(203) IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR-1352-2007 (O&M)
Date of Decision: 02.09.2019

LALITA RANI

..... Petitioner

Versus

SHOBA RASTOGI & ANR

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Mukul Aggarwal, Advocate,
for the non-applicant/petitioner.

Mr Narender Pal Bhardwaj, Advocate,
for the applicants-respondents.

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SUDIP AHLUWALIA, J. (ORAL)

1. On 13.03.2007 notice of motion in this revision petition was ordered to be issued in view of the submission to the effect that the requirement *qua* provisional assessment of the arrears of the rent as also costs and interest had not been complied with by the Rent Controller in terms of the decision and guidelines of the Hon'ble Supreme Court in the case of ***Rakesh Wadhawan and Ors. Vs. Jagdamba* Industrial Corporation and Ors, (2002) 5 Supreme Court Cases 440** .

2. Subsequently the petitioner was granted an opportunity to pay the outstanding arrears at the rate ultimately assessed by the Rent Controller and observed by the Appellate Authority.

3. A perusal of the Lower Court Record at page No. 265 goes to show that an order of assessment on the basis of statement of the petitioner and submissions made by learned counsel for both sides was passed, by

virtue of which, the petitioner paid an amount of ₹92,100/-, which included rent for 09 months at the rate of ₹10,000/- per month and which was accepted on behalf of respondent/landlord without prejudice to his legal rights.

4. Ultimately the rent petition was allowed in favour of the respondent wherein the judgment of Rent Controller was upheld by learned Appellate Authority on 16.01.2007. It was noted in the order of the Rent Controller dated 23.12.2003 in answering issues No. 1 and 2;

> *" The rate of rent of the ground floor is Rs. 15,000/- per month w.e.f. 01.02.1996. Since the rent has been paid at the rate of Rs. 10,000/- only, so the tender is short and invalid and the respondent is liable to be ejected from the ground floor of the tenancy premises in question. Accordingly both these issues are decided in favour of the petitioners."*

5. It is therefore clear that while rent had originally been assessed provisionally at the rate of ₹10,000/- per month on the submission of the petitioner, after taking evidence in the case which was actually found to be ₹15,000/- per month for the ground-floor, and so the petitioner was held to be liable to be ejected from the said floor on account of the deficit/short fall in payment.

6. In Rakesh Wadhawan's case (supra), the Apex Court had laid down six specific guidelines for a final adjudication qua eviction of the tenant on the ground of non-payment of rent, which was contained in para 30 of the said judgment. In guideline No. 2, it was observed that an obligation was casted upon the Rent Controller to determine the arrears of

rent, the interest admissible thereon, which was to be paid within the time to be fixed by the Rent Controller. But in subsequent guideline No. 5, it was laid down:-

> *"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 cased. 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 of deficient, the Controller may pass a conditional order directing the 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."*

7. As such, in the present case once it had been determined by the Rent Controller that the actual rent payable was ₹15,000/- per month and not ₹10,000/- as provisionally assessed earlier, it was incumbent upon the Rent Controller to grant a reasonable time to the petitioner-tenant for paying the deficit amount, which was not done in the present case.

8. Consequently the eviction orders passed against the petitioner on account of such alleged deficit was clearly un-sustainable as also the decision of the Appellate Authority which upheld such order, which was passed by the Learned Rent Controller on 23.12.2003 i.e., after the decision passed in Rakesh Wadhawan's case (supra), had been pronounced.

9. For the aforesaid reasons, the impugned judgments of both the authorities below are not sustainable and are accordingly set aside.

10. The revision is, therefore, allowed and the matter at this stage, remanded back to the Rent Controller for deciding exactly how much arrears till now, if any, are outstanding against the petitioner. Further, if it is found that any such amount remains unpaid, a reasonable time may be granted to the petitioner to make good the short-fall. In doing so however the Rent Controller shall also be at liberty to look into the overall conduct of the petitioner as contained in guideline No. 6 of the decision in Rakesh Wadhawan's case (supra), and take an appropriate decision after recording his reasons for the same.

September 02, 2019 **(SUDIP AHLUWALIA)**
tarun **JUDGE**

1. Whether speaking/ reasoned : Yes/ No

2. Whether reportable : Yes/ No