

CR-708-2012 (O&M)
Date of decision : 17.05.2016

versus

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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The brief facts of the case are that the landlord had filed a petition for eviction of the tenant on the ground of non-payment of rent @ Rs.300/- per month w.e.f. 01.04.2008 till the date of filing of the petition i.e. 18.03.2011. The petitioner appeared and admitted the rate of rent as well as the date from which

the amount was due and, since there was no dispute on facts, provisional rent was assessed and the petitioner not having paid the amount, he was ordered to be evicted.

Learned counsel for the petitioner has argued that on 17.08.2011, the case was adjourned to 26.08.2011 for filing replication. On 26.08.2011 no order was passed with regard to the replication but provisional rent was assessed which was ordered to be paid on 7th of September, 2011.

On 07.09.2011 the following order was passed :-

“Present :- Counsel for the parties

On request, case is adjourned to 26.9.2011 for payment of rent.”

On 26.09.2011 the respondent moved an application praying that the order of eviction be passed since rent was not tendered on the previous date. As per learned counsel for the petitioner once the matter was adjourned on 07.09.2011 for payment and a date was fixed for the said purpose the petitioner could not have been ordered to be evicted on the ground that provisional rent was not paid, more so since the case was earlier fixed for replication and consequently the orders of both the Courts below are liable to be set aside and the petition is liable to be dismissed.

On the other hand learned counsel for the respondent has argued that once the rate of rent and the period from which the rent was not paid were admitted there was no occasion or requirement for any replication to be filed and rather it was the duty of the tenant to have come present and paid the rent. The issue of computation of provisional rent and of giving one opportunity to the

tenant to make the payment was devised by the Hon'ble Supreme Court in the case of *Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation, 2002 (1) R.C.R. (Rent) 514*, which was primarily in the context of the facts where either the rate of rent or the period of non payment were in dispute, but where there was no dispute of these two facts, as in the present case, there would really be no requirement either for computation or for providing the tenant a specific opportunity to pay the same. Moreover, both the Courts have found as a fact that there was no justification for the petitioner-tenant to have not paid the rent on 07.09.2011 after the same was computed on 26.08.2011. In the facts of the case the arguments sought to be raised to the effect that the petitioner was mislead is neither here nor there.

In the circumstances no fault can be found with the judgments of the Courts below.

The Petition is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

May 17, 2016
Pooja sharma-I