

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 19.12.2017****CR No.8940 of 2017 (O&M)**

Harvinder Singh Gill

...Petitioner

Vs.

Avinash Chand

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. A.K.Chopra, Senior Advocate, with
Mr. G.S.Bhandal, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

1. This petition has been filed under Article 227 of the Constitution of India against the order dated 17.11.2017 passed by the Rent Controller, Mansa allowing the tenant's application for assessment of provisional rent made at the eleventh hour when the case was mature for final hearing.

2. Mr. Ashwani Chopra, learned senior counsel, points out from Para.3 of the written statement filed by the respondent-tenant the portion denying relationship between the parties, as one of tenant-landlord and claiming that landlord was not the owner of the demised premises. Either of the parties on an application or the rent controller *suo motu* at the commencement of the trial could have gone into assessment of provisional rent and passed orders to operate the law in Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation, 2002 (1) RCR (Rent) 514 but that was not resorted to by the parties or the rent controller. Not having done so it is too far-fetched and improper exercise of jurisdiction for the rent authority to

start assessing provisional rent with landlord opposing the application, especially when the evidence of the parties is closed and the case matured for arguments.

3. Mr. Chopra refers to Para.7 in Yashpal Singla Vs. Vijay Kumar, 2004 (1) RCR (Rent) 718 and Para.14 in Hukma Devi Vs. Bhagwan Dass, 2003 (1) RCR (Rent) 533 to stress his point that the law is to the effect that protection of rent laws has to be denied to a tenant, who has denied relationship of landlord and tenant because such a tenant can never be considered to have claimed protection of the rent laws and especially when issues have been framed and evidence has been adduced by both the parties in support of their respective stands.

4. Having heard Mr. Chopra, I am of the view that the situation may have been different had the application been filed at the initial stage. In this case, the evidence of both parties stands concluded and the case stands ripe for arguments. The rent petition has been pending since 2011. Since the legal position is clear it is apparent that the impugned order is not in accordance with law. No prejudice will be caused to the tenant, if the impugned order is set aside on an undertaking, which the petitioner is prepared to make to this Court; that he is ready to accept judgment on the evidence on record after final hearing of the matter without nitpicking on the assessment of provisional rent at the fag-end of the trial. It is not for the respondent to insist that provisional rent should be assessed after the evidence stands concluded before the rent controller and only arguments are to be addressed by the parties and judgment pronounced.

5. Accordingly, while setting aside the impugned order dated 17.11.2017 (Annex P-6) the instant petition is allowed. The Rent Controller,

Mansa will proceed to hear both the parties on the merits of their respective case and pass final orders in accordance with law.

19.12.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>