

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

**CR No.6731 of 2017 (O&M)
Date of Decision: 20.09.2018**

Sharwan Kumar

... Petitioner

Versus

Yashpal Pahwa and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Divanshu Jain, Advocate,
for the petitioner.

Mr. Sourabh Goel, Advocate,
for respondent Nos.1 and 2.

TEJINDER SINGH DHINDSA, J.

Petitioner/tenant has filed the instant revision petition assailing the order dated 04.07.2017 passed by the Rent Controller, Ludhiana whereby provisional rent for the shop/premises in question has been assessed @ Rs.20,000/- per month w.e.f. 01.06.2009. Further challenge is to the order dated 05.09.2017 passed by the Learned Appellate Authority, Ludhiana, dismissing the appeal preferred by the petitioner against the assessment of provisional rent.

Brief facts are that landlords/respondents filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act (hereinafter referred to as "the Act") on 25.10.2016 seeking eviction of the tenant from the demised premises/shop described as basement i.e. Lower Ground Floor part of property No.216/1, opposite ESI Hospital, Bharat Nagar Chowk, Ludhiana on the twin

grounds of non payment of rent and bona fide personal necessity of respondent No.1 and his son Naveen. It was pleaded in the eviction petition that the tenant (petitioner herein) was inducted as a tenant at a monthly rate of rent of Rs.18,600/- w.e.f. 01.08.2005 for running a business of Plyboard, Sunmica etc. A Rent Note dated 29.07.2005 is also stated to have been executed between the parties wherein it was agreed that the rent would be increased @ 10% after every 03 years.

Case set up on behalf of the landlords was that the tenant had paid rent up to May, 2009 @ Rs.20,460/- per month but thereafter had stopped making payment towards rent and as such he was in arrears of rent @ Rs.20,460/- from 01.06.2009 to 31.07.2011, @ Rs.22,516/- from 01.08.2011 to 31.07.2014 and @ Rs.24,767/- after 01.08.2014.

Tenant contested the eviction petition by filing his written statement and apart from raising various preliminary objections and other submissions averred that rent had been paid till August, 2016 and that the landlords are taking the benefit of non-issuance of receipts to the tenant. It was stated that the tenant had issued cheques towards tender of rent for the year 2015 in favour of the landlords but the same were not encashed. In a nutshell, tenant denied that he was in arrears of rent.

Rent Controller vide order dated 04.07.2017 has assessed the provisional rent @ Rs.20,000/- per month w.e.f. 01.06.2009 to 01.07.2017 and directed the petitioner herein to tender Rs.24,16,300/- including interest component of

Rs.4,75,300/- and cost of Rs.1000/-.

Aggrieved against the order dated 04.07.2017, petitioner filed an appeal before the Appellate Authority, Ludhiana and which stands dismissed vide order dated 05.09.2017.

Resultantly, the instant revision petition at the hands of the tenant.

Matter came up for preliminary hearing before this Court on 29.09.2017 and the following order was passed by a Coordinate Bench of this Court:-

“Petitioner (tenant) is in revision directed against the order dated 4.7.2017 passed by the Rent Controller, Ludhiana whereby provisional assessment of rent at the rate of Rs.20,000/- per month payable w.e.f. 01.06.2009 has been ordered; and the order dated 5.9.2017 passed by the Appellate Authority, Ludhiana whereby the appeal against the order dated 4.7.2017 has been dismissed.

It is submitted that the petitioner is in the Plywood business since 29.07.2005 and the landlords entered the same business just above the demised shop in the year 2013. By reference to the bills at Annexure P-2 (Colly) it is shown that the tenant had supplied goods to the landlord firm worth lacs of rupees. When the landlord tried to interfere in the running of the business by parking their vehicles in front of the shop, tenant filed a suit for permanent injunction on 01.10.2016 with the averments that the landlord had refused to accept the rent since September 2016. The eviction petition was filed as a

counter blast to the said civil suit after the grant of temporary injunction.

It is contended that in the facts of the present case and from the Account ledgers placed on record, it is evident that prima facie rent stands paid till August 2016. The landlord has falsely claimed rent is due w.e.f. 01.06.2009 only to use it as a tool to evict the petitioner.

Notice of motion for 10.01.2018.

In the meanwhile payment beyond the rate of Rs.20,000/- per month payable w.e.f. 1.9.2016 in terms of the impugned order shall remain stayed. The tenant is further granted three weeks time from today to deposit the arrears of rent at the said reduced rate.”

I have heard Mr. Divanshu Jain, Advocate for the petitioner and Mr. Sourabh Goel, learned counsel representing respondent Nos.1 and 2/landlords.

In the considered view of this Court, the impugned order passed by the Rent Controller dated 04.07.2017 assessing provisional rent @ Rs.20,000/- per month for the demised premises and the same being held payable w.e.f. 01.06.2009 would require intervention at the hands of this Court in exercise of its revisional jurisdiction.

Extract of Section 13 of the Act insofar as which is relevant to the issue at hand reads as follows:-

“13. Eviction of tenants.- (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or

after the commencement of this Act or otherwise and whether before or after the termination of tenancy, except in accordance with the provisions of this section, or in pursuance of an order made under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, as subsequently amended.

2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied –

(i) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable :

Provided that if the tenant on the first hearing of the applications for ejectment after due service pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid.

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The Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.”

In ***Rakesh Wadhawan and others Vs. Jagdamba Industrial Corporation and others 2002 (1) R.C.R. (Rent) 514***, the Supreme Court had examined the provisions of Section 13 (2) (i) and had held that the proviso to Section 13 (2) (i) of the Act casts an obligation on the Rent Controller to make an assessment of (i) arrears of rent, (ii) the interest on such arrears, and (iii) the cost of application and then quantify by way of an interim or provisional order the amount which the tenant must pay or tender on the “first date of hearing” after the passing of such order of “assessment” by the Controller so as to satisfy the requirement of the proviso. On the failure of the tenant to comply, the consequential order for eviction would follow. However, if the tenant makes compliance, the inquiry shall continue by the Controller for finally adjudicating upon the dispute as to the arrears of rent in the light of the contesting pleas raised by the landlord and the tenant.

Adverting back to the facts of the present case, the relationship of landlords and tenant is admitted.

Perusal of the pleadings on record would clearly indicate that in the reply filed by the petitioner to the eviction petition as also in the appeal preferred against the order dated 04.07.2017 assessing provisional rent, the petitioner had raised the following contentions to deny that he is in arrears of rent.

a) It was averred that the petitioner was engaged in the business of Plyboard, Sunmica etc. under the name and style of Gagan Plywood and Laminates from the demised premises and the landlords are occupying the Upper Ground Floor of the same very building and one son of the respondent/landlord, namely, Jitesh is also engaged in the same business under the name and style of M/s Sandhya Plywood. It was asserted that since parties were in the same line of business, the landlords used to purchase raw material from the petitioner and as such there were various financial transactions inter se the parties. Copies of various bills in support of such assertion have been appended along with the instant petition as Annexure P-2 (colly.). As such it was sought to be contended that in spite of operating from the same building and having business transactions on a continuous basis, it could not be believed that rent had not been tendered by the tenant since 2009 and the landlords would remain silent over a period of 6-7 years and would not even issue any legal/demand notice for demand of rent. It had been urged on behalf of the tenant that under such circumstances, an adverse inference ought to have been drawn against the respondents/landlords as no cogent explanation was forth coming to explain the inordinate delay of filing an eviction petition in the year 2016 on the ground of non payment of rent with effect from the year 2009.

b) It was also asserted that the landlord had started to create

hindrance for usage of the demised premises/shop by way of blocking/parking vehicles at the entrance and on account of which the petitioner/tenant had been constrained to institute a civil suit seeking permanent injunction and in such civil proceedings, the tenant was granted interim protection vide order dated 06.10.2016 passed by the Civil Judge, Junior Division, Ludhiana.

The restraint order dated 06.10.2016 was in the following terms:

“Accordingly, defendants are restrained from dispossessing the plaintiff from the ground floor and lower ground floor as detailed in the head note of the plaint and defendants are further restrained from blocking the frontage of tenancy premises in any manner till the next date of hearing.”

The eviction petition was filed by the landlords on 25.10.2016 i.e. merely 03 weeks after passing of the restraint order and as such it was contended that the eviction petition was nothing but a counter blast to the civil suit instituted by the tenant for grant of permanent injunction and by taking the concocted and false plea with regard to the tenant being in arrears of rent.

C. Reliance was further placed upon certain entries in the Account Ledgers placed on record to contend that rent already stood tendered till August 2016.

The contentions noticed hereinabove bring forth that a triable issue as regards tenant being in arrears of rent since the

year 2009 had arisen. For findings to be recorded thereupon evidence would have to be led. However, in terms of the impugned order dated 04.07.2017 of the Rent Controller not only has the provisional rent been assessed @ Rs.20,000/- per month but liability to deposit the arrears of rent @ Rs.20,000/- per month for a period of almost 08 years has been fastened. The tenant as such has been put to such onerous terms that the same would virtually tantamount to a summary eviction. The Appellate Authority while affirming the order of Rent Controller has also overlooked such aspect.

In view of the discussion above and against the uncontroverted factual premise that an order of eviction has not been passed by the Rent Controller, the instant petition is partly allowed.

The provisional rent assessed @ Rs.20,000/- per month is upheld. Directions for deposit of arrears of rent for the period 01.06.2009 to 01.09.2016 are set aside.

Court has been apprised that the tenant has already made good the provisional rent assessed from 01.09.2016 onwards. He would continue to deposit rent @ Rs.20,000/- per month subject to final decision in the eviction petition.

Directions are issued to the Rent Controller, Ludhiana to decide the eviction petition filed by the landlords/respondents expeditiously and to in any case pass final orders thereupon within a period of 08 months from today.

Further clarified that the observations contained in this

order shall have no bearing on the merits of the case.

Revision petition is allowed in the aforesaid terms.

20.09.2018

vandana

Whether speaking/reasoned

Whether Reportable

(TEJINDER SINGH DHINDSA)

JUDGE

Yes

Yes