

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No. 3959 of 2017 (O & M)

Date of decision: 02.06.2017

Ajit Singh

....Petitioner(s)

Versus

Harjit Kaur

...Respondent(s)

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

Present: Mr. Rishu Mahajan, Advocate, for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The tenant is in revision against the orders of eviction passed on the ground of non-payment of the provisional rent as assessed on 02.11.2016 which were to be paid on 13.12.2016 and were not paid and resultantly, the eviction order was passed by the Rent Controller, Amritsar on 13.12.2016.

The said order has been upheld in appeal by the Appellate Authority on 27.04.2017 by taking into account that the explanation given in the grounds of appeal that the respondent was ready to furnish post dated cheque and ready to make online transfer of the amount in the account of the landlord was only a frivolous excuse on the ground that the landlord was not furnishing the bank account. It was noticed that the case was kept pending till 3.55 p.m by the Rent Controller but the cheque was not tendered on the said date. Reliance was placed upon judgment of the Apex Court in *Rakesh Wadhawan and others vs. M/s. Jagdamba Industrial Corporation and others, 2002 (5) SCC 440* to come to the conclusion that eviction was justified.

A perusal of the order of the Rent Controller would go on to show that a sum of Rs.1,25,495/- was assessed for payment to be made on 13.12.2016. On the date the payment was to be given, an application was filed for directing the landlady to furnish the bank account for the amount to be transferred in the account. The tenant was quizzed by the Rent Controller that whether he would deposit the amount in the account on the same day, but he was only ready to furnish a post dated cheque and that he was ready to make online transfer of the amount in the account of the petitioner. It was further recorded by the Rent Controller that the case was kept pending till 3.55 p.m. but he failed to tender the cheque of the same date and apprise the Court whether he would make any online transfer. It was in such circumstances, the eviction has been ordered.

In appeal also, as noticed, the issue was raised that the tenant was ready to furnish post dated cheques and make online transfers but it was wrongly not taken into consideration.

When the matter came up before this Court on 31.05.2017, counsel for the petitioner had taken time to demonstrate whether the petitioner had sufficient funds as on 13.12.2016 in his bank account for the purpose of making payment by online transfer or by issuance of cheque on the date the amount of provisional rent was to be paid.

Today, bank statement of one Mr. Sumandeep Singh has been produced to show that the amount was available in the bank. The said Sumandeep Singh is allegedly a nephew of the tenant. It is, thus, apparent that the petitioner was in no position to make the payment on the date it had been fixed. The argument which has now been raised that the amount was

to be paid through the nephew was never the ground before the Appellate Authority also. It is apparent that the tenant was not having sufficient funds and it is on that account the excuse of demonetization has been cooked up to contend that it was beyond his ability to deposit in cash due to the prevailing market conditions.

The said explanation, thus, has been rightly rejected. The law stands settled on this issue. The Division Bench of this Court in ***Rajan @ Raj Kumar vs. Rakesh Kumar, 2010 (2) PLR 201*** has held that once an order of provisional assessment is not complied with, nothing more is to be done but eviction is to be ordered. The relevant observations read thus:-

“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 forum.

14. We have gone through the findings given in *Rajinder Lal case (supra)*. We respectfully are unable to agree with the proposition of law laid down therein. The rationale of the assessment as laid down in *Rakesh Wadhawan's case (supra)* is to be discerned from the view as expressed in para No. 29 of the said judgment because the Hon'ble Supreme Court has balanced the interests of the landlords and tenants so as to ensure that the tenants get an adequate opportunity to deposit the rent consequent upon determination of the provisional rent. Whatever may be the extent of emphasis, which have been put on the view taken in the judgment relied upon by the petitioner, this Court is bound by the conclusions arrived at by the Supreme Court in *Rakesh Wadhawan's case (supra)* wherein it has been held that if a tenant does not comply with the order on the first date of hearing after determination of the provisional rent and other ancillary expenses by the Court, then eviction has to follow."

In ***M/s. Nihal Singh Motors and others vs. Shama Malhotra***

etc., 2004 (3) PLR 389 also, it has been specifically held that the Rent Controller has no power to extend the time of payment.

Thereafter, in ***Sanjeet Singh vs. Mohali Motor Finance Co. and another, 2011 (3) PLR 15***, it has been held that the Rent Controller has no jurisdiction to extend the period of time of the provisionally assessed rent without any reason and on failure, eviction would have to be automatically follow. The relevant observations read thus:-

“9. *It is now well settled by this Court that in view of the decision rendered by the Division Bench of this Court in Rajan alias Raj Kumar's case (supra), following the decision of the Supreme Court in Rakesh Wadhawan's case (supra), the Rent Controller has no jurisdiction to extend the period of time for tendering of provisionally assessed rent without any reason. In the present case, the learned Rent Controller has assessed the provisional rent on 22.01.2009 to be paid by the tenants on 24.02.2010, but the tenants failed to deposit the rent within the stipulated period and for that matter Rent Controller had no jurisdiction to extent the time for tendering of the provisionally assessed rent.*

10. *Learned counsel for the respondents has also submitted that the case is at its fag end as the entire evidence has been concluded, however, it is disputed by learned counsel for the petitioner on the ground that the tenants have filed only their affidavits in their examination-in-chief.*

11. *Be that as it may, in view of the facts and circumstances of the present case and the law laid down by the Supreme Court in Rakesh Wadhawan's case (supra) and followed by the Division Bench of this Court in Rajan alias Raj Kumar's case (supra), the question of law, which has been framed in the beginning of the judgment, is answered in favour of the*

petitioner/landlord by observing that the Rent Controller has no jurisdiction to extend the period of time for the purpose of tendering provisionally assessed rent without there being any reason.

12. *In view of the above, the present revision petition is allowed.”*

Similarly, in **Mrs. Birinder Khullar vs. Maninder Singh, 2011**

(3) PLR 38, the issue raised was that whether the Rent Controller could review the earlier order of assessment and whether he could extend the time. The order extending the time for tendering the provisional rent was set aside. The relevant observations read thus:-

“19. Thus, after considering the facts of this case and law applicable thereto, the first question is decided in affirmative and it is held that the Rent Controller has no jurisdiction to order extension of time of payment of provisional rent by the tenant. Insofar as the second question is concerned, that too is decided in favour of the petitioner herein because even if it is assumed that the application for re-assessment was a review application, the Rent Controller had no jurisdiction to grant further time to the tenant for tendering the provisional rent when he did not agree with him on his application for review. In that circumstance, he was left with no other alternative but to simply dismiss the application as he had actually done in the impugned order but faulted by granting time to the tenant to make the payment of arrears of rent beyond the date, which was given initially when the provisional rent was fixed.

In view of the aforesaid discussion, the present revision petition is thus, allowed and the impugned

order dated 11.8.2010 is hereby set aside with cost throughout.”

Accordingly, there is no scope for interference in the well reasoned orders passed by the authorities below and the present present revision petition is dismissed in limine.

02.06.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No