

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.5531 of 2017

Date of Decision: 21.08.2017

Parveen Kumar

... Petitioner

Versus

Vijay Kumar and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Peeush Gagneja, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.(Oral)

1. The petitioner is the landlord in the petition. The ground of eviction was non-payment of rent and subletting. The tenant tendered rent in excess of then due to the landlord before the first date of hearing. He prayed in his application for immediate eviction of tenant, the tender of rent being unlawful and gave no right to the tenant to ward off eviction on this ground by relying on a Full Bench decision of this Court in Sheo Narain v. Sher Singh, 1977 (1) RCR (Rent) 221 holding that deposit of rent by the tenant prior to the first date of hearing before the Rent Controller cannot be considered to be either proper tender or payment of rent.

2. In the present case, there is not only an advance payment but it is also an excess which means that the tenant reasonably calculated the rent till the point of first date of hearing and tendered that amount in advance.

3. Against the Full Bench of this Court, an SLP was carried to the Supreme Court in Sheo Narain v. Sher Singh, 1980 (1) SCC 125. The Supreme Court set aside the judgment of the High Court and held that if the

tenant deposits the rent even before the first date of hearing it is a solid proof of his bonafides in the matter and the legal position would be that if the rent is deposited before the first date of hearing, it will be deemed to have been deposited on the date of the hearing also because the deposit continues to remain in the Court on that date and the position would be as if the tenant has deposited the rent in Court for payment to the landlord on the first date of hearing.

4. In view of this legal position, there is no merit in this petition and challenge to the order dismissing the application for eviction by reason of the overruled Full Bench decision in *Sheo Narain* case requires no interference. Trial to proceed.

5. Accordingly, the petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

21.08.2017

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Whether speaking/reasoned *Yes*

Whether reportable *No*