

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4936 of 2002 (O&M)

Date of decision: 18.06.2015

Shish Pal

... Petitioner

versus

Charan Kaur

.... Respondent

2. CR No. 4937 of 2002 (O&M)

Hari Ram

... Petitioner

versus

Charan Kaur

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Abhishek Singla, Advocate for
Mr. Akash Singla, Advocate for the petitioner.
None for the respondent.

K.Kannan, J.

The civil revision petitions are by the tenants who have been ordered to be evicted on the ground of non-payment of rent. The tenants had a defence that as against the landlord's plea that the rent payable was ` 100 and ` 110/- per month respectively and that house tax of ` 225/- was also payable which have not been paid from June 1993, that the rent payable was only ` 80/- per month. There was another ground of eviction namely that the building was unfit and unsafe for human habitation but the landlord had given up a plea.

The landlord's contention was that the tenants have been in default from June 1993 while the tenant's contention that the rents have been paid upto September 1994 and on the date of the filing of the writ petition there was no rent payable. Rent Controller did not determine the provisional rent payable by taking a preliminary decision either on

the rate of rent in view of the dispute regarding the quantum or the period from when the rent was still due, in view of the dispute regarding the period from when the default had been committed. The Rent controller held after full fledged trial held accepting that tenant's plea that the rent was ` 80/- only for both tenants and not Rs.100/- qua the tenant who is the revision petitioner in CR No. 4937 of 2002 and ` 110/- qua the tenant who is the revision petitioner in CR No. 4936 of 2002, as contended by the landlords. The Rent controller also found that the house tax was also payable and upheld the landlord's contention that the rent was payable from October 1992 to September 1994 qua CR No.4937 of 2002 and June 1993 till September 1994 qua CR No.4936 of 2002 itself. It is not in dispute that the tenant was paying the rent @ ` 80/- from the date of the filing of the writ petition. Since the tenants admittedly had been found as not having paid rent, they were found to be in default. Eviction orders were passed as a matter of the consequence. The Appellate Authority confirmed the decisions and dismissed the appeals.

In revision petitions the counsel contends that Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation, 2002 (2) PLR 370, laid down the law on the subject casting an obligation on the Rent Controller to determine the provisional rent and call upon the tenant to make the payment before the immediate next day following such determination. The Supreme Court explained that the next hearing would be taken as the first date of hearing after determination if there was dispute regarding the quantum of rent payable. While paraphrasing the entire reasoning in the judgment in paragraph 30, the Supreme Court had explained in paragraph 5 the nature of order that has to be passed in a case where the rent paid by the tenant fall short of the amount determined by the Court. The observations are 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 mount 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 of 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”.

I would apply these observations of the Supreme Court to the present situation to hold that if the Rent Controller had not carried out the statutory obligation of determination of provisional rent, the Rent Controller was bound to call upon the tenant to pay the rent determined by it within a period prescribed by it and if actually there was a default, inspite of there granted by it, the eviction order could have been issued. The order directing the eviction when there was a dispute regarding both the quantum and the period was therefore incompetent. I therefore modify the order and hold as follows:

- 1.The tenant in CR No. 4396 of 2002 shall become liable to pay the in rent calculated @ Rs.80/- per month from June 1993 till September 1994 and also pay the house tax @ ` 225/- being the yearly tax.
- 2.The tenant who is the party in CR No. 4937 of 2002 will pay ` 80/- from the year October 1992 upto September 1994 together with the house tax payable.
- 3.The amounts calculated shall be paid within four weeks from the date of the receipt of the copy of the order. If the amount is paid within the time stipulated, the order of eviction passed already shall stand set aside.
4. If on the other hand, the amount is not paid as directed, it shall be construed that the respective tenants

were in default in payment of rent as determined by the Court and the order of eviction will operate from the period after the expiry of one month from the date when the copy of the order is made ready.

The order passed by the authorities below are modified and the civil revision petitions are ordered on above terms.

18.06.2015
kv

(K.KANNAN)
JUDGE