

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.6791 of 2016 (O&M)

Date of decision: 13.12.2017

Mrs. Harinder Walia and others

...Petitioners

Vs.

Surinder Pal Jain and others

...Respondents

2. CR No.6793 of 2016 (O&M)

Sanchit Walia

...Petitioner

Vs.

Surinder Pal Jain and others

...Respondents

3. CR No.6792 of 2016 (O&M)

Smt. Harinder Walia

...Petitioner

Vs.

Surinder Pal Jain and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Amarjit Markan, Advocate
for the petitioners.

Mr. R. Kartikeya, Advocate
for the respondents.

RAJIV NARAIN RAINA, J. (ORAL)

1. These petitions are filed against the order dated 17.08.2016 passed by the learned Rent Controller, Chandigarh.

2. The only straw the petitioners could hold on to, to maintain the present petition against the order assessing provisional rent by the Rent Controller, Chandigarh was a stray observation in the Supreme Court judgment in case Harjit Singh Uppal Vs. Anup Bansal, 2011 (3) RCR (Civil) 247; (2011) 11 SCC 672 which has been explained by the

Division Bench of this Court on a reference to larger Bench in Tirlok Chand Anand Vs. M/s Prem Chand & Sons and others, 2012 SCC OnLine P&H 10697, (2013) 1 RCR (Civil) 488 (DB), (2012) 2 RCR (Rent) 472 (DB). The three questions framed in *Tirlok Chand Anand* case (supra) for answer were as follows:

(a) if the notification dated 14.04.1947 is still holding the field by which only an order passed under Sections 4, 10, 12 & 13 is made appealable in terms of the notification No. 4137/2-CII-76/17354 dated 29.04.1976 issued by the Government of Punjab?

(b) Whether the observation of the Supreme Court in para No. 25 of the Harjit Singh Uppal Vs. Anup Bansal (2011) 11 SCC 672, while referring to Section 15 (1) (b) of the East Punjab Urban Rent Restriction Act, 1949 only, is an observation in context of the facts of that case as there was no issue of maintainability of appeal or revision arising out of interlocutory order before it and there is no reference to Section 15(5) of the Act or Section 15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973?

(c) Whether the orders passed by the Rent Controller during the proceedings exercising its inherent powers like in the case of amendment of pleadings, impleadment of parties, setting aside of ex parte proceedings, restoration of petitioner etc. etc....are

revisable under Section 15 (d) of the East Punjab Urban Rent Restriction Act, 1949?

3. These questions have been answered holding that in terms of the notification dated 14.04.1947, orders passed by the Rent Controller under Sections 4, 10, 12 & 13 alone are appealable in both the States Punjab and Haryana and that all other orders passed by the Rent Controller are not subject matter of appeal. Orders other than the orders which are appealable can be disputed only by way of revision petition before this Court.

4. The question whether an order of provisional assessment of rent falls within the purview of Section 13 of the East Punjab Urban Rent Restriction Act, 1949 or not, for maintainability of action to come within the rule in *Tirlok Chand Anand* case has been explained in Rinku Vs. Rita Singhanian and others: 2015 SCC OnLine P&H 158 (decided on 19.02.2015) and in Ajay Partap Singh Vs. Gurdial Singh and others: 2015 SCC OnLine P&H 10199 (decided on 13.05.2015) after noticing both the decisions in *Harjit Singh Uppal's* case and the Division Bench in *Tirlok Chand Anand's* case (supra) that appeal lies due to the mechanism devised by the Supreme Court for assessment of provisional rent in the guiding light ruling in Rakesh Wadhawan and others Vs. M/s Jagdamba Industrial Corporation and others, (2002) 131 PLR 370. It has been explained that such an order would fall within the purview of Proviso to Sub rule (1) of Section 13(2) of the East Punjab Urban Rent Restriction Act, 1949.

5. It may also be noticed that learned counsel for the appellant has referred to the decision of the Supreme Court in M/s Daya Chand Hardayal Singh Commission Agents Vs. Bir Chand: 1983 (2) ILR (Punjab) 378 : 1983 (2) RCR (Rent) 38 which explains the remedy against an interlocutory order in the light of the Government notification dated 08.05.1978. The general principle evolved in the Full Bench judgment is that by virtue of the notification dated 08.05.1978 each and every order has been made available is not legally tenable proposition.

6. Needless to say that the issue focused in the decision in *Tirlok Chand Anand* case (supra) etc. is what is covered by the recent decisions in *Rinku* and *Ajay Pratap Singh* cases (Supra) explaining the legal position that an appeal would lie against an order of the rent controller fixing provisional rent and not a revision petition in this Court.

7. Accordingly, the petitions are dismissed as not directly maintainable and the petitioners are relegated to their remedy in appeal before the Appellate Authority, Chandigarh.

8. The petitioner would have two weeks from the date of the availability of the certified copy of the order to move to the Appellate Authority at Chandigarh and in the meanwhile the interim order of stay dated 07.10.2016 passed by this Court shall remain operative till the presentation of the appeal and until effective hearing is granted to the

petitioner by the Appellate Authority, Chandigarh on stay matter/main appeal.

13.12.2017
kv

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*
Whether Reportable: *No*