

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

Civil Misc. No.25567-CII of 2016 in/and
Civil Revision No.7397 of 2016(O&M)
Date of decision: 09.02.2017

Kuldip Singh

...Petitioner

Versus

Kanwaljit Kaur (deceased) through her L.Rs. and another **...Respondents**

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

Present: Mr. Sandeep S. Majithia, Advocate for the petitioner.

Mr. Darshan Singh Malwai, Advocate for the Caveator-
respondents.

G.S.SANDHAWALIA, J. (Oral)

Civil Misc. No.25567-CII of 2016

Prayer made in the present Civil Misc. Application for granting exemption from filing certified and typed copies of judgments dated 15.7.2016 passed by the Rent Controller, Amritsar and 21.9.2016 passed by the Appellate Authority, Amritsar is allowed.

The Civil Misc. Application stands disposed of accordingly.

Civil Revision No.7397 of 2016

The present revision petition is directed against the order dated 21.9.2016 passed by the Appellate Authority, Amritsar while who dismissed the application for stay filed by the tenant.

The reasons which prevailed with the Appellate Authority, Amritsar while declining the stay was that vide order dated 18.5.2016, the rent was provisionally assessed at the rate of ₹ 1550/- per month from November, 2013 to February, 2016 by the Rent Controller, Amritsar along with interest and costs totalling ₹ 49,546/-. The date of tender had been

fixed as 15.7.2016 and on that date the amount had not been tendered. Therefore, keeping in view the judgment in **Rakesh Wadhawan & others Vs. M/s Jagdamba Industrial Corporation & others 2002(1) RCR (Rent) 514**, eviction was ordered vide order dated 15.7.2016 passed by the Rent Controller, Amritsar. The contention of the appellant that he was ready to make the payment was rejected and the application under Order 41 Rule 5 read with Section 151 C.P.C. for staying operation of ejectment order dated 15.7.2016 was dismissed.

It is not disputed that the lower Court record was also summoned on the same date for 30.9.2016. In the application filed for stay, prayer made was that the appeal was likely to succeed and there was a good prima facie case and therefore, operation of the impugned order dated 15.7.2016 be stayed. The application was duly supported by affidavit of Mr. Kuldip Singh dated 5.8.2016. In reply to the application, it was mentioned that an application for extension of time for deposit had been filed since Kanwaljit Kaur, landlady had died and there was no other person for receiving the rent before the Rent Controller, Amritsar. It was further mentioned that Jarnail Singh son of the landlady was also co-applicant along with landlady Kanwaljit Kaur, therefore, since no objection had been raised regarding impleading of the said person in the main application and the relationship of the landlady and tenant had been admitted qua both the applicants the rent should have been tendered. While assessing the provisional rent on 18.5.2016, the Rent Controller, Amritsar noticed that the petitioner herein had admitted the fact that he was tenant at the rate of ₹ 1000/-per month but he denied the factum with regard to recital made overleaf in the rent note regarding enhancement. The order dated 18.5.2016

whereby the provisional rent had been assessed reads as under:-

“Present : Sh. Navjiwan Sharma, Adv for the petitioner
Sh. Rajesh Nanda, Adv for the respondent.

Received by transfer. Be registered. Heard on the assessment of rent. It has been the case of the applicant that the respondent was inducted as tenant in the shop in question @ Rs.1000/- per month with effect from June, 2001 and a rent note has already been executed between the parties and the parties have agreed to enhance the rate of rent @ 10% after every two and half years. However, the respondent has admitted this fact that he is tenant @ Rs.1000/- per month, however, the respondent vehemently denied the factum with regard to recital made overleaf in the rent note regarding enhancement of rate of rent @ 10% after two and half years which is stated to be illegal, null and void. The applicant has placed on record copy of rent note. Perusal of the rent note reveals that there is recital with regard to enhancement of rent @ 10% after two and half years. It is not the case of the respondent that he is neither paid rent @ Rs. 1000/- nor Rs. 1550/- per month. In view of the recital made in the rent note as well as from the pleadings of the parties, rent is provisionally assessed @ Rs. 1550/- per month with effect from November, 2013 to February, 2016 which comes to be Rs. 43,400/- interest on the said amount which comes to be Rs. 3146/- and costs of petition is assessed as Rs.3000/- totalling Rs.49,546/-. Now to come upon 15.7.2016 for tendering rent.”

Resultantly, as noticed above, the case was fixed for 15.7.2016 for tendering the rent. At that point of time, co-owner and son of the landlady namely Jarnail Singh was already a person who could have received the rent, if it was tendered as per the provisional assessment. The said tender was never made on the ground that the landlady had expired during the pendency of the ejectment application. The applicant wanted to bring on record her legal representatives after getting death certificate

which was not available. Only after the legal representatives were brought on record, the applicant undertook to clear all arrears as assessed by the Rent Controller, Amritsar on the ground that Jarnail Singh was not the landlord and therefore, there was no relationship of landlord and tenant.

Keeping in view the above stance, the Rent Controller, Amritsar had ordered eviction in view of the binding precedent of the Apex Court in **Rakesh Wadhawan's case (supra)**.

Counsel for the petitioner has raised an argument as such which is contrary to the plea taken from the stand of the tenant before the Rent Controller, Amritsar. He has submitted that there are photocopies of demand drafts dated 4.8.2016 in favour of Jarnail Singh, Sukhjinder Singh and Harjinder Kaur (Annexure P/1) to show that the tenant in a bonafide manner wanted to tender the rent but could not do so because of the death of the landlady.

From perusal of the date of demand drafts, it would be clear that these were prepared at the time of filing of the appeal which was on 5.8.2016 and no such specific stance was taken before the Rent Controller, Amritsar. A categorical risk was taken by the tenant to delay payment of rent on account of death of one of the landlord. As noticed, the Apex Court in **Rakesh Wadhawan's case (supra)** has specifically held that in case the tender is not made on the date fixed, eviction has to follow. This view has been followed by Division Bench in **Rajan @ Raj Kumar Vs. Rakesh Kumar 2010 (2) PLR 201** wherein it was held that once the tenant does not tender the rent there is nothing else to be done and eviction has to follow. Resultantly, the view taken in **Rajinder Lal Vs. Gopal Krishan 2006 (2) PLR 124** was overruled.

The tenant took a risk by taking the plea that all the legal representatives were not available on record despite the fact that son of the landlady as co-applicant was already on record. In such circumstances, the order impugned dated 21.9.2016 whereby the stay had been declined under Order 41 Rule 5 read with Section 151 C.P.C. by the Appellate Authority, Amritsar does not suffer from any infirmity or illegality.

This Court in **Mrs. Birinder Khullar Vs. Maninder Singh** 2011 (3) PLR 38 has held that the Rent Controller would have no jurisdiction to grant further time for tendering provisional rent, keeping in view the observations made by the Division Bench. Even if there was a sufficient cause as such, this Court would have examined the aspect but herein it a case where there was no sufficient cause also available with the tenant as he could have deposited the amount of rent and register a protest that it should not be disbursed till the legal representatives of landlady are brought on record. He chose not to do so.

Keeping in view the law settled by the Apex Court in **Rakesh Wadhawan's case (supra)**, the impugned order dated 21.9.2016 passed by the Appellate Authority, Amritsar does not suffer from any infirmity and illegality which would warrant interference by this Court in exercise of revisional jurisdiction.

Accordingly, the present revision petition is dismissed.

February 09, 2017
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(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No