

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

Date of decision: 31.08.2017

CR No.5556 of 2015

Sunder Singh

...Petitioner

Vs.

Harish Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ravindra Jain, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

Having heard learned counsel for the petitioner at considerable length, I have no occasion to differ with the findings recorded by the Rent Controller, Yamuna Nagar at Jagadhri in Para.19 of the order dated 20.10.2014. It would be best to reproduce such findings. The same are as follows:

“19. Perusal of the discussion as above made makes it apparently clear that there was absolutely no default on the part of the tenant in tendering the provisionally assessed rent. Though the provisional rent was assessed on 29.03.2012 and the court posted the matter for 11.04.2012, but since the court proceeded on leave the file was taken up a day before and was posted for 17.04.2012. Since on 12.04.2012, the tenant still had time to tender within 15 days available with him, the tenant in his bona fides moved an application for tendering the rent in the court on 12.04.2012, though the case was posted for 17.04.2012. The said act of the tenant reflects his bona fides. However, since on 12.04.2012 none was appearing for the landlord was not being represented by any lawyer as per the order of the court dated 17.04.2012, the court instead of making the tenant tender the provisional rent deemed it fit to post the matter for 17.04.2012. It is an admitted fact that 13.04.2012 to 15.04.2012 happened to be

court holidays. As such, this court is of the opinion that there happens to be no default on the part of the tenant and since *actus curiae numinem (sic, neminem) gravabit* is an established legal maxim whereby it is agreed all over that an act of court should not do any harm to any person, the tenant in the present case cannot be made to suffer any loss. As far as the law cited by the learned counsel for the petitioner is concerned, this court is of the opinion that the present case is not a case whereby any extension of time was granted to the tenant for tendering rent, but is rather a case whereby because of administrative exigencies arising on account of the court being on leave the rent could not be deposited within the mandate of law. Even otherwise, despite the court refuting the said argument of the tenant in order dated 17.04.2012 and 18.04.2012 and despite the fact that the court did not order immediate eviction of the tenant, the petitioner has not challenged the orders dated 17.04.2012 and 18.04.2012 passed by the court and as such the said orders have attained finality. As such, since the said issue has already been decided, the undersigned does not feel any need to disturb the said observations passed by the learned predecessor of this court. As such, present issue stands decided against the petitioner and in favour of the respondent.”

In appeal, the Appellate Authority, Yamuna Nagar at Jagadhri has re-appreciated the entire evidence and proven facts in issue and held that the Rent Controller did not extend the time for payment of provisional rent along with cost etc. Rather, delay in paying the assessed rent was due to the Rent Controller proceeding on leave on 11.04.2012 and the file by routine procedure taken up on the day prior to the fixed date adjourning in advance the case to 17.04.2012. It has been noticed that on 12.04.2012, the tenant appeared to tender rent, but it was not possible to do so in the absence of other party and case already adjourned. The all of a sudden act of the Presiding Officer taking leave has created the problem. Obviously, the

landlord would also not have known what to do and was not expected to be in Court on 11.04.2012 or 12.04.2012. Since the date to tender the provisional rent was 11.04.2012, therefore, it could not be said that the tenant had defaulted in paying rent within the stipulated time in compliance of the provisional assessment order passed by the Rent Controller. I agree with the findings recorded by the Courts below when they have rightly observed that an act of the Court should prejudice and hurt no one.

Moreover, there was another issue remaining, which deserves consideration, was that the landlord did not challenge the orders dated 17.04.2012 and 18.04.2012 passed by the Rent Controller by virtue of which his plea seeking eviction of the tenant on the ground of non-payment of provisional rent has not been accepted.

At this stage, Mr. Jain argues that the tenant had failed to deposit the amount of provisional rent on 17.04.2012, as he had not submitted challan for depositing the amount with the court till 4.30 PM.

This objection is fallacious and is turned down. A perusal of the order dated 17.04.2012 passed by the Rent Controller reveals that the tenant appeared in Court to tender the provisional rent, but the petitioner – landlord refused to accept the tendered amount and objected for tendering of rent by the tenant on the ground that as per the statutory limits under the Rent Act the provisional rent was to be tendered within 14 days. After noticing all the facts including dates, the Rent Controller adjourned the case to the next day i.e. 18.04.2012 as Court time was by then over. On 18.04.2012, the Rent Controller, after recording separate statement of the petitioner – landlord regarding refusal to accept the provisional rent, directed the tenant to deposit the rent in the Treasury and to place the copy of challan in the Court file. It

was in these circumstances the amount was deposited by the tenant under protest on 18.04.2012 before the Treasury. Thus, I find that both the Rent Controller and the Appellate Authority have done substantial justice and have justifiably avoided the path of technicalities to do justice.

In view of the above, I do not find any patent illegality or irregularity in the orders passed by the Rent Controller and the Appellate Authority, which may warrant any interference by this Court. Consequently, the instant petition is dismissed.

31.08.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>