

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 3001 of 2014 (O&M)

Date of decision: 27.04.2017

Gurminder Singh Kahlon ... Petitioner

versus

Rakesh Soni Respondent

CR No. 7017 of 2014 (O&M)

Gurminder Singh Kahlon ... Petitioner

versus

Rakesh Soni Respondent

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

Present: Mr. Rajiv Joshi, Advocate for the petitioner.

Mr. Ashwani K. Chopra, Senior Advocate with
Mr. G.S. Bhandal, Advocate
for the respondent.

G.S. SANDHAWALIA, J. (ORAL)

The landlord is aggrieved against the order dated 28.03.2014 (Annexure-P6) passed by the Rent Controller, Batala whereby the provisional rent earlier assessed on 28.02.2014 (Annexure P5) was sought to be rectified and the case was fixed for 23.03.2014 for the said purpose. Similarly, the grievance is also raised against the order dated 01.08.2014 (Annexure-P10) in CR No. 7017 of 2014 whereby the application for passing an ejectment order on account of non deposit of provisional rent as assessed in view of the stay order passed by this Court on 01.05.2016 in CR No. 3001 of 2014 was rejected.

Perusal of the paper book would go on to show that

ejectment was sought from the shop of the respondents in question on the ground of arrears of rent from 01.04.2003. The defence had been taken in the written statement that an agreement to sell had been executed in favour of the respondent-tenant regarding three shops including the shop in dispute. In the written statement filed on 17.05.2011 (Annexure P2) attached in CR No. 7017 of 2014, he further averred that suit for specific performance, for enforcement of the agreement was also preferred which was pending in the Court of Civil Judge, Junior Division, Batala. Vide order dated 28.02.2014 rent was assessed at the rate of ₹ 700/- per month and the arrears from 31.03.2003 to 28.02.2014 + house tax, interest and cost totalling to ₹ 1,70, 148/-. Payment of rent of ₹ 1,70, 148 was to be made by 28.03.2014.

It is pertinent to notice that for a period of three years, the provisional assessment was not made and only on 21.01.2014 an order had been passed that petition is adjourned to 17.02.2014 for consideration of provisional assessment of rent subject to last and final opportunity. On the date when the case was fixed for the payment, counsel for the tenant pointed out to the Court that no argument had been advanced and inadvertently the rent had been got assessed and accordingly, rectification was sought. The said prayer was allowed which was challenged before this court by the landlord and while issuing notice of motion, the order was stayed on 01.05.2014.

The consequential effect had been that the order dated 28.02.2014 thus came into operation which was sought to be taken advantage of by the landlord who filed an application before the Rent Controller, that payment had not been made, and, therefore once the tenant had not complied with the order, no extension of time could be granted, ejectment should be ordered. The application was contested on the ground that the arguments had never been addressed when the order dated 28.02.2014 had been passed and the previous order of assessment of rent was liable to be rectified and the application was mala fide and motivated. The said application was dismissed by the Rent Controller by noting the history that the matter has been pending since 09.08.2011 and arguments had not been advanced by either side and therefore, the provisional assessment as such made was wrong. The matter had been thereafter pending for provisional assessment as the counsel for the landlord has been delaying the matter and the assessment had only been made on the statement given by the learned counsel for the landlord on the ground that arguments had already been made when the case was old one. Rectification has been made in such circumstances, and, therefore the case was again fixed for consideration for the assessment of rent.

It is pertinent to notice that all the three order dated 28.02.2014, 28.03.2014 and 01.08.2014 have been passed by the same officer. The said officer was thus in the best position to know under

what circumstances first order has been passed and then rightly rectified the mistake on 28.03.2014. The effort made by filing subsequent application to seek ejectment was also thus rightly repelled which was to take an advantage that the payment had not been made within the time prescribed and by virtue of the fact the operation of the order had been stayed. It is settled principle that the matters are to be decided on merits and not on the strength of technicalities. Counsel for the petitioner placed reliance on the judgment of this Court in ***Sat Paul Jindal Vs. Smt. Sushma, 2011 (2) RentLR 451*** but it would not be of much assistance as it was held that there was no power to extend the time. The judgment relied on by the counsel for the respondent in ***Gurpreet Singh and another Vs. Brijinder Bhardwaj and another 2011 (3) PLR 212*** wherein it has been held that if there is mistake in the calculation and if the assessment is not properly made, the Rent Controller has the power as such to rectify the mistake made earlier would be applicable. The principle which has been put in operation is based on the maxims “de minim is not curat lex” and “Actus curiae neminem gravabit”. The relevant part reads as under:-

“In the case of Umesh Chand Gandhi (Supra), there was a default in deposit of arrears of rent due to bona fide mistake of calculation. It was held that no ejectment could be ordered as there was a bona fide mistake in computation of arrears-Maxim “ de minim is not curat lex” was applied.

In the case of Vinod Kumar (supra), it was held that in terms of Section 13 (2) (1) of the Act, it is the duty of the Rent controller to assess interim rent, interest and cost to be deposited by the tenant on the first date of hearing. Almost a similar controversy came up before this Court in the case of Lambher Singh (Supra) in which the landlord had some in revision. In that case also, the tenant skipped one year rent at the time of calculation. He filed the application for making deficiency good and simultaneously the landlord also filed an application in order to seek ejectment. The said application of the tenant was allowed by the Rent Controller. In the said application also, the provisional rent was assessed by the Rent Controller for a particular period at a particular rate of rent without assessing the the exact amount of rent and interest accrued thereon, as a result of which, the tenant skipped a period 12 months in assessing the arrears of rent, but as soon as he realised his error of calculation, an application was filed for making the deficiency good and the said prayer was accepted by the Rent Controller unlike the present case in which the said prayer has been declined and the application of the landlord for passing an order of ejectment on that ground has been allowed. This Court in the case of Lambher Singh

(supra) discussed Rakesh Wadhawan (Supra) in extenso and also a Division Bench of this Court passed in 2010 (1) RCR (Rent) 386: Civil Revision no. 3577 of 2006 titled as Rajan alias Raj Kumar Vs. Rakesh Kumar, decided on January 07, 2010 and observed that the order of the Rent Controller granting permission to make deficiency of the rent tendered short to be made good, does not suffer from an infirmity.”

In such circumstances, the orders passed as such do not suffer from any infirmity specially keeping in view that the dispute as such was not regarding the extension of time for deposit. Accordingly, this Court is of the opinion that in the facts and circumstances of the case, no interference is required under revisional jurisdiction. The revision petitions are dismissed. Needless to say that proceedings will commence afresh in the eviction petition from the stage it was last left.

(G.S. SANDHAWALIA)

JUDGE

27.04.2017

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Whether speaking/non-speaking: Yes/No

Whether reportable : Yes/No