

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

**Civil Revision No.3819 of 2018 (O&M)
Date of Decision: November 13, 2018.**

Sunil Mahinderu

.....PETITIONER(s).

VERSUS

Baij Nath Aggarwal

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Anil Chawla, Advocate
for the petitioner (s).

SURINDER GUPTA, J.

Heard.

Petitioner filed ejectment application under Section 13 of East Punjab Urban Rent Restriction Act, 1949 against the respondent on the ground of non-payment of rent and personal bona fide necessity.

On notice, respondent put in appearance and learned Rent Controller assessed the provisional rent vide order dated 11.09.2017, which reads as follows:-

“2. As per the petitioner, the demise premises was rented to the respondent by the father of the applicant @ Rs.10/- as rent per month by way of oral tenancy accompanied by delivery of possession. The respondent has not tendered the arrears of rent w.e.f. from 01.4.2012 till date @ Rs.10/- per month.

3. The rate of rent as alleged by the petitioner/applicant is admitted by the respondent.

4. Accordingly, provisional rent is hereby quantified as follows:-

a) Rent w.e.f. 01.04.2012 to 30.9.2017 @Rs.10/- per month $10 \times 65 =$	6500/-
b) Interest on arrears @ 6% p.a.	Rs.1072/-
c) cost	Rs.1,000/-
TOTAL	Rs.8572/-

6. Now to come up on 21.9.2017 for payment of arrears of rent by the respondent.”

On 21.09.2017, the date fixed for tendering of rent, the above order was rectified and the provisional rent was again assessed. The order passed on 21.09.2017 reads as follows:-

“Inadvertently, on the last date of hearing the provisional rent was assessed wrongly. As Rs.6500/- was mentioned as rent from 01.04.2012 to 30.09.2017. The earlier stands rectified. Accordingly, provisional rent is hereby quantified as follows :-

a) Rent w.e.f.01.04.2012 to 30.09.2017 @ Rs.10/- $10 \times 65 =$	Rs.650/- per month.
b) Interest on arrears @ 6% p.a.	Rs.170/-
c) Cost	Rs.1,000/-
TOTAL	Rs.1757/-

Despite repeated calls none has appeared on behalf of respondent. Let notice be issued to the respondent for 10.10.2017 for tendering rent.”

From perusal of the orders passed by learned Rent Controller, it appears that without issuing any notice to respondent or his counsel, file was again taken up. Respondent was proceeded ex parte and as per the law settled by Hon'ble Apex Court in case of **Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation 2002 (1) R.C.R. (Rent) 514**, ejectment of the respondent-tenant was ordered.

Respondent-tenant filed appeal against the order of his

ejectment, which was allowed by Appellate Authority, Amritsar with

observations in para 14, operative part of which reads as follows:-

*“14. Since, both orders admittedly have been passed by the Ld. Rent Controller on the same date and both are contradictory orders. Counsel for the respondent has not denied the earlier order which was duly uploaded by the Rent Controller. Ld. Rent Controller has committed serious illegality as it is the bounden duty of the court to protect the right of litigants and no act of court should harm any litigant as per maximum “Actus curiae neminem gravabit” as held by Hon'ble Supreme Court of India in **Jang Singh vs Brij Lal & Another** (supra). Though, there is clear direction of Hon'ble Apex*

*Court of India in **Rakesh Wadhawan's** case which is followed by our own Hon'ble High Court in many cases that when rent is not tendered on fixed date, eviction has to follow and ratio of said case law is not in dispute. But, in the present case, when Rent Controller had wrongly assessed the rent and Lower court unilaterally rectified its own order and assessed rectified provisional rent, court should have given notice to the respondent/appellant in the interest of justice. In my view Rent Controller has tried to dispose of the case in a technical manner without following principle of natural justice and without giving notice to respondent of rectified order hurriedly. Incidentally, order dated 21.09.2017 in which notice to respondent was given for 10.10.2017 has been withdrawn which is sought of review of its own order and as such present impugned order becomes itself illegal. This court fails to understand why the Rent Controller was in so much hurry to pass eviction order when conduct of court is also not unblemished. No doubt, Rent Act is a Special*

Act, but principle of natural justice are always to be followed while applying specific provisions and Rent Controller has failed to exercise caution with purpose to hide its own mistake. So, in view of discussion made above, present appeal filed by appellant is accepted and case is remanded back to Rent Controller with direction to give fresh notice to respondent/appellant for tendering the rectified provisional rent.”

Learned counsel for the petitioner has argued that there was only an arithmetical mistake while assessing provisional rent which was rectified. Respondent had not appeared on 21.09.2017 which shows that he had no intention to pay the rent. He could otherwise move an application seeking rectification of the previous order, whereby the provisional rent was wrongly assessed. In support of his contention, he has relied on the observations of Co-ordinate Bench of this Court in case of ***Madan Lal and another Vs. Tek Chand Sharma 2011(1) R.C.R.(Rent) 486.***

The facts as emerge from the above discussion are that the order passed by learned Rent Controller on 11.09.2017 was virtually withdrawn. As per this order, tenant was directed to pay the provisional rent assessed vide order dated 11.09.2017 on 21.09.2017. On withdrawal of order dated 11.09.2017 on the next date fixed for tendering of rent, there was no provisional rent assessed for making the tender. Learned Rent Controller again assessed the provisional rent on 21.09.2017 and was duty bound to give a date to the tenant to make payment by fixing a date for this purpose. It is mentioned in the order that notice be issued to the respondent for 10.10.2017 for tendering the rent but on the same day i.e. 21.09.2017, the ejectment order was passed which shows the patent illegality in the

order passed by learned Rent Controller.

So far as the citation referred by learned counsel for the petitioner is concerned, it has no application to the facts of the present case as in that case, tenant was trying to explain his conduct for noting the wrong date for the purpose of tendering rent and under these circumstances, Co-ordinate Bench has observed that on the date wrongly noted by the tenant, he would have appeared before the Rent Controller and moved the application for tendering the rent.

In view of my above discussion, I find no legal or factual infirmity in the judgment passed by Appellate Authority, calling for any interference.

This petition has no merits.

Dismissed.

November 13, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***