

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

**Civil Revision Nos.2834 & 2835 of 2015 (O&M)
Decided on : 15.03.2017**

Mani Nandwani

... Petitioner

Versus

M.R. Sharma and others

... Respondents

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

Present : Mr. Ashish Aggarwal, Senior Advocate with
Ms. Aakriti Malik, Advocate for the petitioner.

Mr. Gulshan Sharma, Advocate
for the respondents.

G.S. Sandhawalialia, J. (Oral)

The present order shall dispose off two revision petitions i.e ***Civil Revision Nos.2834 and 2835 of 2015***, since vide a common order dated 22.04.2015, the Rent Controller/Executing Court, Chandigarh declined the application for extension of time for depositing the rent and vacated the stay against the warrant of possession which had been granted on an earlier occasion on 16.03.2015 (Annexure P-11), while dismissing the objections. The facts are being taken from ***Civil Revision No.2834 of 2015 'Mani Nandwani Vs. M.R. Sharma and others'***.

Directions were issued that fresh warrant of possession be issued against the judgment debtor for 25.05.2015. Resultantly, there is no specific mention that the objections filed also were disposed of.

The reasoning given by the Rent Controller in the impugned order was that the petitioner-tenant was at liberty to prove the same during the respondent evidence and pray to the Court while passing the final order

in the subsequent rent petition whether he had paid the rent upto March, 2014. The said issue was thus to be decided by the Rent Controller, wherein the second petition was pending. It was further held that, the tenant had waived his right to apprise the Court regarding the payment of rent in the subsequent rent petition and if he wanted to raise the issue regarding the payment of rent, it was to be done before the expiry of the 60 days and, therefore, no grace period could be granted to him.

The dispute pertains on account of the non-compliance of the order dated 16.12.2014 in the eviction petition filed on 11.06.2009 (hereinafter referred to as the '1st petition') under Section 13 on the grounds for non-payment of rent for the period from 01.06.2005 to October, 2010 and for material impairment of the premises.

Vide order dated 28.10.2010 (Annexure P-1), the Rent Controller provisionally assessed the rent for the ground floor of premises SCO No.48, Sector-23C, Chandigarh @ 5,500/- per month alongwith costs of 2,000/- and interest @ 6% per annum and case was fixed for 20.01.2011 for tendering the provisionally assessed rent.

It is not disputed that the rent was deposited on the date fixed. Thereafter, on 31.05.2013, the second petition bearing No.118 (hereinafter referred to as the '2nd petition') was filed for non-payment of rent from November, 2010 onwards and also on the ground of bonafide requirement.

The Rent Controller in the second petition assessed a sum of ₹2,50,177/- till March, 2014 which was inclusive of the interest and costs

and payment was to be made on 30.05.2014. The amount was duly paid on 30.05.2014 (Annexure P-3).

The first petition in which the rent had been deposited on 20.01.2011 was dismissed on 16.12.2014 (Annexure P-4), but directions were issued that the arrears of rent after 20.01.2011 would be paid within 60 days of the order, failing which the tenant would be liable to be evicted on this ground. The petitioner was also directed to pay the future rent at the rate determined regularly.

It is the case of the petitioner-tenant that since there was a dismissal, he was not properly informed by his counsel and there was an overlap of the period to the extent in the second petition and the payment had already been made till March, 2014. Therefore, the arrears were only to be paid from April, 2014 to December, 2014 and the fact was not brought to the notice of the Rent Controller. The requisite period which had been granted ran out on 14.02.2015.

As noticed there was a lapse as such on the part of the tenant to deposit the said amount within the prescribed period. The execution application was, thereafter, filed by the respondent on 09.03.2015 (Annexure P-5) on this account. Resultantly, objections came to be filed in the said execution application that there was an overlap and payment had been made to some extent. The rent after March, 2014 was still pending consideration in the 2nd rent petition and the same was subjudice.

It is also pertinent to mention that the landlord was very categorical in the execution application that the rent had been paid and

there is no such concealment as such on behalf of the landlord on that he was taking advantage as such in spite of the payment that had already been received in the second petition. The tenant also filed application for extension of time for deposit of the arrears (Annexure P-7) that he be allowed the time to deposit the rent.

It is also a matter of record that the balance amount was also deposited on 13.03.2015 vide (Annexure P-10) in the Treasury to the tune of ₹49,500/- which were the arrears. It is, however, the case of the landlord this desposit was without any authority as such and there was no specific order by the Court. The said stand was raised in the reply to the application for extension of time (Annexure P-8). It was specifically averred that the deposit as such was without any specific order by the Rent Controller.

Counsel for the petitioner has accordingly submitted that there was power of extension was present with the Rent Controller which was not excercised under Section 148 of the Code of Civil Procedure, 1908. There was a delay of only 28 days as such which could have been condoned. He rightly placed reliance upon the judgment of the Apex Court in '***D.V. Paul Vs. Manisha Lalwani***' 2010 (4) RCR (Civil) 190 and submitted that the Executing Court has the jurisdiction. The relevant portion reads as under:-

“21. It is not in light of the above decisions open to the respondent to argue that a Court can fix time for the doing of an act like making of deposit in the instant case, but has no jurisdiction to extend the said period even when a case for such

extension is clearly made out. The power to fix the time for doing of an act must in our opinion carry with it the power to extend such period, depending upon whether the party in default makes out a case to the satisfaction of the Court who has fixed the time. There is nothing in Section 148 of the CPC or in any other provisions of the code to suggest that such a power of extension of time cannot be exercised in a case like one at hand. The argument that the power to extend time cannot be exercised where the act in question is stipulated in a conditional decree has not impressed us. We see no reason to draw a distinction depending on whether the prayer for extension is in regard to a conditional order or a conditional decree. The heart of the matter is that where the Court has the power to fix time and the power is not regulated by any statutory limits, it has in appropriate cases the power to extend the time fixed by it. It is common ground that neither the CPC nor the provisions of M.P. Accommodation Control Act places any limitation on the power of the Court in like the one in hand.”

Reliance has also been placed upon the judgment passed in ***'Ramakutty Gupta Vs. Avara' 1994 AIR (SC) 1699*** and in ***Civil Revision No.7103 of 2011 'Yatinder Rana Vs. Harpal Singh and others' decided on 07.04.2015.***

It is, accordingly, submitted that ***'Rakesh Wadhwan and others Vs. Jagdamba Industrial Corporation and others' 2002 (5) SCC 440*** would not be applicable to the facts and circumstances, since it is not a case of provisional assessment.

Mr. Sharma, on the other hand submits that an appeal has also been filed against the order dated 16.12.2014 and the matter can be as such taken up before the Appellate Authority. Mr. Sharma has further submitted that the tenant is a incorrigible defaulter, as he does not deposit

the rent on a regular basis. It is his case that two petitions had been filed to get the rent recovered from the tenant and now also only till 30.09.2016 the amount has been paid.

Mr. Aggarwal on the other hand has handed over the deposit receipt to Mr. Sharma that the rent has been paid uptill April, 2017.

Keeping in view the above cumulative facts that there was only a delay of 28 days in depositing the rent as such and there is a justification in the arguments raised that the petition was dismissed, though there was a condition to clear the arrears to pay the rent regularly, but it was also not brought to the notice of the Rent Controller that for an overlapping period, the rent had already been in the second petition till March, 2014. The arrears were only due from April, 2014 onwards to December, 2014 which were not brought to the notice of the Rent Controller also. Resultantly, keeping in view the above cited case law, the arguments of the tenant is accepted.

In such circumstances, this Court is of the opinion the rules of procedure are hand maid's of justice and the techanility should not have waived with the Rent Controller. In such manner the application for extension of time has wrongly been denied.

Accordingly, the present revision petition is, accordingly, allowed and extension is granted and objections are, accordingly, also allowed. The warrants of possession for dispossession are, accordingly, set aside.

However, on account of lapse on the part of the tenant and

the unnecessary harassment caused to the landlord, the present revision petitions are allowed with costs of ₹10,000/- in each petition to be deposited by the tenant within a period of one month from the receipt of the certified copy of the order before the Rent Controller.

MARCH 15, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No