

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

CR-6800-2018 (O&M)

Date of Decision: 05.10.2018

Balwinder Singh Sandhu

... Petitioner

Versus

Ritesh Arya

... Respondent

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

Present:- Mr. Shashank Sharma, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J. (ORAL)

The landlord filed an eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act (hereinafter to be referred to as 'the Act') seeking eviction of the tenant from Flat No.14, Spangle Height, Dhakauli, Zirakpur, Tehsil Derabassi, District SAS Nagar, Mohali on the following grounds:

a) That the respondent has not paid rent of the premises i.e. Rs.15050/- per month w.e.f. February 2016 till December, 2016 (Rs.165550/- for 11 months) and w.e.f. January, 2017 till March, 2017 @ Rs.16555/- per month i.e. Rs.49665/- for 3 months. As such the respondent is in huge arrears of rent i.e. Rs.2,15,515/-.

b) That the tenanted premises is required by the petitioner for his bonafide personal use and occupation as he is residing in rented accommodation as mentioned above and is paying Rs.19000/- per month as rent excluding water and electricity charges. The petitioner wants to shift in his own property. As such the respondent is liable to be evicted from the premises in question on the ground of personal necessity.”

2. The Rent Controller assessed the provisional rent vide order dated 07.04.2018 (Annexure P-5) and whereby tenant was directed to pay provisional rent of Rs.10,41,280/-. Appeal having been preferred by the tenant, the Appellate Authority remanded the matter back to the Rent Controller to assess the rent for the period February, 2016 to December, 2016 and January, 2017 to March, 2017 vide order dated 03.05.2018 (Annexure P-4). Thereupon, Rent Controller assessed the provisional rent for the period February, 2016 to August, 2018 along with interest and cost and directed the tenant to pay an amount of Rs.3,83,362.80 paise towards provisional rent till 18.08.2018. Tenant having failed to tender such amount, eviction order was passed on 23.08.2018. Aggrieved by the afore noticed orders passed by the Rent Controller, tenant filed an appeal and vide order dated 10.09.2018 passed by the Appellate Authority-cum-Additional District Judge, SAS Nagar Mohali, the provisional rent stands assessed as under:

	Amount	Period	Total amount in rupees
Rent for the period 15.02.2016 till 15.08.2016 after increasing the rent at the rate of 10% after interval of 11 months.	Rs.13,286/- per month	6 months	13,286 x 6 = 79,716/-
Rent for the period 15.08.2016 till 15.04.2017 after increasing the rent at the rate of 10% after interval of 11 months	Rs.14,614/- per month	8 months	14,614 x 8 = 1,16,912/-
Interest at the rate of 6% per annum			6882/-
Costs			1000/-
Total			2,04,510/-

3. In consequence thereof, the order of eviction dated 23.08.2018 passed by the Rent Controller has been set aside and the matter stands

remanded back to the Rent Controller with a direction to afford 15 days time to the tenant to pay the provisional rent so assessed.

4. The instant revision petition is at the hands of the tenant impugning the order dated 10.09.2018 passed by the Appellate Authority.

5. Counsel for the petitioner/tenant has argued that the provisional rent now assessed by the Appellate Authority vide impugned order dated 10.09.2018 is based upon a rent agreement dated 15.03.2010 and which could not be taken into consideration as the same was not a registered document. Further urged that the provisional rent for the period in question has been assessed by applying an increase of rent @ 10% after every 11 months and the same also cannot sustain as the rent agreement dated 15.03.2010 was initially entered into between the parties only for 11 months and since no fresh agreement was entered into, the increment clause could not operate. It is also contended that an amount of Rs.1,86,800/- that was spent on the repair of the house by the tenant between 18.08.2015 till 24.06.2016 has not been taken into reckoning while passing the impugned order.

6. Counsel for the petitioner has been heard at length and the case paper book has been perused.

7. Section 13 of the Act came up for consideration before the Hon'ble Supreme Court in the case of **Rakesh Wadhawan Versus Jagdamba Industrial Corporation, 2002 (1) RCR (Rent) 514** and it was held as follows:

“To sum up, our conclusions are:

1. In Section 13(2) (i) proviso, the words 'assessed by the Controller' qualify not merely the words 'the cost of

application' but the entire preceding part of the sentence i.e. 'the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application'.

2. The proviso to Section 13(2)(i) of East Punjab Urban Restriction Act, 1949 casts an obligation on the 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.

3. Of necessity, 'the date of first hearing of the application' would mean the date falling after the date of such order by Controller.

4. On the failure of the tenant to comply, nothing remains to be done and an order for eviction shall follow. If the tenant makes compliance, the inquiry shall continue for finally adjudicating upon the dispute as to the arrears of rent in the light of the contending pleas raised by the landlord and the tenant before the Controller.

5. If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If, on the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount, failing which alone he shall be liable to be evicted. Compliance shall save him from eviction.

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.”

8. Adverting back to the facts of the present case, the Appellate Authority in the impugned order has formed an opinion that since the rent agreement in question dated 15.03.2010 had been entered into only for a period of 11 months, it did not require registration as per the registration Act, 1908. Furthermore, Clause 3 of the agreement contained a recital that rent was to be increased @ 10% after 11 months. Since rent agreement expired on 15.02.2011 and the tenant continued to remain in possession of the demised premises, an inference has been drawn that parties continued with the relationship of landlord and tenant on the same terms and conditions as contained in the rent agreement dated 15.03.2010. With regard to the sum of Rs.1,86,800/- having allegedly been spent by the tenant on the repairs of the demises premises, the Appellate Authority has opined that at this stage, such issue cannot be settled and in any case, as per Clause 7 of the rent agreement, the tenant was not authorized to undertake any such expenditure without prior permission of the landlord in writing.

9. Under Section 13 of the Act and while assessing provisional rent, the order is passed on an opinion formed prima facie by perusal of pleadings and such other material as may be available before the Controller/Appellate Authority. It is well settled that such order assessing provisional rent would be in the nature of an interim order which will have to give way to a final order to be made on further inquiry to be held during the course of proceedings in the eviction petition wherein one of the grounds of eviction

raised is of non-payment of rent and which would be a matter of adjudication upon evidence being led.

10. The impugned order assessing provisional rent, as such, would not call for any interference by this Court in exercise of its revisional jurisdiction.

11. Petition is dismissed.

05.10.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |