

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1074 of 2011 (O&M)

Date of decision: 25.09.2018

Paramdeep Singh

..... Petitioner

Versus

Kanwaljit Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Munish Gupta, Advocate
for the petitioner.

Mr. Pawan Kumar, Sr. Advocate with
Mr. Rohit Kumar, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Tenant-petitioner is in the revision petition against the order passed by the learned Appellate Authority.

The question which needs determination is whether in terms of Section 13 of the East Punjab Urban Rent Restriction Act as interpreted by Hon'ble Supreme Court in the case of Rakesh Wadhawan Vs. M/s Jagdamba Industrial Coporation 2002(5) SCC 440, it is incumbent upon the Rent Controller to provisionally assess the rent and grant opportunity to tender the rent before ordering eviction on the ground of non-payment irrespective of fact whether the dispute is with regard to rate of rent or the period for whcih the arrears are pending.

The respondents-landlord who are 8 in number filed the petition claiming that their father Harbans Singh was co-owner of the property having died on 17.06.2000 leaving behind the respondents as their

heris. Their mother as also one brother had died. Wife of the deceased brother is also one of the petitioner in the rent petition. It is further case of the respondents-landlords that the petitioner-tenant is the tenant under the landlords since 1987 @ 400/- per month with stipulation that rent would increase @ 15% after every three years. It was further claimed that the tenant has not paid the rent from 01.09.1990. It will be significant to note that the rent petition was filed on 09.03.2004 i.e. after a period of more than 13 years claiming that the tenant has failed to pay the rent.

The petitioner-tenant (respondent in the rent petition) filed an application on appearance on 29.07.2004 requesting the learned Rent Controller to assess the amount of rent payable. It was pleaded that the monthly rent @ 400/- per month is being regularly paid and a receipt of rent of Rs.400/- per month was issued by the petitioners. The tenant further claimed that excess rent has claimed by the landlords and therefore, the provisional rent be assessed.

However, the learned Rent Controller did not assess the rent as requested. On 03.11.2004, the learned Rent Controller only assess the cost after noticing that the tenant wishes to tender the rent. Two orders passed on 03.11.2004 are extracted as under:-

“03.11.2004

Present : Counsel for the parties.

*Respondent wants to tender the rent. Rs.300/-
assessed as costs of the petition.*

RC, Patiala

Present : As before.

*Rent tendered which has been accepted under
protest being short and invalid. Case is adjourned to 18.11.2004
for filing of reply.*

RC, Patiala.”

After tendering the rent, the tenant filed his detailed reply wherein relationship between the petitioner and the landlord was admitted. It was pleaded that the petitioner-tenant was inducted as a tenant by petitioner No.9 i.e. husband of petitioner No.8. It was pleaded that initially the shop was taken on rent from Sh. Harbans Singh. It was further pleaded that the rent has been paid to late Sh. Raminder Singh till 30.04.2003 and the remaining rent from 01.05.2003 to November 2004 has been tendered in the Court.

When the tenant appeared in evidence, he reiterated his stand that he has paid the rent upto 30.04.2003 and thereafter he has tendered the rent in the Court. It was stated by the petitioner-tenant in evidence that he has been demanding receipt from the petitioners but they always used to put off the matter on one pretext or the other. Only one receipt was issued in the year 1990 and he had brought the aforesaid receipt in Court.

Learned Rent Controller dismissed the petition whereas the learned Appellate Authority set aside the judgment passed by the Rent Controller and ordered eviction of the tenant on the ground that the tenant has failed to prove the payment of rent upto 30.04.2003 as no receipt could be produced.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Hon'ble Supreme Court while interpreting provisions of the Act of 1949 in the case of Rakesh Wadhawan's (supra) had held that the Rent

Controller is duty bound to assess the rent and if the provisional rent assessed by the Rent Controller is not paid or tendered by the tenant, the eviction order has to follow. However, if the rent has been tendered, the case would proceed and thereafter, on consideration of evidence led by the parties, if the Court comes to a conclusion that some further rent is payable and the provisional assessment of rent was erroneous, the tenant would be granted second opportunity to pay the arrears. The conclusion drawn by the Hon'ble Supreme Court in the case of Rakesh Wadhawan's (supra) are extracted as under:-

“30. 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.”

In the present case, no provisional rent was assessed.

Learned counsel for the petitioner-tenant has submitted that in view of the judgment passed by the Hon'ble Supreme Court in the case of Rakesh Wadhawan's (supra), the learned Rent Controller committed an error while not assessing the provisional rent as payable. He further submitted that the Rent Controller did not give second opportunity after final determination by the learned Rent Controller. He submitted that in view of the judgment passed by the Hon'ble Supreme Court, the order passed is erroneous. He submitted that no eviction could be ordered against the tenant without granting opportunity to the petitioner to pay the rent at the first stage i.e. when the provisional rent is to be assessed by the learned Rent Controller and second when final order is passed if the provisional rent has been paid by the tenant and the learned Rent Controller finds that certain more amount is payable after trial.

On the other hand, learned senior counsel for the respondent-landlord has submitted that the tenant was not honest and the plea taken by him was not bona fide. Hence, the Rent Controller was not bound to assess either the provisional rent or grant second opportunity to the tenant.

It will be noticed that in the case of Rakesh Wadhawan's (supra) dated 26.04.2002, the provisions of the Act were interpreted and concept of Rent Controller being duty bound to assess the provisional rent was declared by the Hon'ble Supreme Court.

Learned counsel for the petitioner submits that the assessment of provisional rent is mandatory for the Rent Controller even when dispute is with regard to the period of arrears of rent payable by the tenant. On the other hand, learned senior counsel for the respondent assert that the judgment passed by the Hon'ble Supreme Court in Rakesh Wadhawan's case (supra) was in a situation when the dispute was with regard to rate of rent and therefore, the period of arrears of rent is in dispute, hence, the judgment passed by the Hon'ble Supreme Court in the case of Rakesh Wadhawan's (supra) would not be applicable.

Learned senior counsel for the respondent-landlord further submitted that the stand of the tenant was not bona fide as he failed to produce the receipts of rent as alleged by him by the landlord. Hence, the order of eviction has been correctly passed. At this stage, it would be appropriate to deal with the various precedents cited by learned counsel for the parties.

Learned counsel for the petitioner-tenant has relied upon the judgment passed by this Court in the case of Kaushalya Rani (dead)

through LRs Vs. Sham Lal and another, 2007(2) RCR (Rent) 413 in which the Court took a view that in both the cases where rate of rent is in dispute or the period for which arrears are being claimed is in dispute, it is incumbent upon the Rent Controller to pass the order assessing the provisional rent. Merely because the tenant took the plea before the learned Rent Controller that he has already paid the claimed arrears of rent, the Rent Controller is not absolved of the duty to pass an order assessing provisional rent payable.

Learned counsel for the petitioner-tenant also relied upon a judgment in the case of Manoj Kumar Vs. Jai Pal and another, 2011(1) RCR (Rent) 490 which in turn relies upon the judgment passed in the case of Kaushalya Rani's (supra).

On the other hand, learned counsel for the respondent-landlord has relied upon the judgment passed in the case of Mohd. Fiaz Vs. Mohd. Guljar and another, 2011(1) Rent LR 385 and submitted that in case the tenant is disputing the only period of arrears of rent, then the judgment passed by the Hon'ble Supreme Court in the case of Rakesh Wadhawan's (supra) would not apply. Learned counsel for the respondent-landlord has further relied upon the judgment passed in the case of Raunki Ram Vs. Sham Lal Jain, 2014(1) RCR (Rent) 417 in support of his argument.

Learned senior counsel for the respondent-landlord has further referred the judgment passed by the Court in the case of Ameek Singh Vs. D.N. Gaur, Chief Engineer 2010(1) PLR 375. He further referred to the judgment passed in the case of Mohan Lal Vs. Gurcharan Kaur and others, 2006(1) RCR (Civil) 25 in support of his contention.

This Court has carefully read the judgments passed by the Courts from time to time as relied upon by learned counsel for the parties. This Court has drawn a distinction based upon certain facts to be noticed by the learned Rent Controller before assessing the provisional rent which are to the following effect:-

1. Where relationship of landlord and tenant is disputed and denied by the tenant, the learned Rent Controller is not required to assess the provisional rent.
2. If the tenant was not honest and the stand taken by him was not bona fide, the Rent Controller was not required to assess the provisional rent.
3. In all other cases, the Rent Controller would be required to assess the provisional rent.

In the present case, as noticed by the Court, the tenant on appearance filed an application before the learned Rent Controller requesting the Court to assess the provisional rent which has not been assessed by the learned Rent Controller. Thus, the intention of the tenant was bona fide. This application was filed even before filing reply to the petition.

Learned counsel for the respondent although tried to persuade this Court to take a view that the intention of the tenant was not honest, however, this Court does not find substance therein. Learned counsel for the respondent-landlord has referred to the application filed for assessment of the provisional rent in which the tenant had claimed that he was issued a receipt which the tenant failed to produce. On careful reading of the

application for assessment of the provisional rent filed by the tenant, it is apparent that the tenant had only claimed that there was 'a receipt' of rent issued by the landlord. The tenant while appearing in the evidence has stated that he has not brought that receipt. On the basis thereof, learned counsel for the respondent wants this Court to take a view that the stand taken by the tenant was not bona fide which in the considered view of this Court is not correct. Learned senior counsel appearing for the respondent-landlord further submitted that if the dispute is with regard to period of arrears of rent, the judgment of Rakesh Wadhawan's case (supra) would not be applicable. It will be noticed that no doubt, in the case of Rakesh Wadhawan's (supra) the dispute was with regard to rate of rent, however, the Hon'ble Supreme Court after interpreting the provisions of section 13 of the Act of 1949 have held that the Rent Controller is duty bound to assess the provisional rent. The Hon'ble Supreme Court had declared a law which is binding on all the Courts under Article 142 of the Constitution.

The judgments relied upon by learned counsel for the landlord are not applicable. The judgment in the case of Mohd. Fiaz's (supra) relied by learned counsel for the respondent, the Court found that since the tenant had taken a stand that he had paid all the monthly rent against the receipt which the tenant had failed to prove those receipts and there was neither any dispute with regard to period of arrears of rent nor the rate of rent, therefore, in such circumstances, the stand taken by the tenant was not bona fide. Hence, the Court held that the learned Rent Controller was not required to assess the provisional rent. Still further, the attention of the Court was not drawn to the previous judgment passed by the Court in the case of Kaushalya Rani's (supra). As regards the judgment passed in the

case of Raunki Ram's (supra), the tenant had taken a stand that the rent has been paid to owner. Only the photocopies of the receipts were produced. The Court in the aforesaid case held that in the facts and circumstances of the aforesaid case, the stand of the tenant was not honest and bona fide.

In the next judgment relied upon in the case of Ameek Singh's (supra), the Court arrived at a conclusion that the stand of the tenant was dishonest and false. Even in the case of Mohan Lal's (supra) relied upon by learned counsel for the respondent, the attention of the Court was not drawn to the judgment passed by the Hon'ble Supreme Court in the case of Rakesh Wadhawan's (supra).

In the present case, on facts this Court has found that intention of the tenant was honest. In none of the cases which have been relied upon by learned counsel for the respondent, the tenant on the very first hearing had requested the Court to assess the provisional rent.

In view of the aforesaid discussion, the judgment passed by the learned Rent Controller as also of the learned Appellate Authority are set aside. Learned Rent Controller is directed to assess the provisional rent as required by law and thereafter, proceed with the case.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Revision petition is allowed.

25.09.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No