

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

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CR No.6908 of 2012

Date of decision: 30.03.2017

Mukand Singh

....Petitioner

Versus

Ranbir Singh

...Respondent

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

Present: Mr.Rajinder Goyal, Advocate, for the petitioner.

Mr.Mukand Gupta, Advocate, for the respondent.

G.S. SANDHAWALIA, J. (Oral)

The petitioner-landlord challenges the order passed by the Appellate Authority, Sangrur dated 08.08.2012, whereby the appeal of the tenant was allowed and eviction which was ordered on 02.09.2011 by the Rent Controller on the ground that complete tender had not been made as per the provisional assessment order, was, accordingly, set aside.

It is not disputed that the eviction order was only on the said ground and at that stage, the case had not proceeded ahead on other issues and the rent petition was also filed for change of user, for opening of STD/PCO and a boutique.

Counsel for the petitioner-landlord is, thus, well justified in saying that the Appellate Authority should have set side the ejectment order and remanded the matter/called for the report, so that the case could be proceeded ahead, accordingly, since it had found that there was no shortfall in the tender which was given and that excess amount had been deposited and therefore, the costs could have been adjusted against the said tender.

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The said argument could not be contested by counsel for the respondent, as admittedly, no evidence has been led on the said issue and therefore, the landlord has been prejudiced from seeking his eviction on other grounds, on which the petition was filed.

Resultantly, this Court is of the opinion that the order passed by the Appellate Authority dated 08.08.2012 is not sustainable, to that extent whereby it had allowed the appeal as the same suffers from procedural irregularity and illegality. Even otherwise, since the eviction was only on the ground of provisional assessment, the Rent Controller will have to come to a positive finding, in view of the judgment of the Apex Court in ***Rakesh Wadhawan vs. M/s. Jagdamba Industrial Corporation, 2002 (1) RCR (Rent) 514***, at a final stage, whether the tenant is entitled for any refund or has to fulfill the deficiencies. Accordingly, both the orders passed by the Rent Controller, Sangrur dated 02.09.2011 and that of the Appellate Authority, Sangrur dated 08.02.2012, are set aside. The matter is remanded back to the Rent Controller, Sangrur, for a fresh decision, on all issues, which arise. Parties shall put in appearance before the Rent Controller, Sangrur on 27.04.2017.

30.03.2017
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*