

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

C.R No. 3826 of 2018 (O&M)
Date of decision : August 02, 2018

Pawan Kumar, deceased, through LRs

..... Petitioner

v.

Vinod Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Raghav Gulati, Advocate
for the petitioner.

Mr. Arihant Jain, Advocate
for the respondents.

Ajay Tewari, J (Oral)

This petition has been filed against the concurrent judgments of the Courts below allowing the eviction petition filed by the respondents. The primary ground taken by the Courts below is that the petitioner-tenant very obstinately did not pay even the provisional rent during the pendency of these proceedings. Both the Courts below have relied upon conclusion No.6 drawn by the Supreme Court in Rakesh Wadhawan v. Jagdamba Industrial Corporation (SC) 2002(1) RCR 514, which is to the following effect:-

“ 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.”

On the last date of hearing, the following order was passed :-

“ The issue which now survives in this petition is whether the petitioners paid at least their version of the rent with regularity during the pendency of the rent petition.

The counsel for the petitioners states that as per the petitioners the rate of rent was Rs.2,800/- per month which the petitioners were regularly depositing during the pendency of the petition.

Learned counsel for the respondents-caveator however, alleges that petitioners never deposited even Rs.2,800/- with any regularity and moreover even after the order of 2015 they did not deposit the mesne profits and etc. with regularity.

Both learned counsel pray for a short adjournment to place on record the chart of payments.

Adjourned to 02.08.2018. It is directed that both the parties will exchange their respective charts on 31.07.2018.

Counsel for the respondents-caveator states that till that date they would not seeks dispossession.”

Today, a chart has been placed on record by both the parties. A perusal thereof reveals that the claim of the landlord was that the rate of rent was ₹ 5,000/- per month while the claim of the petitioner was that it was only ₹ 2800/- per month. Since the landlord was not able to give any proof of the rate of rent at that time, provisional rent was assessed at ₹ 2800/- per month. The provisional rent for the period during which this issue was in controversy i.e from 1.8.2002 to 31.7.2008 was deposited by the tenant by challan dated 22.8.2008. Till this date, it cannot be said that there was any default on the part of the tenant because, as mentioned above, the rate of rent was yet in controversy. It is not disputed that the issue of provisional rent was finalized in the year 2008 but after depositing the provisional rent upto 31.7.2008, the petitioner admittedly did not deposit the monthly rent for a period of 45 months and it was only on 17.5.2012 that he deposited the provisional rent from 1.8.2008 to 31.5.2012. Thereafter,

again the petitioner stopped depositing the provisional rent and ultimately the provisional rent for the period 1.6.2012 to 30.4.2014 was deposited by the petitioner on 21.4.2014. It would be seen that at every step the petitioner was remiss in depositing even the monthly provisional rent. Conclusion No.6, quoted above, is fully applicable to the facts of this case. In the circumstances, the plea of counsel for the petitioner that he is entitled to one more opportunity to deposit the rent in terms of the principle decision in Rakesh Wadhawan's case (supra) cannot be acceded to. Consequently, finding no merit this petition is dismissed.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

August 02, 2018
'kk'

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No