

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Civil Revision No.390 of 2019 (O&M)
Date of Decision:January 29, 2019.**

Narinder Singh

.....PETITIONER(s).

VERSUS

Indu Dhir

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Mandeep Singh Sachdev, Advocate
for the petitioner (s).

SURINDER GUPTA, J.

This is revision against the concurrent orders of Rent Controller and Appellate Authority, Jalandhar under the East Punjab Urban Rent Restriction Act, 1949 allowing the petition filed by respondent Indu Dhir seeking ejectment of the petitioner-tenant from the demised premises.

Respondent-landlord sought ejectment of the revision petitioner-tenant from the demised premises on the ground of non-payment of rent and her personal bona fide need. It was alleged that respondent-landlord purchased the building bearing No.B-IX/671 on the basis of three sale deeds as follows:-

(i) Chander Dev Dhir husband of respondent purchased 14 marlas including the demised premises vide two sale deeds dated 24.09.1974 and 18.10.1974.

(ii) Respondent purchased remaining 14 marlas of demised

premises vide sale deed dated 22.10.2003.

Petitioner was tenant in the demised premises under the earlier owner at the rent of ₹600/- per month and thereafter, became tenant under the petitioner on the same terms. The rate of rent was subsequently enhanced to ₹1300/- per month. The petitioner-tenant denied the rate of rent and his tenancy under the respondent-landlord or their vendors. He alleged that he had taken the shop on rent from Swaran Lata Dhir on monthly rent of ₹600/- and had been paying the rent to her. It was also pleaded that shop in question was not part and parcel of building No.B-IX/671.

Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether there exists relationship of landlord and tenant between the parties? OPA
- (2) Whether the respondent is in arrears of rent of the shop in question since 01.04.2009? OPA
- (3) Whether the petitioner requires the shop in dispute for bonafide necessity and personal use ? OPA
- (4) Whether the court has no jurisdiction to entertain the present petition? OPR
- (5) Whether the present application for ejectment is not maintainable? OPR
- (6) Whether the petitioner has no locus standi to file the present application? OPR
- (7) Whether the petitioner has no cause of action to file the present application.? OPR
- (8) Relief.

On appraisal of evidence on record, learned Rent Controller held that shop in question is part of the property of respondent-landlord and the plea of the respondent that he is tenant under her was held as duly

proved. As the petitioner-tenant had denied his relationship of landlord and tenant with respondent-landlord, the petition was allowed.

Not satisfied, the petitioner-tenant filed appeal, which was also dismissed with the observation that petitioner-tenant has not been able to produce on file any cogent, convincing and reliable evidence that he was tenant under Swaran Lata Dhir.

Learned counsel for the petitioner-tenant has argued that denial of relationship of landlord and tenant between the parties was not mala fide on the part of revision petitioner, as such, after recording the finding that there exists relationship of landlord and tenant between the parties, learned Rent Controller was required to assess the provisional rent and give opportunity to the petitioner-tenant to pay the same instead of passing the order of ejectment. In support of his contention, he has relied on the observations of Coordinate Bench of this Court in case of ***Raghubir Chand Mahajan Vs. Indian Bank 2015(4) R.C.R. (Civil) 156.***

In the case referred by learned counsel for the petitioner-tenant, the ejectment of tenant was ordered on the ground of short tender of rent and the tenant in that revision petition had relied on the observations of Hon'ble Apex Court in case of ***Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation 2002(1) R.C.R. (Rent) 514***, that provisional rent is to be assessed by the Rent Controller and in the event of finding about rate of rent being higher, tenant shall be provided with opportunity to pay the difference of rent within the period as fixed by the Rent Controller. Coordinate Bench of this Court took note of the contention of the tenant and reproduced the same in para 4 of the judgments as follows:-

“4. The learned counsel appearing on behalf of the petitioner states that after the dismissal of inter-pleader suit, they preferred an appeal and the appellate authority set aside the order of the trial court and remanded the matter by judgment dated 24.2.1997. He states that he has no instruction about the fate of the suit after remand. He would contend that he is willing to accept the rent payable as Rs. 90/- and that in terms of the judgment of the supreme Court in ***Rakesh Wadhawan V. Jagdamba Industrial Corporation, 2002(1) R.C.R. (Rent) 514***, the rent determined by the court ought to be permitted to be paid through a direction and if only the direction is not complied with, the order of eviction could be issued. He would therefore, seek for an appropriate direction from the court for determination of the amount that is payable.”

As per law settled in case of ***Rakesh Wadhawan V. Jagdamba Industrial Corporation (supra)***, duty is cast upon to the Rent Controller to assess the provisional rent and in case, the tendered rent as assessed is found to be short, the tenant is to be given opportunity to pay the balance arrears of rent within the period as fixed by the Rent Controller. The observations of Hon'ble Apex Court in that case to this effect in para 30(5) are reproduced as follows:-

“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.”

In this case, the petitioner had denied the relationship of landlord and tenant between the parties, as such, there was no reason or occasion for the Rent Controller to make provisional assessment of arrears of rent. The revision petitioner has come up with the plea that he was tenant under Swaran Lata Dhir and had been paying rent to her but no receipts were issued. However, at later stage, he came up with some receipts but did not examine Swaran Lata in support of his contention. Learned Rent Controller took note of the above facts and observed in para 24 of its order as follows:-

“24. Further, he contended that the shop in dispute was taken on rent from Swaran Lata and he is still paying rent to her. However, earlier he stated that no rent receipts were ever issued by Swaran Lata but on later date he placed on record the said receipts. The rent receipts relied upon by him does not inspire the confidence of the court. Since, he himself has admitted the fact that no receipts were ever issued by Swaran Lata till filing of the petition. Even in his cross-examination, he stated that no rent receipts have been issued by Swaran Lata so far. The said cross-examination was conducted in the month of February. However, at the advanced stage of the petition, He produced on record certain rent receipts pertaining to period December, 2017 to March, 2018. The executant of the said receipts i.e. Swaran lata has not been examined by him. There is

nothing on record to link Swaran lata with the said receipts. Merely permitting the respondents to lead evidence of the alleged rent receipts does not mean that existence and execution of the rent receipts has been proved or photo-stat copies sought to be proved as secondary evidence have been proved to be correct copies of the originals. Moreover, the said receipts were never relied upon by the defendant/Respondent neither in his written reply nor in affidavit.”

From the submissions of learned counsel for the revision petitioner, it appears that revision petitioner is no more denying the relationship of landlord and tenant with the respondent but seeking an opportunity to tender the rent with the plea that the denial of relationship was a bona fide act on the part of revision petitioner. On this issue, learned Rent Controller has relied on the observations in case of ***Sandeep Shahi Vs. Smt. Asha Rani 2010 (4) Law Herald (P&H) 2787***, wherein it was observed that in case, tenant has denied the relationship of landlord and tenant, the Rent Controller is not required to make provisional assessment of rent payable by the tenant or is required to give opportunity to the tenant to pay the rent and the observation in case of ***Ragbir Singh and others Vs. Sansar Chand and others, 2004(2) R.C.R. (Rent) 670***.

As per the law settled by Hon'ble Apex Court in case of ***Rakesh Wadhawan V. Jagdamba Industrial Corporation (supra)***, where there is dispute about the rate of rent between landlord and tenant, the Rent Controller is required to make provisional assessment of arrears of rent, interest on such arrears and costs of application and then to give opportunity to the tenant to tender the same. However, where tenant has denied the

relationship of landlord and tenant between the parties, the Rent Controller was not obligated to assess the rent or call upon the tenant to make payment of the rent. Reference can be made to the observations in cases of ***Hukma Devi Vs. Bhagwan Dass 2003(1) R.C.R. (Rent) 533; M/s Gawritax Industries Limited, Panchkula Vs. Sqn Lds. Gurdial Singh (Retd.) & others 2009(2) R.C.R. (Rent) 213; Archana Kapoor Vs. Goyal Brothers 2011 (10) R.C.R. (Civil) 266.***

In case of ***Hukma Devi Vs. Bhagwan Dass (supra)***, it was observed by a Coordinate Bench of this Court as follows:-

“14. A perusal of afore-mentioned provision shows that there is a presumption of relationship of landlord and tenant which is implicit in Section 13(2). Therefore, an unscrupulous tenant like the petitioner cannot first be permitted to take the stand that he is not the tenant under the landlord and then to claim that he is a tenant but he should be permitted to deposit the assessed arrears of rent. If such an interpretation is given to Section 13(2) then many tenants may take the stand that there is no relationship of landlord and tenant. In such a case a tenant would successfully delay the payment of rent. Therefore, there cannot be any obligation on the Rent Controller to make an assessment about the arrears of rent once such a stand has been taken by the tenant. The object of making assessment of the arrears of rent, interest and cost by the landlord is that in case there is a dispute with regard to rate of rent or the period of rent, house tax, cost and interest etc. then he may not suffer because of short tender. But in a case where the tenant refuses the liability to pay the rent, the question of assessment would not at all arise.....”

It was further observed in above referred case that observations

of Hon'ble Supreme Court in para 30 of case of **Rakesh Wadhawan V. Jagdamba Industrial Corporation (supra)** “would not apply to a case where the status of a party has not been accepted as a landlord by the other party who denied his status to be the tenant.”

Another Coordinate Bench of this Court on appraisal of law on the above issue, observed in case of **M/s Gawritax Industries Limited, Panchkula Vs. Sqn Lds. Gurdial Singh (Retd.) & others (supra)**, in para 9 and 12 as follows:-

“9. After hearing learned counsel for the parties, I find force in the arguments of the learned counsel for the petitioner. While raising his first argument that once the landlord-tenant relationship is denied, the Rent Controller cannot pass any order of provisional assessment of rent, learned counsel for the petitioner relied on the cases titled as **Yashpal Singla v. Vijay Kumar** 2004(3) P.L.R. 504, **Narinder Singh vs. Sarabjit Singh** 2006(2) R.C.R. (Rent) 226, **M/s Rachitech Engineering Pvt. Ltd. vs. M/s Kundan Steel Pvt. Ltd.** 2007(1) R.C.R. (Civil) 218, **Jagdamba Tea Factory, Amritsar vs. Parshotam Kishan** 2008(4) Law Herald (P&H) 2730, **Rakesh Wadhawan & Ors. vs. Jagdamba Industrial Corporation & Ors.** P.L.R. Vol. CXXXI 2002(2) 370. This Court, in the case of **Yashpal Singla (supra)**, held in para 7 of the judgment as follows :-

“ Once the tenant has denied the relationship of landlord and tenant, then there would be hardly any justification for the Rent Controller to frame an assessment order in pursuance to the provisions of proviso of Section 13(2)(1) of the Act as interpreted by the Supreme Court

in the case of Rakesh Wadhawan (supra). After the evidence has been led by the landlord showing the relationship of landlord-tenant, then there would be no justification to permit the tenant to deposit the arrears of rent in accordance with the interim assessment order of rent. Such an approach would create imbalance of equities and would hardly be justified. Therefore, I have no hesitation in rejecting the argument raised by learned counsel and reiterate my view taken in the cases of Ramanand Shastri (supra) and Kukma Devi (supra).”

12. Thus, in view of the above stand in para 6 of the reply to the petition under East Punjab Urban Rent Restriction Act, 1974 that there was no relationship of landlord and tenant, and also in view of the notice dated 19-07-2004 for termination of the lease and communication dated 20-10-2004 after the expiry of the notice period on 19-10-2004, it is sufficient for the Rent Controller to refuse to give an interim or provisional order, assessing the amount of rent. The interest of the landlord stands protected because, in case, the relationship of landlord and tenant is subsequently established, the tenant loses the opportunity of making payment towards arrears of rent and is liable to be evicted without any further opportunity. The arrears of rent are always liable to be recovered from tenant through the recovery suit.”

Taking note of consistent view of this Court on this issue, I find no merits in the submission of learned counsel for the revision petitioner that denial of relationship of landlord and tenant on the part of revision

petitioner was bona fide and therefore, he be allowed to tender the rent at this stage. Orders passed by the Rent Controller and Appellate Authority suffer from no legal or factual infirmity, calling for any interference.

This petition has no merits.

Dismissed.

January 29, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***