

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.2862 of 2017 (O&M)

Date of decision: 04.05.2017

Meena Sharma

....Petitioner

Versus

Rakesh & another

...Respondents

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

Present: Mr.Surinder Gandhi, Advocate, for the petitioner.

G.S. SANDHAWALIA, J. (Oral)

CM-9687-CII-2017

Application for placing on record pleadings of the case, is allowed. Same is taken on record. Office to tag the same at appropriate place.

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The present revision petition, filed by the petitioner-landlord, is directed against the order dated 05.01.2016, passed by the Rent Controller, Moga, whereby the case was fixed for payment of the provisional rent. The said order was challenged before the Appellate Authority, Moga, on the ground that there was a denial, as such, of the relationship by the tenant and therefore, the provisional rent had been wrongly assessed. The appeal being rejected on 06.03.2017, is also subject matter of challenge in the present revision petition.

The sole argument of counsel for the petitioner is that once the relationship, as such, was denied, the Rent Controller was not justified in assessing the provisional rent. It is settled principle that if the relationship is denied, then the tenant is not to be given an opportunity, as such, to tender the rent. Reliance can be placed upon **Hukma Devi Vs. Bhagwan**

Dass 2003 (1) RCR (Rent) 533, wherein, after placing reliance upon the judgment in Sheela Vs. Firm Prahlad Rai Prem Prakash 2002 (3) SCC 375, it was held that where the tenant refuses the liability to pay rent, the question of presumption would not arise at all and a unscrupulous tenant cannot be permitted to take a stand that he is not tenant under the landlord and then claim that he is a tenant and be permitted to deposit the arrears of rent. In Devinder Singh Puri Vs. B.N.Rampal 2004 (2) RCR (Rent) 216 (P&H), this Court has held as under:

“10. It is also well-settled that in cases where the tenant raises dispute with regard to the status of his landlord and alleges that intact the respondent is not his landlord then he would obviously be not required to make any payment of rent. In such circumstances he cannot expect the Rent Controller to first draw a provisional order of assessment and then claim an opportunity to make payment of arrears of rent. In other words, the judgment of the Supreme Court in the case of [Rakesh Wadhawan v. Jagdamba Industrial Corporation and Ors.](#) 2002(5) SCC 440, interpreting Section 13(2)(i) of the Act would not be applicable. This Court has taken the afore-mentioned view in the case of Rama Nand Shastri v. Gian Singh 2003(1) R.C.R. (Rent) 734 (P&H). Therefore, the plea which could have been raised on the basis of the judgment of the Supreme Court in Rakesh Wadhawan's case (supra) would not be available to the tenant-petitioner in the instant case.”

A perusal of the eviction petition filed before the Rent Controller, would go on to show that the petitioner's claim was that Pandit Mohan Lal was the owner, who had inducted Ram Chand as a tenant. After the death of the tenant, the respondents had continued and succeeded to the tenancy. On account of the death of the landlord, the

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petitioner, being the daughter-in-law and wife of the elder son-Joginder Sharma, had succeeded to the property, on the basis of a family settlement and she had started receiving the rent from 01.01.1989 @ Rs.600/- per month. The same was enhanced to Rs.1500/- per month w.e.f. 01.01.2005 and payment was made upto December, 2011. In January, 2012, her brother-in-law, Pawan Kumar had raised a dispute and the tenant had stopped paying the rent. The legal heirs of Pandit Mohan Lal had resolved the issue and a registered sale deed dated 26.04.2013 had been executed in her favour and resultantly, she claimed eviction on the ground of non-payment of rent from 01.01.2012, apart from other grounds of *bona fide* requirement etc.

The stance of the respondent-tenant was an admission qua the relationship, as such, with Pandit Mohan Lal with Ram Chand. After the death of Ram Chand, the original tenant, on 17.06.1986, they had deposited the electricity charges and had inherited the tenancy. After the death of the original landlord, Pandit Mohan Lal, they had started paying rent to Pawan Kumar @ Pappi @ Rs.200/- per month and he had been collecting and receiving the rent till 30.06.2013 and he was the owner/landlord of the shop in dispute. A Civil Suit had also been filed against him to protect their possession in which he had not appeared and the transfer in favour of the present petitioner was unusual and a sham transaction, for the purpose of eviction of the respondents and the *bona fide* necessity, as such, was, accordingly, questioned.

It is on the basis of these pleadings, as such, the Rent Controller has come to the conclusion that the respondents had rather

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come forward for depositing of the assessed rent and the judgment in **M/s Gawri Tex Industries Ltd. Panchkula Vs. Sqn. Ldr. Gurdial Singh & others 2009 (4) RCR (Civil) 70**, as such, relied upon by the landlord was not applicable. It was not in dispute that Pawan Kumar, being the son, had also inherited the property after the death of the original landlord and there was a dispute, as such, of the rate of rent also as, on one hand, the tenants were alleging that the rate of rent was Rs.200/- per month, whereas the petitioner is alleging that it was Rs.1500/-. The rent was assessed @ Rs.200/-, keeping in view the fact that no document, as such, had been produced by the petitioner.

The Appellate Authority also came to the conclusion that there it was no absolute proposition that in every case where the tenant denies the existence of relationship of landlord-tenant between the parties, he is to be denied the opportunity to tender the rent. It was held that the denial of relationship was not *mala fide* and the judgments, as such, which were relied upon, were not applicable. The rate of rent, as claimed by the landlord, if accepted without there being any cogent material, then the tenant may have to face the eviction even without having been afforded an opportunity of proving his plea and resultantly, the appeal was dismissed.

Thus, it would be apparent from the above discussion that the respondents are not denying that they are tenants in the property. The only issue is as to who would be their landlord and they have only put forward the plea that the brother-in-law of the petitioner, as such, namely, Pawan Kumar is the landlord.

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As noticed, the principle which Mr. Gandhi is propagating is whether there is a dishonest intention on the part of the tenant, as such, wherein rent is not tendered on the denial of the relationship and at the fag end, in order to frustrate the eviction order, a plea is made to pay the rent, which has been deprecated by the Courts in several authorities. Reference can be made to Sheela(supra), Hukma Devi (supra), Devinder Singh Puri (supra), Jagdish Singh Vs. Mohan Lal 2004 (2) RCR (Rent) 114, Jagdamba Tea Factory, Amritsar Vs. Parshotam Kishan 2008 (3) RCR (Civil) 17 and M/s Gawritex Industries Ltd. Panchkula (supra).

In the present case, as noticed, an application had been filed by the tenant to deposit the rent, and the rent had, accordingly been tendered. The Rent Controller was bound to frame an issue on the basis of the pleadings, on the relationship aspect and parties will have to lead their evidence on the basis of the said pleadings. The Rent Controller would, then come to the final conclusion as to whether the stand taken is correct or not regarding the relationship and the rate of rent. A *prima facie* view has, thus, been taken and therefore, the objection, as such, which has now taken to the orders passed, is without any basis as the same does not suffer from any procedural infirmity or irregularity which would warrant interference by this Court under revisional jurisdiction.

Accordingly, finding no merit in the present revision petition, the same is, hereby, dismissed in limine.

04.05.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No