

CR No.8408 of 2014

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

CR No.8408 of 2014

Date of decision: 28.05.2016

Raghubir Singh Oberoi

.....Petitioner(s)

VS.

Kulwant Kaur & another

.....Respondent(s)

CORAM: HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. N.C. Sahni, Advocate
for the petitioner.

Mr. Ish Puneet Singh, Advocate
for the respondents.

AUGUSTINE GEORGE MASIH,J. (Oral):

Challenge in this revision petition is to the order dated 02.12.2014, passed by the Rent Controller, Jalandhar, whereby, an application for permission to tender the arrears of rent after the date which was fixed for tendering the provisional rent as assessed, had expired which application stands dismissed.

It is the contention of the learned counsel for the petitioner that in the given facts and circumstances of the case in hand, the Rent Controller should have exercised its discretion and extended the period for tendering the rent as provisionally assessed by it vide order dated 01.10.2014, according to which, the said assessed provisional rent was to be deposited on or before 01.11.2014. On the said date, despite best efforts made by the petitioner, he

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could not reach the Court on time. He asserts that the petitioner had gone to Delhi on 29.10.2014 and started back for Jalandhar by road very early morning on 01.11.2014, cautiously doing so with an intention to reach the Courts at Jalandhar to attend the proceedings and tender the provisionally assessed rent but because of the traffic jam on account of declaration of Punjab Bandh, he could not reach Jalandhar by the Court time and thus, could not deposit the rent. He submits that under these peculiar facts and circumstances when the intention of the petitioner was clear that he wanted to tender the provisionally assessed rent by the date on which it was ordered by the Court, he cannot be penalized for the same. Assertion has been made that in such exceptional circumstances where the intention of the petitioner-tenant is to tender the provisional rent, the Rent Controller can extend and accept the arrears of rent at a later date as well. Prayer has, thus, been made for setting aside the impugned order dated 02.12.2014, passed by the Rent Controller, Jalandhar. Counsel for the petitioner placed reliance upon the judgments of this Court in Nirmal Singh Vs. Mohd. Bashir, 2004 LAR 573 and Rakesh Kumar Vs. Ishro Devi and another, 2014(3) LAR 100.

On the other hand, learned counsel for the respondents submits that the *bona fides* of the petitioner for tendering the provisional rent as assessed, can be seen from the fact that an application for permission to tender the arrears of rent was filed on 18.11.2014. Even if, the contention of the petitioner is accepted that he was unable to reach Jalandhar despite his best efforts on 01.11.2014, the date fixed for tendering the assessed rent, it is not disputed that on the said date he reached Jalandhar and therefore, the

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assessed provisional rent could be tendered on the very next day. Further, there is no explanation as to what stopped him from filing an application for permission to tender the arrears of rent immediately but he did so only on 18.11.2014. In any case, he submits that in the light of the judgment of the Supreme Court in Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation 2002(1) RCR (Rent) 514 as also the Division Bench judgment of this Court in Rajan @ Raj Kumar Vs. Rakesh Kumar, (2010) 158 PLR 201, the contention as raised by the counsel for the petitioner cannot be accepted as it has been held that on failure to tender the rent as assessed on the date fixed by the Court, order for eviction shall follow. It is, thus, apparent and clear in the said judgments that the Rent Controller has no power to extend time to tender the rent. Prayer has, on this basis, been made for dismissal of the present revision petition.

I have considered the submissions made by the learned counsel for the parties and with their assistance, gone through the impugned judgment as also the judgments relied upon by them but, am of the considered view that the contentions as raised by the counsel for the petitioner cannot be accepted for the simple reason that in the present case, *bona fides* of the petitioner are in severe doubt. The date, admittedly, fixed for tendering of the provisional rent as assessed by the Rent Controller, vide order dated 01.10.2014, was 01.11.2014. On the said date, admittedly, the rent so assessed was not tendered, although an explanation has been given that it was not his fault rather all efforts were made by him to reach the Court well in time so that he could tender the assessed rent. Assuming that to be correct, there is no

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explanation as to why the provisionally assessed rent was not tendered by the petitioner on the very next working day of the Court. Further, there is no explanation for the delay in filing the application after a period of 17 days i.e. on 18.11.2014 for permission to tender the arrears of rent. In the given facts and circumstances of the present case, the arguments as raised by the counsel for the petitioner that in exceptional circumstances and in cases of extreme hardship, the Court may consider the extension of time, does not arise or hold good, thus, cannot be accepted. The judgments on which reliance has been placed by the learned counsel for the petitioner i.e. *Nirmal Singh's* case (supra) and *Rakesh Kumar's* case (supra), were cases where the facts and circumstances were beyond the control of the petitioner because of which the assessed rent could not be tendered, which in the present case, has been found to be otherwise.

Now coming to the situation as to what would be the position if the provisional rent as assessed is not tendered on or before the date fixed by the Rent Controller after assessment of the rent, the answer to the said question is available in para 30 of the judgment of the Supreme Court in *Rakesh Wadhawan's* case (supra), where it has been, after referring to various judgments, in conclusion No.4, held as follows.

“4. On the failure of the tenant to comply, nothing remains to be done and an order for eviction shall follow. If the tenant makes compliance, the inquiry shall continue for finally adjudicating upon the dispute as to the arrears of rent in the light of the contending pleas raised by the landlord and the tenant before the Controller.”

Relying upon the above observations, the Division Bench of this Court in *Ranjan @ Raj Kumar's* case (supra), has, in para 13 of the said judgment, held as follows.

“13. This Court is of the view that the ratio of judgment in Rakesh Wadhawan's case (supra) leaves no manner of doubt that the provisional rent and other ancillary charges assessed by the Rent Controller had to be deposited by the tenant on the next date of hearing alongwith arrears, interest and costs etc., as may be determined by the above said authority. The ‘first date of hearing’ has also been interpreted to mean, the first date of hearing after determination of provisional rent and other expenses by the Rent Controller. A reading of conclusions drawn in para No. 30 of the judgment in Rakesh Wadhawan's case (supra) leaves no doubt that if after determination of the provisional rent, a tenant fails to deposit the same, nothing remains to be done and an order of ejectment of a tenant has to be passed. The language of conclusion No. 4 in the said para is very clear and needs no further interpretation. The Court is further of the view that the benefit of conclusions No. 5 and 6 would become available to a tenant only on his making a deposit of the provisional rent and other ancillary charges determined by the Rent Controller and not otherwise. It was implicitly made clear that it is the bounden duty of the tenant to deposit the provisional rent determined by the Rent Controller, otherwise it will entail the tenant’s ejectment from the premises in dispute. This Court feels that if a tenant is dissatisfied with the interim order passed by the Rent Controller, he has an opportunity to challenge the same before the date fixed for payment, in the higher

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forum.”

In view of the above, this Court finds no illegality in the impugned order which would call for any interference by this Court, therefore, the revision petition stands dismissed.

May 28, 2016
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(AUGUSTINE GEORGE MASIH)
JUDGE