

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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C.R. No. 8050 of 2015 (O&M)

Date of Decision: 08.01.2016

Sandeep Sood

.....PETITIONER

VERSUS

Yashpal Sharma

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

PRESENT: Mr. S.S.Hira, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J (ORAL)

Challenge in this revision petition is to the order passed by the Rent Controller, Hoshiarpur dated 20.07.2015, whereby the application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 for ejectment of the petitioner-tenant from the demised shop has been allowed because of non-payment of the assessed provisional rent, appeal against which has been dismissed by the Appellate Authority on 08.09.2015.

2. It is the contention of the learned counsel for the petitioner that as per the judgment and decree dated 27.07.2009 passed by the Additional Civil Judge (Senior Division), Hoshiarpur in case titled as Kasturi Lal vs. Yashpal Sharma, the petitioner-tenant was not liable to pay any rent to the respondent-landlord till ₹ 1 lac is paid to the father of the petitioner and since not even a single penny has been paid to the father of the petitioner, he

was not liable to pay any rent. He contends that this is a term of the decree and, therefore, the rent, as assessed, was not to be paid by the petitioner and he has, therefore, rightly not tendered the same in Court. In any case, he contends that the arrears of rent would come to ₹ 36,536/-, as assessed, whereas the amount payable to the father of the petitioner is ₹ 1 lac. His further submission is that the Courts below have not properly appreciated the terms of the decree and have misled themselves in coming to the conclusion that the petitioner was liable to tender rent, as assessed, within the time stipulated. Prayer has, thus, been made for setting aside the impugned order and for allowing the present revision petition. Reliance has also been placed upon the judgment of the Supreme Court in **Shashi Jain vs. Tarsem Lal (Dead) and another**, 2009 (2) R.C.R. (Civil) 782, to contend that the High Court, in exercise of its revisional jurisdiction, can independently reassess the pleadings and the evidence and come to its own conclusion and, therefore, this Court may, in exercise of its powers, do the same in the present case.

3. I have heard the learned counsel for the petitioner and with his assistance, have gone through the impugned orders but do not find any substance in the submissions, as put forth by the counsel for the petitioner.

4. As regards the judgment of the Supreme Court in Shashi Jain's case (supra) where the powers conferred on the High Court in its revisional jurisdiction is mentioned, cannot be disputed with but in the present case, I do not find any misinterpretation or misreading of the judgment and decree dated 27.07.2009 passed by the Additional Civil Judge (Senior Division), Hoshiarpur in the light of the facts and circumstances of the present case.

5. It is not in dispute that the judgment and decree dated

27.07.2009 is in favour of the father of the petitioner and there is a stipulation therein that unless an amount of ₹ 1 lac is paid to the father of the petitioner, namely, Sh. Kishori Lal Sood (wrongly mentioned as Kashmiri Lal in the order passed by the Appellate Authority), the rent shall not be paid by the petitioner, who is the son. However, it is not in dispute that after passing of the decree, an execution application was filed by the father of the petitioner, in which the decretal amount stands deposited on 12.11.2011. This came to light in reply dated 15.12.2014 to the application for assessment of rent moved by the respondent-landlord in which it has been specifically mentioned that the landlord had deposited the decretal amount on 12.11.2011 and a copy of the challan has also been filed in support of the said contention. The case was, thereafter, adjourned to 06.02.2015 for consideration of the application for assessment of rent and on 06.02.2015, the rent was assessed and the case adjourned to 23.03.2015 for tender of the rent. On the said date, rent was not tendered and on request of the petitioner, the case was adjourned to 10.04.2015 as an application for review was being filed. Thereafter, the case has been adjourned for various dates and the application was ultimately dismissed vide order dated 08.09.2015.

6. A perusal of the above would show that after deposit of the decretal amount on 12.11.2011 by the landlord, it cannot be said by the petitioner that no amount has been paid to his father by the respondent-landlord. Once the amount has been deposited with the Executing Court and especially when that is supported by the challan, there was no reason why the petitioner, on assessment of the provisional rent after this fact has come to his knowledge could not tender the same. Merely because the actual

payment has not been received by the father of the petitioner cannot be a ground for not tendering the rent or coming to a conclusion that he was not liable to pay rent till the actual payment is received or released to his father.

7. In view of the above facts and circumstances of the case, it cannot be said that there is any illegality in the orders passed by the Courts below which would call for any interference by this Court especially when it is an admitted case that no provisional rent, as assessed, has been tendered by the petitioner.

8. Finding no merit in the present revision petition, the same stands dismissed.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

January 08, 2016

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