

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

C.R. No. 1427 of 2014 (O & M)

Date of decision: 13.01.2017

Abdul Wahid

....Petitioner(s)

Versus

Mehmood Ali and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Anil Kumar Garg, Advocate,
for the petitioner.

Mr. K.S. Boparai, Advocate,
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The petitioner-landlord challenges the order dated 28.01.2014 whereby, the application for assessment of provisional rent has been rejected. The grouse was that on 18.05.2010, the case was fixed for provisional assessment of rent and the same was not done and the case was fixed for his evidence/witnesses after framing of the issues.

The Rent Controller dismissed the said application on the ground that on 01.12.2007, the respondent-tenant had tendered the arrears of rent @ ₹100/- alongwith interest and the costs to the petitioner to the tune of ₹300/- and the same had been accepted under protest that the same are insufficient and invalid. Thereafter, the issues had been framed on 18.05.2010 and, therefore, at this stage, there is no requirement for provisional assessment of the rent.

Counsel for the petitioner has submitted that in view of the

judgment of the Apex Court in *Rakesh Wadhawan and others vs. M/s. Jagadamba Industrial Corporation and others, AIR 2002 Supreme Court 2004*, the Rent Controller was under a bounden duty to assess the provisional rent on the basis of the pleadings as such of the parties. It is his case that since there was a dispute qua the amount of rent which was to be paid as to whether it was ₹100/- or ₹500/- as per the rent note on the basis of which the landlord-petitioner was claiming the same, the impugned order was not justified.

The position of law as contended by the petitioner-landlord cannot be disputed. However, this Court is not inclined to interfere with the order impugned on the ground that the application dated 26.10.2010 (Annexure P-5) is based on the ground that the case was fixed on 18.05.2010 for fixing of provisional assessment of rent. In fact almost 3 years earlier, the rent had been tendered and the petitioner had accepted the same being insufficient and invalid. If the petitioner had any grouse at that point of time, he should have filed an appropriate application immediately. He chose not to challenge the said order or to file an appropriate application within reasonable time. He delayed the matter for a period of 3 years and thereafter filed the present application.

Much water had flown thereafter and in fact on 18.05.2010, as noticed by the Rent Controller, a specific issue has been framed whether the respondent is in arrears of rent w.e.f. 01.12.2005 at ₹500/- alongwith house tax, interest and costs. It was thereafter the application was filed.

Counsel for the respondent has pointed out that thereafter also, evidence was recorded of the petitioner-landlord and the proceedings were thereafter only stayed by this Court much later on 19.03.2014.

Keeping in view the cumulative facts and in view of the fact that in the meantime, the evidence of the landlord as such had been completed, this Court is not inclined to interfere with the impugned order since the application itself was filed at a belated stage. It would only amount to putting back the clock and would be prejudicial to the landlord itself. The Rent Controller can always, at the time of final decision, come to the conclusion as to what is the amount of rent which was payable by the tenants. In view of the judgment of the Apex Court also in *Rakesh Wadhawan's case (supra)*, in case it is found that the rent is less which was tendered earlier, an opportunity even otherwise has to be given to the tenants to tender the amount as per the finding of the Rent Controller regarding the rate of rent between the parties.

In such circumstances, finding no merit in the present revision petition, the same is dismissed.

13.01.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No