

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**C.M. NOS.15683-84 AND 23179 CII OF 2016
CIVIL REVISION NO.5076 OF 2016 (O&M)
DATE OF DECISION: NOVEMBER 18, 2016**

Dr.Shamsher Singh Dhillon

.....Petitioner

VERSUS

Dev Wati

....Respondent

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Vishal Deep Goyal, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASI, J. (ORAL)

C.M. Nos.15683 and 23179 CII of 2016

Applications are allowed as prayed for subject to all just exceptions.

C.M. No.15684 CII of 2016 and Civil Revision No.5076 of 2016

Petitioner has approached this Court, impugning the order dated 07.07.2014 passed by the Rent Controller, Bathinda, whereby eviction of the petitioner has been ordered on the basis of non-submission of provisional rent on the next date of hearing as fixed, appeal against which preferred by the petitioner has also been dismissed by the Appellate

Authority, Bathinda, on 19.05.2016.

It is the contention of learned counsel for the petitioner that neither the counsel for the petitioner in the Court below nor the petitioner himself was present, when the provisional rent was assessed by the Rent Controller on 22.03.2014. He contends that because of the ignorance of the fact that provisional rent has been assessed, which was not to the knowledge of the petitioner or his counsel, Sh.Rajiv Gupta, Advocate, the rent could not be tendered on 28.05.2014, the date on which the case was subsequently taken up for hearing. He contends that on the said date i.e. 28.05.2014 when it came to the knowledge of the petitioner that date for payment of provisional rent has been fixed by the Rent Controller, he moved an application for recall of the said order. On the next date of hearing i.e. 03.07.2014, the provisional rent, as assessed, was tendered in the Court. He further contends that on the very first occasion, when the petitioner got an opportunity after getting knowledge about the assessment of the provisional rent, he offered to deposit the same with arrears but the Court refused to take the same on the pretext that the period, as fixed by the Court for tender of the provisional rent having expired, the same could not be accepted. This, the counsel submits, is unsustainable.

Having considered the submissions as made by counsel for the petitioner and also going through the orders impugned as also the zimni orders, which have been placed on record today, the assertions as made by counsel for the petitioner are unacceptable. On all dates, when the proceedings were taken up, presence of counsel for the petitioner has been correctly marked. A plea was taken before the Appellate Authority by the petitioner that Mr.M.L.Gupta, Advocate, whose presence has been marked on his behalf was never engaged by him, which fact has been found to be

totally incorrect by the Appellate Authority on perusal of the records of the Rent Controller, which were called for. As a matter of fact, from the power of attorney, which was on record, it is apparent that he had engaged both the counsel, namely, Sh.Rajiv Gupta and Sh.M.L.Gupta, Advocates. The petitioner, therefore, is a person, who can go to the extent of making a false averment in an appeal, which is totally contrary to the records. The action of the petitioner is malafide and he has made an effort to over-reach the Court, rather to mislead the Court by making a false statement. Thus, the equity is against him.

It is a settled proposition of law that tender of provisional rent, as assessed, has to be made within the time as fixed by the Rent Controller, which, as is apparent from the records, was assessed on 22.03.2014 in the presence of the counsel for the parties and thereafter the effective hearing of the case had taken place on 28.05.2014, on which date the petitioner failed to tender the provisional rent, as assessed. It may not be out of way to mention here that after 22.03.2014, when the assessment of provisional rent was made by the Rent Controller, the case was fixed for two dates, namely, 25.04.2014 and 14.05.2014 but since the Court was on leave, the matter was taken up for effective hearing on 28.05.2014, which apparently and rightly has been taken to be the date for tender of provisional rent as assessed. The petitioner having not availed of the opportunity, as has been granted by the Rent Controller, the Court has rightly ordered eviction of the petitioner from the demised premises.

In view of the above discussion, there is no merit in the petition and the same stands dismissed in limine.

Since the main petition stands dismissed, C.M. No.15684 CII of 2016 for staying dispossession of the petitioner from the premises in question is also dismissed.

**November 18, 2016
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**(AUGUSTINE GEORGE MASIH)
JUDGE**

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