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

**CR No.2192 of 2017 (O&M)
Date of Decision: February 13, 2019**

Parveen Kumari

..... Petitioner

Versus

Navjot Kaur

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Atul Jain, Advocate
for the petitioner.

Mr. Avtar Singh Khinda, Advocate
for the respondent.

SUDIP AHLUWALIA J. (ORAL)

1. This revision is directed against the original order passed by the Ld. Rent Controller, Sultanpur Lodhi in CIS No. RP/1211 of 2013 on 17.05.2016 which in turn was upheld by the Ld. Appellate Authority in Rent Appeal No.11 dated 31.05.2016 vide its impugned judgment dated 24.01.2017.
2. By virtue of the aforesaid decisions, the eviction of the petitioner, who happens to be a tenant under the respondent in the demised premises, was ordered on account of her failure in making the payment of the arrears of the provisional rent which had been assessed earlier vide the order Annexure P-1 passed on 09.07.2014.
3. According to the original order dated 09.07.2014, an amount

of Rs.33,400/- was provisionally assessed as arrears of rent plus interest accrued thereupon, as well as costs, which was directed to be paid by the petitioner on or before 13.08.2014.

4. On the adjourned date, however, the petitioner did not make any payment and sought for the time for that purpose. A week later (on 20.08.2014), she filed an application seeking modification in the original order dated 09.07.2014 by making out a case that she had already paid an amount of Rs.20,000/- towards the arrears of rent to the landlord's counsel in the Ld. Court below earlier on 16.04.2014, against a receipt issued by the said counsel. As such, according to the petitioner, the aforesaid amount of Rs.20,000/- was liable to be deducted from the aggregate of the arrears of provisional rent and other charges determined on 09.07.2014, and consequently, the petitioner was liable to pay only a balance amount of Rs.13,400/-.

5. The Ld. Rent Controller effectively allowed the aforesaid application dated 20.08.2015 vide its order (Annexure P-2) passed on 01.04.2015.

6. The landlady, however, challenged both the orders of the Ld. Rent Controller dated 13.08.2014 and 01.04.2015 in this Court by way of CR No.3042 of 2015, which was disposed off by a Co-ordinate Bench on 06.04.2016 vide its detailed order (Annexure P-3). The revision petition was allowed by the Coordinate Bench which *inter alia* recorded the following observations:-

“5. Giving benefit of the amount, as tendered, to the counsel for the petitioner i.e. ₹ 20,000/- on 16.04.2014, still an amount of ₹ 13,400/- was due to

the credit of the respondent-tenant. Nothing has come forth on record as to why the said amount was also not tendered before the Rent Controller, simultaneously taking a plea of the adjustment of the amount of ₹ 20,000/-, which has been paid to the landlord through her counsel. It is not in dispute that the Rent Controller has no power to extend the time for deposit of the provisional rent, as assessed.

6. *In the light of the facts and circumstances of the case, the non-tender of the amount of arrears, costs and interest, as assessed by the Rent Controller, Sultanpur Lodhi dated 09.07.2014 on or before 13.08.2014, the date fixed by the Rent Controller for such tender, the impugned order dated 13.08.2014 cannot sustain and is hereby set aside.*

7. *The revision petition stands allowed.”*

7. The contention of the petitioner's side before this Court now is that even though both the orders dated 13.08.2014 and 01.04.2015 might have been challenged by the respondent-landlady in her aforesaid revision, still the revision was allowed only to the extent of the order passed on 13.08.2014 being set aside, whereby time for payment of the assessed provisional rent and other dues had been extended, and that neither there was any reference to the subsequent order dated 01.04.2015, nor it was explicitly set aside in the respondent's revision.

8. As such, according to the petitioner, the aforesaid order dated 01.04.2015 has attained finality, on account of which, the subsequent impugned orders passed by both the Ld. Courts below directing eviction of the petitioner on account of her failure to pay the provisionally assessed rent as determined on 09.07.2014, are unsustainable.

9. This Court is, however, not in agreement with the aforesaid

contention. This is so because, when the original order dated 13.08.2014 granting extension of time for making payments had been set aside by the Coordinate Bench of this Court after holding that “*Rent Controller has no power to extend the time for deposit of the provisional rent as assessed*”, so any additional time granted vide the said order was itself beyond jurisdiction of the Ld. Rent Controller, who, therefore, was required to straight away direct eviction of the petitioner-tenant for her failure to pay the assessed rent.

10. Even otherwise, the Coordinate Bench of this Court had also observed that assuming there was some justification for the petitioner to seek modification of the provisional assessed arrears by subtracting the amount of Rs.20,000/- which she claimed to have paid to the respondent's counsel, still she was bound to pay at least the balance amount of Rs.13,400/- on the stipulated date i.e. 13.08.2014, which she failed to do, and in the circumstances, was liable to be evicted at least for non-payment of the undisputed part of the arrears.

11. Reliance has been placed upon a decision of this Court in “*Sanjay Sharma and another vs. Ajmer Singh and another*”, 2007(3) **R.C.R. (Civil) 85**, by the petitioner's side to contend that even though the Ld. Rent Controller has no power to review his own order, but can certainly re-fix the provisional rent when certain other material is brought on record subsequently.

12. In the given facts and circumstances of the case, however, this decision is not helpful to the petitioner. This is so because, before the provisional rent was determined on 09.07.2014, she was already in the

knowledge that she had paid an amount of Rs.20,000/- towards the arrears to the respondent's counsel, although this fact has been denied on behalf of the respondent. Nothing prevented the petitioner in the circumstances from placing the receipt purportedly issued by the respondent's counsel before the Ld. Rent Controller prior to passing of the order dated 09.07.2014. It was, therefore, certainly not a case of some '*material being brought on record subsequently*', but rather of omission to place certain disputed facts before the Court, which were well within the concerned party's knowledge, who was therefore, required to do so by exercise of due diligence.

13. For the aforesaid reasons, this Court finds no justification to interfere with the impugned order(s) passed by the Ld. Rent Controller and the Ld. Appellate Authority. Consequently, the present revision petition stands dismissed.

February 13, 2019

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**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No