

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 10.08.2017****CR No.6123 of 2014 (O&M)**

Rajesh Kumar & others

...Petitioners

Vs.

Gaurav & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. B.R.Mahajan, Senior Advocate, with
Ms. Manpreet Ghuman, Advocate, for the petitioners.Mr. Arun Jain, Senior Advocate, with
Mr. Amit Jain, Advocate, for the respondents.**RAJIV NARAIN RAINA, J.**

When this petition came up for hearing on 10.09.2014, the following interim order was passed:

“Counsel for the petitioners, inter-alia, contends that the Appellate Authority has remanded the case to the Rent Controller, which action is not supported by law and cites Krishan Lal Seth v. Pritam Kumari, 1961 PLR 865, Raghu Nath Jalota v. Romesh Duggal and another, 1979(2) RCR (Rent) 501 and Smt. Urmila Devi v. Davinder Singh, 2014(1) PLR 308. It is also contended that since no order has been made by the Rent Controller with regard to provisional assessment of rent in this matter, report was to be called for from the Rent Controller limited to this extent and not on the entire case which includes even grounds of personal necessity and building being unfit and safe.

Notice of motion to the respondents for 29.1.2015.

Passing of the final judgment shall remain stayed in the meanwhile.”

The law in the judgments mentioned in the interim order is clear enough that the Appellate Authority cannot remand a case for wholesale de novo re-examination of grounds of eviction giving a carte blanche to the Rent Controller to retread the case all over again.

In the present case, the Rent Controller did not pass an order regarding provisional assessment of rent, as was required by law and failure to do so was a lapse and thus the Appellate Authority could only have remanded the case only to call for a report from the Rent Controller on the limited issue by keeping the appeal pending before it.

In the cases cited by Mr. Arun Jain, learned senior counsel representing the respondents, the points in issue were different. In Balwant Rai Tayal v. M/s Subhash Oil Company, Hisar through Shri Raghunath Sahai, 2003 (2) RCR 148, the Rent Controller did not decide the ejectment petition while taking into consideration the complete merits of the case as he was misled by landlord who deliberately did not implead a necessary party whose presence was found necessary to decide the controversy fully and effectually. In such a situation, learned Single Judge held that the Appellate Authority could remand a case in such circumstances and even the High Court has *suo motu* power to remand a case brought in revision. The issue in the present case is not limited to the findings on the grounds of eviction, but merely on the question of assessment of provisional rent upon eviction and therefore the reliance is misplaced.

Similarly, dependence on judgment in Ajaib Singh v. Vijay Kumar, 2014 (4) RCR (Civil) 831 is also misplaced. In that case, evidence was closed by order since landlord failed to avail several opportunities given

to him to tender his evidence. The day, the evidence was closed the petition was dismissed without touching upon the merits of the case. In the face of such an illegality committed by the Rent Controller, the Appellate Authority was within jurisdiction to remand a case to give opportunity to both the parties to lead evidence and then decide the case on merits. Thus, the case presents its own facts. Since the evidence had not come in, opportunity was given to avoid a miscarriage of justice. The case is distinguishable on facts.

Accordingly, the impugned order of the Appellate Authority remanding the case to the Rent Controller to decide the case afresh consistent with the law laid down by the Supreme Court in Rakesh Wadhawan & others v. M/s Jagdamba Industrial Corporation & others, AIR 2002 SC 2004 has to be read as one calling for a report on the issue of provisional order assessing rent and not one of full remand for a de novo decision on the entire range of grounds of eviction on which findings of the Rent Controller have been recorded and are therefore open to appeal.

As a result of the above discussion, the appeal is restored to its original number to be shown as pending before the Appellate Authority, Hisar to await the report of the Rent Controller, Hisar on the remanded issue confined only to provisional assessment of rent. After the Appellate Authority, Hisar receives the report from the Rent Controller and his findings on evidence on market rent of the demised premises and his provisional assessment thereon, it shall take up the matter again and proceed to adjudicate the appeal on merits and pass a final order within a reasonable time of submission of the report.

Consequently, the petition is allowed to the above extent and the impugned order dated 29.05.2014 passed by the Appellate Authority, Hisar is modified as above.

10.08.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*