IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.8695 of 2014 (O&M)
Date of decision:06.01.2015

Raja

....Petitioner

Versus

Jaswant Kaur

.....Respondent

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

Present: Mr.Raj Kumar Chandana, Advocate, for the petitioner.

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G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition, filed by the tenant-petitioner is to the order dated 02.05.2014, passed by the Rent Controller, Ludhiana, whereby eviction order was passed on the ground that the provisional rent, as assessed on 10.04.2014, had not been paid and an application had been filed for extention of time for the payment of ₹35,075/-. The appeal has also been dismissed on 20.10.2014, by the Appellate Authority, keeping in mind the judgment of this Court in ***Mrs. Birinder Khullar Vs. Maninder Singh 2011 (3) PLR 38***.

A perusal of the facts would go on to show that vide the order dated 10.04.2014, the rent was provisionally assessed at ₹500/- per month, w.e.f. 01.05.2009 to 30.04.2014, which included the interest component and the costs. The date for tendering rent was fixed for 02.05.2014 and the application was filed for extending the time by the tenant. In view of the judgment of the Apex court in ***Rakesh Wadhawan Vs. Jagdamba Industrial Corporation 2005 (5) SCC 440***, the application was dismissed and the ejectment order was passed from the one room tenanted premises. As noticed, the appeal has also been dismissed.

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The law is settled by the Apex Court and the Division Bench of this

Court that once the provisional rent is not tendered, ejectment is to follow. This Court in ***Rajan @ Raj Kumar Vs. Rakesh Kumar 2010 (2) PLR 201*** held that once there is a failure to deposit the rent assessed, nothing is to be done and eviction has to follow. Relevant observations read as under:

> "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.
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> 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

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> 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."

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 extent the time for tendering of the provisionally assessed rent.
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> 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.
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> 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.
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> 12. In view of the above, the present revision petition is allowed."

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Similarly, in the case of **Mrs. Birinder Khullar** (supra), the issue raised was that the Rent Controller could review the 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.
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> 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."

In view of the settled principle of law, since the tenant has throughout not chosen to comply with the directions, then the impugned order is not liable to be interfered with. In such circumstances, the orders which have been passed by the authorities below do not warrant interference by this Court in its revisional jurisdiction.

Accordingly, finding no merit in the present revision petition, the same is hereby dismissed.

06.01.2015 (G.S.SANDHAWALIA)
sailesh JUDGE

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