

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4262 of 2018(O&M)

Date of Order: 16.07.2018

Satish Saini

...Petitioner

Versus

Siri Pundrik Tirth and Mandir Sudar Dharamshala
(Regd.) and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajinder Goyal, Advocate,
for the appellant.

ANIL KSHETARPAL, J.

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

In the present case, tenant-petitioner has not been fair in the court. A religious institution filed a petition seeking eviction on the ground that respondent no.1 was inducted as a tenant and he has not paid the rent and also he has sub-let the premises to respondent no.2 for an unknown valuable consideration and respondent no.1 has walked away from tenant premises and it is defendant no.2 who is in actual possession thereof. Respondent no.1-tenant, who is petitioner herein, denied the relationship of landlord and tenant between the parties. Petitioner took a plea that he had taken possession of the premises from Nihal Chand by paying him Rs.30,000/- and he has never paid rent to the petitioner or any one. It was further pleaded that he came to know in the month of March, 2013 that an eviction order was passed against Nihal Chand on 17.02.2006 and thereafter

petitioner paid the rent upto May, 2012 and also paid a rent @ Rs.1,000/- per month from 01.06.2012 and also executed a rent note dated 25.03.2013 in favour of Aggarwal Panchayat Dharamshala. Petitioner also pleaded that his signatures were obtained on blank papers and the landlord wants to take forcible possession of the premises.

Learned Rent Controller after appreciating the evidence available on the file and after examining two affidavits executed by the petitioner Ex.PW2/C and Ex.PW2/D, recorded a finding that the petitioner is a tenant of the religious institution. The court also noticed that the petitioner admitted his signatures on the aforesaid two affidavits. The story put forth by the tenant that the possession was delivered to him by Nihal Chand was also found to be false. However, learned Rent Controller dismissed the petition on the ground that the present petition has not been filed by an authorized person.

Landlord filed the first appeal, whereas the tenant filed cross objections. Learned Appellate Authority after re-examining the evidence available on the file affirmed the finding of the learned Rent Controller to the effect that it is the petitioner, who is tenant of the landlord i.e. religious institution as is apparent from various documents produced including Ex.PW2/C, Ex.PW2/D, the affidavits of the petitioner on which he admits his signatures. The learned Court further held that the petition was filed through President of the Society who is a principal officer and, therefore, the petition was maintainable.

Since, tenant-petitioner had not even tendered the rent and denied relationship of landlord and tenant, therefore, he was ordered to be evicted.

Learned counsel for the petitioner has been heard at length and

with his able assistance this court has gone through the judgments passed by the courts below.

Learned counsel for the petitioner has raised two contentions:-

- (i) that the Haryana Urban(Control of Rent & Eviction) Act, 1973 (hereinafter referred to as 'the Act') does not make a provision for ordering eviction of the tenant on account of forfeiture of the tenancy on the ground of denial of relationship of landlord and tenant. He, hence, submitted that the judgment passed by the first appellate authority was erroneous.
- (ii) it was the duty of the learned Rent Controller to assess the provisional rent and grant opportunity to the petitioner-tenant to tender the rent, even, if he had denied the relationship of landlord and tenant.

First argument of learned counsel for the petitioner does not pose any difficulty as grounds of eviction are specified in Section 13 of the Act of 1973. Forfeiture of tenancy on denial of relationship between the landlord and tenant is not one of the ground for eviction of the tenant. The judgment relied upon by learned counsel for the petitioner in the case of **Sheela v. Firm Prahlad Rai Prem Parkash (2002) 3 SCC 375**, does lay down that once the Rent Control Legislation provides for specific ground of eviction and also provide that a tenant shall not be evicted except in accordance with the provisions of this Section, in absence of the specific ground, the forfeiture of the tenancy cannot be used to evict the tenant, who has statutory protection.

In view of the aforesaid, first contention of learned counsel for the

petitioner is correct.

However, the case does not end here. In the present case, tenant has put forth the defence with a malafide intention. Respondent-tenant denied the relationship of landlord and tenant between the parties. He has not paid the rent. He has even went on to the extent of denying the execution of the two affidavits which are admittedly signed by him. Both the courts have found that there was a relationship of the landlord and the tenant between the petitioner and the landlord. Learned counsel for the petitioner could not show that the findings arrived at by both the authorities concurrently are erroneous. In such circumstances, once the petitioner had denied the relationship of the landlord and tenant between the parties, it has been consistently held by this court that the Rent Controller is not required to assess the provisional rent. The reasons for not assessing the provisional rent are obvious. The provisional rent can only be assessed once relationship of landlord and tenant between the parties is admitted and there is some dispute about the rate of rent. Once the relationship is disputed, there cannot be any provisional assessment of the rent. Reference in this regard can be made to the following judgments:-*Ramanand Shastri v. Gian Singh, 2003(1) RCR(Rent) 735: 2003 HRR 771, Yash Pal Singh v. Vijay Kumar, 2001(1) RCR(Rent) 718: 2004(3) PLR 504, Hukama Devi and others v. Bhagwan Dass, 2003(1) RCR (Rent)533: 2003(2)PLR 371, Narinder Singh v. Sarabjit Singh, 2006(2) RCRRent) 226: 2006(2)HRR 467, and Jagdish Singh v. Mohan lal, 2004(2) RCR(Rent)114 (P&H).*

Learned counsel for the petitioner has submitted that as per the judgments passed by the Hon'ble Supreme Court in the case of *Rakesh Wadhawan vs. M/s Jagdamba Industrial, 2002(2) Rent Law Reporter, 36,*

it is obligatory for the Rent Controller to assess the provisional rent.

On careful examination of the aforesaid judgment, it is apparent that the Hon'ble Supreme Court was not dealing with a situation where tenant was disputing the relationship of landlord and tenant. In that case relationship between the parties as a landlord and tenant was an admitted fact. In such circumstances, judgment passed by the Hon'ble Supreme Court in the case of **Rakesh Wadhawan (supra)** would not come to rescue the petitioner.

In view of the aforesaid, there is no good ground to interfere with the findings of learned appellate authority.

The revision petition is dismissed

July 16, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No