

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Civil Revision No. 3095 of 2005(O&M)

Date of Decision: December 17 , 2018.

Rameshwar Dass and another PETITIONER (s)

Versus

Nar Singh Dass through LRs RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. C.B.Goel, Advocate
for the petitioners.

Ms. Hemani Sarin, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Petitioners are aggrieved of judgment dated 04.03.2005 passed by the learned Appellate Authority, Jagadhri whereby appeal filed by the respondent against judgment dated 14.05.2003 passed by the learned Rent Controller, Jagadhri was accepted.

Brief facts necessary for adjudication of the case are that, petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short, the 'Act') was filed by the petitioner-landlord seeking eviction of the

respondent-tenant from the shop as detailed in the petition. It is relevant to note at this stage that earlier a petition filed by the petitioner-landlord on 16.09.1985 was allowed by the learned Rent Controller on 16.03.1991. However, in appeal filed by the tenant, said order of eviction was set aside by the learned Appellate Authority and revision petition was filed before this Court by the petitioner-respondent. Present subsequent petition under Section 13 of the Act (i.e., the subject-matter of the present petition) was filed while revealing the said facts. It was pleaded that the tenant had further defaulted in making further payment of the dues from 01.02.1990 to 31.07.1995. Eviction of the respondent was sought.

Petition was resisted by the respondent-tenant. Earlier proceedings between the parties were admitted while revealing that appeal filed by the landlord was dismissed by the Hon'ble Supreme Court on 04.07.1995. It was denied that respondent-tenant was in arrears of rent.

Learned Rent Controller, Jagadhri allowed the petition on the ground that tender of rent by the respondent-tenant was not valid as it was not tendered by the respondent-Narsingh Dass in his individual capacity. Appeal filed by the respondent-tenant was however allowed by the learned Appellate Authority, Jagadhri vide judgment dated 04.03.2005. Aggrieved therefrom, present petition has been filed.

Learned counsel for the petitioner vehemently argues that tender of rent by the respondent-tenant was not valid. It was tendered by the tenant on behalf of the firm and not in his individual capacity. Therefore, the learned Appellate Authority has erred in setting aside the well reasoned and logical

judgment passed by the learned Rent Controller, Jagadhri.

Per contra, learned counsel for the respondent submits that the tender of rent is legal and valid. It is specifically mentioned that the rent is tendered on behalf of the firm – M/s Narsingh Dass Satpal as well as on behalf of the tenant in the individual capacity. It is thus prayed that the present petition deserves to be dismissed.

I have heard learned counsel for the parties and have gone through the file.

The earlier round of litigation between the parties is not in dispute. The same was decided by this Court in CR No.4026 of 1993 reported as **Rameshwar Dass and Jai Parkash v. Narsingh Dass (retd.), 1995(2) RCR 545.**

It has been specifically observed by this Court in the said proceedings that:-

“..... As regards the second contention that tender made on the first date of hearing was not valid, suffice it to say, on the first date of hearing tender was made by the counsel who not only appeared on behalf of the firm but also on behalf of Narsingh Dass. In his statement recorded at the time the rent was tendered, he never stated that he is tendering rent solely on behalf of the firm. Otherwise too, it would have made no difference even if the rent had been tendered by respondent No.2 as the view taken by Punjab High Court in *Ram Gopal and others v. Om Parkash and others*, 1963 PLR 1112 and by this Court in *Punjab Rajasthan Goods Carrier and others v. Onkar Mal and another*, 1978(2) RCR 570 that the tenant as defined under the Act could only deposit or tender rent and not a stranger was expressly over-ruled by the Supreme Court in *Pushpa Devi and others v. Milkhi Ram (dead) by his LRs*, 1990(1) RCR 334. It was held “It is time for us to be explicit. Taking into account of the intention of the legislature and the purpose for which the proviso

was enacted, we are of the opinion that the obligation to tender the rent under the proviso on the first hearing date does not depend upon the existence of admitted jural relationship of landlord and tenant. When an action for eviction is brought by the landlord on the ground of default, the proviso stands attracted. The benefit of the proviso could be availed of by the tenant and also by those who claim to be the tenant. The view to the contrary expressed by the High Court of Punjab and Haryana in *Ram Gopal and Onkar Mal cases* is likely to be of greater mischief to the tenants than a protection for them and is therefore over-ruled.”

Identical arguments have been raised by learned counsel for the petitioner in the present petition to the effect that tender of rent was not valid as the same was on behalf of the firm and not by the tenant in his individual capacity. Learned counsel for the petitioner however is unable to deny the decision of this Court in the earlier proceedings, CR No.4026 of 1993 reported as *1995(2) RCR 545*.

No other argument has been raised.

Keeping in view the facts and circumstances as above, there is no illegality or perversity in the impugned judgment dated 04.03.2005 passed by the learned Appellate Authority, Jagadhri, which calls for interference by this Court in exercise of revisional jurisdiction.

Petition is accordingly dismissed.

(**LISA GILL**)
JUDGE

December 17 , 2018.
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No