02.2010, but the tenants failed to deposit the rent within the stipulated period and for that matter Rent Controller had no jurisdiction to extend the time for tendering of the provisionally assessed rent.*

10. *Learned counsel for the respondents has also submitted that the case is at its fag end as the entire evidence has been concluded, however, it is disputed by learned counsel for the petitioner on the ground that the tenants have filed only their affidavits in their examination-in-chief.*

11. *Be that as it may, in view of the facts and circumstances of the present case and the law laid down by the Supreme Court in Rakesh Wadhawan's case (supra) and followed by the Division Bench of this Court in Rajan alias Raj Kumar's case (supra), the question of law, which has been framed in the beginning of the judgment, is answered in favour of the petitioner/landlord by observing that the Rent Controller has no jurisdiction to extend the period of time for the purpose of tendering provisionally assessed rent without there being any reason.*

12. *In view of the above, the present revision petition is allowed.”*

Similarly, in ***Mrs. Birinder Khullar vs. Maninder Singh, 2011***

earlier order of assessment and whether he could extend the time. The order extending the time for tendering the provisional rent was set aside. The relevant observations read thus:-

“19. Thus, after considering the facts of this case and law applicable thereto, the first question is decided in affirmative and it is held that the Rent Controller has no jurisdiction to order extension of time of payment of provisional rent by the tenant. Insofar as the second question is concerned, that too is decided in favour of the petitioner herein because even if it is assumed that the application for re-assessment was a review application, the Rent Controller had no jurisdiction to grant further time to the tenant for tendering the provisional rent when he did not agree with him on his application for review. In that circumstance, he was left with no other alternative but to simply dismiss the application as he had actually done in the impugned order but faulted by granting time to the tenant to make the payment of arrears of rent beyond the date, which was given initially when the provisional rent was fixed.

In view of the aforesaid discussion, the present revision petition is thus, allowed and the impugned order dated 11.8.2010 is hereby set aside with cost throughout.”

This Court in ***C.R. No. 7258 of 2014, M/s. G.C.S. Computer Technology Pvt. Ltd. vs. Inderdeep Singh Dhillon decided on 19.11.2014*** has taken a similar view after noticing all the case law on the point.

All contentions raised by the counsel thus have been noticed and are outrightly rejected.

In such circumstances, there is no merit in the present revision

petitions and the same are dismissed with costs of ₹5,000/- in each case.

The Rent Controller, Kharar is directed to ensure that the possession of the shops are handed over to the landlord at the earliest.

13.02.2015
shivani

(G.S. SANDHAWALIA)
JUDGE