

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

123

CR-6659-2018 (O&M)

Date of Decision : 10.10.2018

Ashok Kumar Garg

..... Petitioner

Versus

Mandeep Kaur and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Rajesh Garg, Sr. Advocate with
Mr. Rakesh Dhiman, Advocate
for the petitioner.

Mr. P.S. Thiara, Advocate
for the respondent No.1.

AJAY TEWARI, J. (Oral)

By this petition the petitioner has challenged the order fixing provisional rent.

When the matter came up for hearing urgent notice of motion was issued for today with a direction that the respondents be served through counsel in the trial court. When the case came up before the trial court on 04.10.2018, the trial court proceeded to order ejectment since the petitioner had not paid the provisional rent. In these circumstances, the counsel for the respondent No.1 states that the petition has been rendered infructuous. However, the learned senior counsel for the petitioner states that once the trial court was apprised that this Court had issued urgent notice of motion in a petition challenging the order of fixation of provisional rent, it should have realized that the principles enunciated by the Supreme Court in *Rakesh Wadhawan*

Versus M/s Jagdamba Industrial Corporation-2002(1) RCR (Rent) 514

were not attracted and it should have held its hand at least till the date the matter has come up before this Court. As per the learned senior counsel for the petitioner, now the petitioner has been doubly prejudiced because on the one hand his case against the fixation of exorbitant provisional rent has not been decided and he has also been ordered to be ejected.

In my opinion, the situation can be remedied by permitting the petitioner to take this plea before the appellate authority and the appellate authority is directed to decide the issue of provisional rent as a preliminary issue and till then the execution shall remain stayed. It is, however, made clear that in case the petitioner does not file an appeal within the period of limitation, the interim order will cease to operate.

Petition stands disposed of.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

October 10, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No