

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

C.R. No. 957 of 2016 (O & M)

Date of decision: 06.02.2017

Naresh Kumar Aggarwal

....Petitioner(s)

Versus

Manohar Lal

...Respondent(s)

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

Present: Mr. Naresh Kaushik, Advocate,
for the petitioner.

Mr. Sandeep Bansal, Advocate,
for the respondent.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition is directed by the petitioner-landlord against the order dated 14.12.2015 (Annexure P-4) whereby, the Appellate Authority has set aside the order dated 03.09.2015 (Annexure P-3) passed by the Rent Controller and appointed a Local Commissioner to submit a report after making necessary inquiry regarding the prevalent rate of rent of similar accommodation in the vicinity. It was further directed that the Rent Controller shall assess the provisional rate of rent after hearing the parties and considering the report of the Local Commissioner.

The reasoning which prevailed with the Appellate Authority was that since the onus of the rate of rent was upon the tenant and there was a dispute as regarding the arrears also and in the absence of any written rent note, it was not possible to fix any rent without any justification and the Rent Controller has wrongly assessed the provisional rent.

The dispute inter se the parties is qua the rate of rent and the arrears. The rent petition was instituted on 23.09.2014 and non-payment was alleged from 01.01.2012 @ ₹3,000/- per month. The landlord had taken the plea that the house was taken on monthly rent of ₹700/- in the year 1989 and the rent had been increased @ ₹100/- per annum from time to time with mutual consent and in January, 2012, it was increased to ₹3,000/- in the presence of one Vinod Kumar. The respondent-tenant questioned the title also but took the plea that the tenancy was created in the year 1989 @ ₹550/- per month and there was no agreement to enhance, as alleged. The condition of the house had deteriorated and the landlord had agreed to get the house repaired on the condition that the rent would be ₹1,600/- per month and accordingly, he had paid advance rent of ₹1,600/- from August, 2014. It was denied that the rent was ever enhanced to ₹3,000/-, as alleged in the presence of Vinod Kumar. The ownership was also disputed and directions were prayed that the title deed be produced in Court.

On the basis of the said pleadings, the Rent Controller in its order dated 03.09.2015 (Annexure P-3), noticed that the tenancy was of two rooms, one courtyard and a bathroom and kitchen and the property was situated in Bassi Khawaju, Hoshiarpur. Resultantly, it came to a conclusion that no rent receipts had been attached and, therefore, the rent claimed as per the accommodation was not excessive. Keeping in view the said, the rent was assessed at ₹3,000/- per month and the interest and costs were quantified to a total amount of ₹1,06,120/-. This order was, thus, challenged before the Appellate Authority.

The Apex Court in ***Rakesh Wadhawan vs. M/s. Jagdamba***

Industrial Corporation, 2002 (3) SCR 468 has held that the exercise of the provisional assessment of rent is to be done prima facie by perusal of pleadings and such other material as is made available before the Controller subject to the final adjudication which is to be made on further inquiry to be held later on in view of the dispute between the parties calling for determination of the issue. The fact has also been elaborated that in case the amount found due has been paid, the proceedings will be terminated. In case the rate of rent is less, then as determined by the provisional order, the amount deposited in excess is to be refunded and in the last case where it is more than what was due and payable, the tenant would be given a conditional order affording him one opportunity and reasonable time to deposit the amount of deficit. The relevant portion in *Rakesh Wadhawan's case (supra)* read thus:-

“25. What follows from the abovesaid discussion is that the proviso to clause (i) of sub-section (2) of [Section 13](#) must be read as obliging the Controller to assess, by means of passing an order, the arrears of rent, the interest and the cost of litigation all the three, which the tenant shall pay or tender on the first date of first hearing of the main petition following the date of such assessment by Controller. Such order based on an opinion formed prima facie by perusal of the pleadings and such other material as may be available before the Controller on that day would be an interim or provisional order which shall have to give way to a final order to be made on further enquiry to be held later in the event of there being a dispute between the parties calling for such determination. The Controller would, however, at the outset assess the rent, the interest and the cost of application in the light of and to

*the extent of dispute, if any, raised by the tenant. Such amount, as determined by Controller shall be liable to be paid or tendered by the Controller on the 'first date of hearing' falling after the date of the preliminary or provisional order of Controller. The expression "the date of first hearing" came up recently for the consideration of this Court in **Mam Chand Pal Vs Smt. Shanti Agarwal (C.A. No.1187 of 2002 decided on 14.2.2002)**. It was held that 'the date of first hearing' is the date on which the Court applies its mind to the facts and controversy involved in the case. Any date prior to such date would not be date of first hearing. For instance, date for framing of issues would be the date of first hearing when the Court has to apply its mind to the facts of the case. Where the procedure applicable is the one as applicable to Small Cause Courts, there being no provision for framing of the issues, any date fixed for hearing of the case would be the first date for the purpose. The date fixed for filing of the written statement is not the date of hearing. Keeping in view the interpretation so placed on 'the date of first hearing' the obligation cast by the proviso under consideration can be discharged by the Controller on any date fixed for framing of the issues or for hearing. It would be the obligation of the parties to place the relevant material on record, in the shape of affidavits or documents, which would enable the Controller to make a provisional judicial assessment and place it on record to satisfy the spirit of the proviso. It would be desirable if the Rent Controller specifically appoints a date for the purpose of such assessment and order so that the parties are put on adequate notice and bring the relevant material on record to assist the Controller. A litigant cannot be expected to be ready to comply with*

the order of the Controller on the very day on which the order is made. How could he anticipate what order the Controller would be making?

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29. *The result of the discussion may be summarized. Under proviso to [Section 13\(2\)\(i\)](#), the Controller having discharged his obligation of passing an order under the proviso, either suo moto or on his attention in this regard being invited by either of the parties, it will be for the tenant to pay or tender the amount provisionally assessed by the Controller on the first date of hearing of the application for ejectment. On compliance, the Controller would proceed to adjudicate upon the controversy arising for decision by reference to pleadings of the parties and by holding a summary enquiry for the purpose. Such adjudication shall be provisional and subject to the later final adjudication. The finding that may ultimately be arrived at by the Controller may be one of the following three. The Controller may hold that the quantum of arrears as determined finally is (i) the same as was found to be due and payable under the provisional order, (ii) is less than what was determined by the provisional order, or (iii) is more than the one what was held to be due and payable by the provisional order. In the first case the Rent Controller has simply to pass an order terminating the proceedings. In the second case the Controller may direct the amount deposited in excess by the tenant to be refunded to him. In the third case it would not serve the purpose of the Act if the tenant was held liable to be evicted forthwith as is the view taken by the Punjab High Court in the case of *Dial Chand (supra)*. The Controller directing the eviction of the tenant may pass a conditional order affording the tenant one opportunity*

of and a reasonable time for depositing the amount of deficit failing which he shall be liable to be evicted. This power in the Rent Controller can be spelled out from the use of the word "may" in the expression "The Controller may make an order directing the tenant to put the landlord in possession", as also from the principle of equity and fair play that the tenant having complied with provisional order passed by the Controller should not be made to suffer if the finding arrived at by the Controller at the termination of the proceedings be different from the one recorded in the provisional order. While exercising the discretion to make a conditional order of eviction affording the tenant an opportunity of purging himself of the default the Controller may also take into consideration the conduct of the tenant whether he has even after the passing of the provisional order continued to pay or tender the rent to the landlord during the pendency of the proceedings as a relevant factor governing the exercise of his discretion. Such a course would be beneficial to the landlord too as he would be saved from the trouble of filing a civil suit for recovery of rent which fell due during the pendency of proceedings for eviction before the Controller."

Accordingly, the principles were summed up in para no. 30

which read thus:-

"To sum up, our conclusions are:

1. In [Section 13\(2\)](#) (i) proviso, the words 'assessed by the Controller' qualify not merely the words 'the cost of application' but the entire preceding part of the sentence i.e. 'the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application'.

2. *The proviso to Section 13(2)(i) of East Punjab Urban Restriction Act, 1949 casts an obligation on the Controller to make an assessment of (i) arrears of rent (ii) the interest on such arrears, and (iii) the cost of application and then quantify by way of an interim or provisional order the amount which the tenant must pay or tender on the 'first date of hearing' after the passing of such order of 'assessment' by the Controller so as to satisfy the requirement of the proviso.*

3. *Of necessity, 'the date of first hearing of the application' would mean the date falling after the date of such order by Controller.*

4. *On the failure of the tenant to comply, nothing remains to be done and an order for eviction shall follow. If the tenant makes compliance, the inquiry shall continue for finally adjudicating upon the dispute as to the arrears of rent in the light of the contending pleas raised by the landlord and the tenant before the Controller.*

5. *If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If, on the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount, failing which alone he shall be liable to be evicted. Compliance shall save him from eviction.*

6. *While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings.”*

The said view has been followed in ***Munish Bhatia vs. Smt. Kishni Devi and another, 2006 (2) PLR 457*** and ***Khushi Ram vs. Paramjit Singh and another, 2013 (1) Law Herald 707*** and it was held that evidence is not to be recorded for the said purpose and the rent can be tendered under protest.

Resultantly, keeping in view the above, this Court is of the opinion that the order passed by the Appellate Authority was not justified whereby, he had directed an inquiry by appointing a Local Commissioner to look into the same and opened a fresh round of controversy. The observations of the Apex Court were not taken into consideration.

In such circumstances, the revision petition is allowed and the order dated 14.12.2015 (Annexure P-4) passed by the Appellate Authority is set aside.

06.02.2017
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(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No