

C.R. No.6215 of 2004 (O&M)

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

C.R. No.6215 of 2004 (O&M)

Date of Order: 20.05.2016

Subhash Aggarwal

....Petitioner

Versus

M/s Narinder Singh & Co. etc

....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Amit Jain, Advocate for the petitioner.

Mr.P.C. Dhiman, Advocate for the respondents.

1. **Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)** Yes
2. **To be referred to reporters or not ? (Yes/No)**
3. **Whether the judgment should be reported in the Digest ? (Yes/No)**

AJAY TEWARI ,J (ORAL)

This revision petition has been filed against the concurrent findings of both the learned courts below ordering eviction of the petitioner on the ground of non-deposit of provisional rent.

Petition was filed on 09.10.2001 on the ground of non-payment and subletting (but what survives in the present case is only the issue of non-payment) and the respondent had claimed rent from 01.10.1997 to 31.10.2001. On 20.4.2004, the provisional rent was assessed and the following order was

passed:

“In the present case, the petition has been filed claiming rent w.e.f October 1997 till October 2001, further on the ground of subletting.

Notice of the petition was served. Reply was received in which it has been denied that there are arrears of rent since October 1997 and it was submitted that rent has already been tendered on the earlier petition upto 1.9.2000 to 31.12.2001 alongwith interest and costs and denied that arrears of Rs.5,06,220/- are due and application for stay of ejectment petition was also filed which was disposed of on 28.7.2003.

I have heard the arguments for assessment of provisional rent and learned counsel for the petitioner filed copy of tender statement made on 20.9.2001 duly certified by the counsel herein it is stated that on 27.9.2001 rent was tendered from 1.9.2000 to 31.12.2000. Hence the rent is due from 1.1.2001 @ Rs.11000/- p.m. The respondent is directed to tender the rent on 24.4.2004.”

The dispute is that the petitioner deposited the rent only upto the date of filing of the petition and not till the date of passing the order. Both the courts below have held that in terms of judgment of the Supreme Court reported as **Madan Mohan and anr Vs. Krishan Kumar Sood 1993 (1) RCR (Rent) 290**, it was incumbent upon the tenant to have deposited upto date arrears and having not deposited the same, he was liable to be evicted.

Learned counsel for the petitioner has stated that as

on today he would not dispute this proposition of law but at the time when the order was passed, the Rent Controller having not specified the amount, non-deposit by the tenant had to be held as a bonafide mistake. It is argued that in **Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation, 2002 (1) RCR (Rent) 514**, the Supreme Court settled the issue regarding fixation/payment of provisional rent and held as follows:

“What follows from the abovesaid discussion is that the proviso to clause (i) of sub-section (2) of [Section 13](#) must be read as obliging the Controller to assess, by means of passing an order, the arrears of rent, the interest and the cost of litigation all the three, which the tenant shall pay or tender on the first date of first hearing of the main petition following the date of such assessment by Controller. Such order based on an opinion formed prima facie by perusal of the pleadings and such other material as may be available before the Controller on that day would be an interim or provisional order which shall have to give way to a final order to be made on further enquiry to be held later in the event of there being a dispute between the parties calling for such determination. The Controller would, however, at the outset assess the rent, the interest and the cost of application in the light of and to the extent of dispute, if any, raised by the tenant. Such amount, as determined by Controller shall be liable to be paid or tendered by the Controller on the 'first date of hearing' falling after the date of the preliminary or provisional order of Controller. The expression "the date of first

hearing" came up recently for the consideration of this Court in Mam Chand Pal Vs Smt. Shanti Agarwal, 2002(1) RCR (Rent) 326; (C.A. No.1187 of 2002 decided on 14.2.2002). It was held that 'the date of first hearing' is the date on which the Court applies its mind to the facts and controversy involved in the case. Any date prior to such date would not be date of first hearing. For instance, date for framing of issues would be the date of first hearing when the Court has to apply its mind to the facts of the case. Where the procedure applicable is the one as applicable to Small Cause Courts, there being no provision for framing of the issues, any date fixed for hearing of the case would be the first date for the purpose. The date fixed for filing of the written statement is not the date of hearing. Keeping in view the interpretation so placed on 'the date of first hearing' the obligation cast by the proviso under consideration can be discharged by the Controller on any date fixed for framing of the issues or for hearing. It would be the obligation of the parties to place the relevant material on record, in the shape of affidavits or documents, which would enable the Controller to make a provisional judicial assessment and place it on record to satisfy the spirit of the proviso. It would be desirable if the Rent Controller specifically appoints a date for the purpose of such assessment and order so that the parties are put on adequate notice and bring the relevant material on record to assist the Controller. A litigant cannot be expected to be ready to comply with the order of the Controller on the very day on

which the order is made. How could he anticipate what order the Controller would be making?

Thereafter, this judgment was further explained by this Court in the case reported as **Gurpreet Singh and another Vs. Brijinder Bhardwaj and another, 2011 (1) RCR (Rent) 319** wherein while discussing the law on the entire subject, it has been held as follows:

“At this stage, it would be worthwhile to notice as to whether is it not the duty of the Rent Controller to assess the exact amount of arrears of rent and also calculate the interest accrued thereon at the rate of 6% per annum as provided under Section 13 (2) (i) (proviso) of the Act. To my mind, the Rent Controller is obliged under the Act to assess the exact amount of arrears of rent, exact amount of interest accrued thereon, cost of the petition and the exact total amount which is liable to be paid by the tenants as the provisional rent on the date fixed by the Court. Since consequence of non tendering the exact amount of provisional rent on the date fixed is very drastic, therefore, responsibility of the Rent Controller equally very high and if there is any mistake in the calculation of the amount, if it is not properly assessed by the Rent Controller, the tenant cannot be held liable on the principle that “Act of the Court should do no harm to the litigant”. In this regard, decision of the Supreme Court in Jang Singh's Case (Supra) needs a reference. In the said case, a preemption decree was drawn and the decree holder was directed to deposit Rs.5951/- less Rs.1000/- already deposited by him by a certain date and

on failure, the suit was to stand dismissed. The decree holder approached the Court before the date for making the deposit and the Court Clerk prepared a bank challan for Rs.4950/- instead of Rs.4951/- and the decree holder made the deposit by Rs.one less. After the deposit, the decree holder obtained possession and the judgment debtor applied for release of the amount lying with the Court. It was found that the deposit was short by Rs.one.

Hence, a direction is also given to all the Rent Controllers in the States of Punjab, Haryana and Union Territory, Chandigarh, to assess the provisional rent by multiplying the rate of rent with the period for which it is due, calculate the exact amount of interest @ 6% and after assessing the cost, give an accurate amount to the tenant which he is supposed to tender on the date fixed by the Court so that this kind of situation may not arise in future because this Court has experienced that Rent Controllers are neither calculating the amount of interest nor are giving the accurate amount.”

In the present case, the order of the Rent Controller shows that he did not assess the amount due. In these circumstances, it has to be held that the judgments passed by both the courts below are wrong.

It has also been informed that subsequently the tenant had deposited the entire rent even till today.

Consequently, the impugned judgments passed by both the courts below are set aside and the petition filed by the

C.R. No.6215 of 2004 (O&M)

#7#

respondent is dismissed. Matter is remanded back to the Rent Controller for decision on the other issues. Parties through their counsel are directed to appear before the learned Rent Controller, Chandigarh on 25.7.2016.

May 20, 2016
manoj

(AJAY TEWARI)
JUDGE