

CR No. 3513 of 2016

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 3513 of 2016

Date of Decision: September 14, 2016

Surinder Kumar

...Petitioner

Versus

Savitri Devi through LR Santosh Kumari

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. K.K. Dadwal, Advocate
for the petitioner.

Mr. Rishabh Gupta, Advocate
for the respondent.

AUGUSTINE GEORGE MASIH, J. (Oral):

Petitioner has approached this Court impugning the order dated 11.05.2015 (Annexure P-4) passed by the Rent Controller, Hoshiarpur, whereby, the Court has come to a conclusion that the provisional rent as assessed by the Rent Controller has not been tendered by the petitioner and therefore, keeping in view the judgment of the Hon'ble Supreme Court in **Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation 2002 (1) R.C.R. (Rent) 514**, the eviction order has been passed, appeal against which preferred by the petitioner has been dismissed by the Appellate Authority, Hoshiarpur, vide order dated 28.01.2016 (Annexure P-6).

It is the contention of the learned counsel for the petitioner that on the date which was fixed for tendering of the provisional rent as

assessed, the Court had recorded that the counsel for the petitioner has sought adjournment as the petitioner had not come to Court as yet and on his request, the case was adjourned for further proceedings. This order was passed on 03.02.2014. Thereafter, an application was moved by the petitioner the same day that he is ready to make the payment and got his statement recorded in the Court but since the counsel for the respondent-landlord and the landlord had left and they were not present, the case was adjourned for further consideration. The date which was fixed was 04.04.2014, on which date the case could not be taken up as prior thereto, an order was passed indicating that the Court would be on leave and the matter was adjourned to 24.05.2014. On the said date, an application was moved by the respondent-landlord for passing an order of ejectment of the petitioner-tenant on account of non-compliance of the order dated 27.11.2013, according to which, the provisional rent as assessed and was to be tendered. The copy of the application was supplied to the counsel for the petitioner and the case was adjourned for filing reply and further proceedings. Unfortunately, on the next date of hearing, when the case was taken up on 25.07.2014, the landlord had died and an application for impleading her legal representatives was filed, which was ultimately allowed by the Court on 06.05.2015. Thereafter, the impugned order has been passed on 11.05.2015. He contends that a perusal of the *zimni* orders would indicate that the petitioner was ready and willing to deposit the provisional rent as assessed by the Rent Controller on the date which was

fixed for the same. Initially, when the case was taken up for hearing, the petitioner was not present in Court. The moment he reached the Court, an application for tendering the provisional rent was filed. Rest is apparent from the sequence of the orders which have been passed by the Rent Controller from time to time. He, thus, contends that the petitioner cannot be punished for non-fault of his and the judgment passed by the Hon'ble Supreme Court in Rakesh Wadhawan's case (Supra) in the peculiar facts and circumstances of the present case would not be applicable to the case in hand as there is no extension of time granted by the Rent Controller in the case of the petitioner. Prayer has, thus, been made for setting aside the impugned orders passed by the Courts below by allowing the present revision petition.

On the other hand, learned counsel for the respondent has vehemently argued that it is a settled proposition of law that the Rent Controller has no option but to pass an order of eviction in case the provisional rent as assessed is not tendered on or before the date which is fixed by the Court for such tender. In the present case, the provisional rent was assessed by the Rent Controller on 27.11.2013 fixing the date as 03.02.2014 for tender of the such assessed provisional rent. On the said date, the tender of the rent was not made as is apparent from the order passed by the Rent Controller and adjournment was sought on his behalf. It is because of this reason, the counsel as well as the respondent-landlord had left the Court premises. With a *mala fide* intention subsequently an

application has been moved for tendering of provisional rent and therefore, it cannot be said to be tendered especially when there was no impediment in submitting the same to the Court or deposit it. He, instead, only got his statement recorded before the Court with regard to he being ready to tender the provisional rent. His further contention is that even on the next date of hearing, which was ultimately fixed by the Court as 24.05.2014, no effort was made to tender the provisional rent as assessed which shows that the petitioner did not have the amount ready for making such tender. Prayer has, thus, been made for dismissing the present revision petition as the impugned orders are in accordance with law.

I have considered the submissions made by the counsel for the parties and with their assistance have gone through the orders which have been passed by the Courts below.

It is not in dispute that the provisional rent was assessed by the Rent Controller on 27.11.2013 when the case was adjourned to 03.02.2014 for making the payment. On 03.02.2014, the following order was passed:-

“Tender of rent not made. Counsel for respondent seeks adjournment on the ground that his client has not come yet. Adjourned to 4.4.2014, for tendering rent and further proceedings.”

In the above-mentioned order, the significant word which requires to be taken note of is 'yet'. 'Yet' word indicates that the counsel was aware of the fact that his client is coming and the likelihood of his client coming after some time. It did happen so as on the same day as is apparent

from the subsequent order which has been passed by the Rent Controller on 03.02.2014 itself, which reads as follows:-

“At this stage, file again taken up on moving application by respondent. Respondent is ready to make payment and he got his statement recorded, but none has come present on behalf of applicant. Put up on date fixed for further proceedings.”

A perusal of the above two orders would indicate that the petitioner was very much present on 03.02.2014 in Court when the case was again taken up with the amount of provisional rent and was willing and ready to tender the same but because of the respondent-landlord or his counsel being not present, the same could not be done.

At this stage, counsel for the respondent has pointed out that even the notice of the said application has not been given to the respondent-landlord but this would not make much of a difference. The petitioner cannot be held responsible for such a procedure not having been followed by the Rent Controller. What is apparent and is to be seen is the intention on the part of the petitioner is whether he was willing and had the resources to tender the provisional rent as assessed. The said intention as has been observed above was very much there.

Assertion has also been made that on 24.05.2014, when the case was fixed for hearing, the petitioner did not tender the provisional rent on the said date but a perusal of the order passed on 24.05.2014 would show

that on the said date, an application for passing an order of ejectment against the petitioner was filed of which notice was issued and the same was listed for filing of reply. Unfortunately, in the integrum, the respondent-landlord expired leading to the filing of an application for impleading her legal representatives. This sequence of events further shows that there was no occasion on the part of the petitioner to tender the provisional rent as assessed and therefore, it cannot be said that the petitioner was not ready with the amount or was not willing to tender the provisional rent as assessed on 03.02.2014. It may not be out of way to mention here that the application for impleading the legal representatives of the landlord was allowed only on 06.05.2015 and thereafter, the final order dated 11.05.2015 which is impugned, has been passed. The judgment of the Supreme Court in *Rakesh Wadhawan's* case (supra) would not be applicable to the facts and circumstances of the present case as it is a peculiar case on facts in itself as per the sequence of events as has been narrated in the earlier part of the order.

Keeping in view the above, the impugned order dated 11.05.2015 passed by the Rent Controller as also order dated 28.01.2016 passed by the Appellate Authority cannot sustain and are hereby set aside and the present revision petition stands allowed. Parties to appear before the Rent Controller, Hoshiarpur, on 30.09.2016 on which date petitioner to tender the provisionally assessed rent vide order dated 27.11.2013 by the Rent Controller, Hoshiarpur, as also the arrears of such assessed provisional

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rent. Petitioner to continue deposit of such assessed provisional rent with the Rent Controller, Hoshiarpur, by 7th of each month.

In view of the facts and circumstances of the present case, since the eviction petition was filed in the year 2009, no further delay for concluding the proceedings by the Rent Controller need to occur.

September 14, 2016
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No