

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

CR No.1361 of 2011

Date of Decision:03.08.2018

Sham Sunder

...Petitioner

Versus

Paramjit and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Narayan Prasad Gupta, Advocate for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

The landlord petitioner is in the revision petition against the order passed by the Appellate Authority, permitting the tenant to adjust the excess amount paid by him towards electricity surcharge.

Learned Appellate Authority has very aptly noticed that in fact, while passing an order of provisional assessment, the Rent Controller had committed an error which was corrected, when final order was passed and opportunity was given to the tenant to pay the amount.

The relevant extract of the order passed by the Appellate Authority reads as under:-

“As far as the contention raised by the counsel representing the appellant-tenant is concerned that has certainly merit in it. A bare perusal of detailed order dated 17.10.2008, vide which the assessment of arrears of rent, interest, cost and electricity charges was made by the Rent Controller in compliance with the direction given by the Appellate Authority vide order dated 11.3.2005, would reveal that the Rent Controller found the tenant liable to pay electricity charges to the tune of Rs.6272/- plus surcharge.

Total amount of Rs.6272/- was included in the total amount of Rs.9732/- assessed vide this order dated 17.10.2008. The tenant tendered the alleged amount of Rs.9732/- as is evident from the order dated 7.11.2008. Once that was so the tenant was so the tenant was certainly not liable to pay that amount of Rs. 6272/- which was included in this amount of Rs.9503/-. No doubt the tenant was liable to pay Rs.3231/- which was the actual amount of surcharge in addition to the amount of Rs.6272/- already tendered by him earlier, still when the tenant tendered all this amount of Rs. 9503/- in compliance with the direction of Rent Controller he was entitled to seek refund of excess amount of Rs.6272/-. The tenant is accordingly allowed to adjust that amount against the future arrears of rent to be paid by him to the landlord.”

Learned counsel for the petitioner has submitted that no doubt there was an error in the provisional assessment, however, the tenant has not been thereafter paying regular rent.

This Court has considered the submission, however, do not find any substance therein.

As per the judgment of Hon'ble the Supreme Court in **Rakesh Wadhawan and others Vs. M/s Jagdamba Industrial Corporation and others, 2002 (5) SCC 440**, it is obligatory for the Rent Controller to assess the provisional rent. It is not in dispute that the aforesaid provisional rent as assessed was tendered. Hon'ble the Supreme Court has further held that if ultimately the Rent Controller finds that the provisional rent was wrongly assessed, he has to give further opportunity to the tenant. This is what was done by the Rent Controller. However, adjustment of the excess payment as noticed above was not allowed, which has been allowed by the Appellate

Authority.

As regards grievance of the petitioner that the tenant has not been making regular payment thereafter, in the considered opinion of this Court, the remedy for aforesaid grievance lies some where else.

Dismissed.

03.08.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No