

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

CR No.708 of 2018 (O&M)
Date of Decision : 14.02.2018

M/s Kamal Tractors

..... Petitioner

Versus

Shri Rajiv Rastogi

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Alok Mittal, Advocate
for the petitioner.

Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate for
the respondent-caveator.

AJAY TEWARI, J. (Oral)

This petition has been filed against the concurrent orders of the Courts below allowing an eviction petition filed by the respondent.

The admitted facts are that the petition had been filed on the ground interalia of non-payment of rent by the respondent-tenant against the petitioner-landlord. By an order dated 11.10.2017 the Rent Controller assessed Rs.4,06,000/- as the provisional rent and adjourned to matter to 25.10.2017 for deposit of the provisional rent. On 25.10.2017 none appeared on behalf of the petitioner and the matter was adjourned to 27.10.2017. Again on 27.10.2017 none appeared on behalf of the petitioner and neither the provisional rent was paid. The Rent Controller having allowed the eviction petition on that ground and the appeal having been

The case of the petitioner before the appellate authority as well as this court is that it was a lapse on the part of the counsel who somehow did not appear whereas the petitioner had no objection and has accepted so in the grounds of appeal also and as per learned counsel that Advocate would not be averse to give an affidavit also.

Learned senior counsel has argued that the Haryana Urban Control of (Rent and Eviction) Act, 1973 is a beneficial legislation and has based his argument on clause 5 of the conclusions drawn by the Supreme Court in the judgment passed in ***Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation 2002 (1) RCR (Rent) 514***. Paras No.5 and 6 are to the following effect :-

“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 for 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 regularly the rent falling due month by month during the pendency of the proceedings.”

It is against this that the arguments of the learned senior counsel have to be analyzed.

Before proceeding further it would also be important to reproduce clauses 1, 2, 3 and 4 of the conclusions of their lordships :-

“ 30. 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 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.” (emphasis supplied).”*

The argument that clause 5 would in a sense supersede clause 4 can not be accepted even in the case which is sought to be projected by the petitioner, that is of mistake on the part of the counsel. It can not be lost sight of that there is no averment that after 11.10.2017 the petitioner ever

contacted the counsel to ask what was the amount of provisional rent assessed or deposited any amount with the counsel or even bothered to ensure that the payment was given to the counsel.

In the circumstances, both on facts and in law the argument is rejected.

Petition is dismissed.

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

FEBRUARY 14, 2018
pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No