

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 2704 of 2015 (O&M)

Date of Decision: 26.03.2019

Uggar Sain Garg

...Petitioner

VERSUS

Jasvir Singh @ Jassi Longowalia

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ravinder Sharma, Advocate
for the petitioner.

Mr. K.B. Raheja, Advocate
for the respondent.

SURINDER GUPTA, J.

Heard.

This is revision against orders dated 30.09.2014 and 03.01.2015 passed by learned Rent Controller, Sangrur, which are reproduced as follows:-

Order dated 30.09.2014:-

*“Present:- Sh. L.K.Singal, Adv. counsel for petitioner.
Sh. Amandeep Singh, Adv. counsel for respondent.*

Provisional rent not tendered today. Counsel for the respondent requested for an adjournment for making payment. Request allowed in the interest of justice. One last opportunity is given to the respondent for making payment on 10.10.2014.”

Order dated 03.01.2015:-

“1. Heard on application for passing ejectment order against the respondent for not complying with the order dated 30.08.2014 filed by petitioner.

2. *Learned counsel for the petitioner argued that provisional rent was assessed by order dated 30.08.2014 and case was adjourned to 30.09.2014. But respondent failed to make the payment. Therefore, in view of the law laid down by the Hon'ble Supreme Court ejectment order be passed against the respondent for not paying the assessed rent as per order.*
3. *Learned counsel for the respondent argued that the rent was assessed on 30.08.2014 and case was adjourned for payment of rent. Respondent has complied with the order and tendered the rent as per order of the court. Petitioner has intentionally refused to receive the rent and due to that reason the rent was deposited in the court. The present application is not maintainable. Respondent has complied with the orders. Hence application is liable to be dismissed.*
4. *I have heard the arguments of both the parties, have gone through file. Order of provisional assessment of rent was passed on 30.08.2014 and date fixed for making payment was on 30.09.2014. In the interest of justice last opportunity was given for making payment on 10.10.2014. On the said date respondent was ready to deposit the rent but the petitioner refused to accept the same. Then the same was directed to be deposited in the treasury. Respondent has complied with the order of the court. The court had extended the time for making the payment on 30.09.2014.*
5. *Payment of rent was tendered on 10.10.2014 and present application was filed on 13.10.2014 when respondent had already made payment. Therefore there is no occasion for passing ejectment order.*
6. *Hence in view of the above discussion application for passing ejectment order against the respondent for not complying with the order dated 30.08.2014 filed by petitioner is dismissed. Now to come upon 02.02.2015*

for petitioner evidence.”

The petitioner filed petition under Section 13 of East Punjab Rent Restriction Act, 1949 (later referred to as 'the Act') seeking ejectment of the petitioner from the tenanted premises. Vide order dated 30.08.2014, learned Rent Controller assessed provisional rent and fixed the case for 30.09.2014 for payment of rent. On 30.09.2014, a request was made by counsel for the respondent seeking adjournment for making payment which was allowed and the case was fixed for 10.10.2014 for payment of rent as assessed by learned Rent Controller. On 10.10.2014, rent was tendered but the same was not accepted by the landlord-petitioner and an application was moved for seeking ejectment of the respondent as per law laid down by Apex Court in case of **Rakesh Wadhawan and others vs. Jagdamba Industrial Corporation and others, 2002 (5) SCC 440**, which was declined by learned Rent Controller vide order dated 03.01.2015, referred to above.

Learned counsel for the petitioner has argued that as per law settled by Apex Court in case of ***Rakesh Wadhawan (supra)***, on failure of tenant to pay the rent, eviction order has to follow. Learned Rent Controller was not competent to extend time for payment of rent. He has also relied on observations of a coordinate Bench in case of **Mrs. Birinder Khullar vs. Maninder Singh, 2011 (3) PLR 38**, wherein it was so held. He has referred to observations of a Division Bench in case of **Rajan @ Raj Kumar vs. Rakesh Kumar, 2010 (1) RCR (Rent) 386**, wherein it was observed that as per ratio of judgment in case of ***Rakesh Wadhawan (supra)***, in the event of non-payment of provisional rent, assessed by the Court, on first date of hearing, eviction has to follow.

Learned counsel for the respondent has argued that the law in

the authorities as cited by learned counsel for the petitioner is not disputed. However, the fact is that on 30.09.2014, date fixed for payment of provisional rent, request of tenant for adjournment to make the payment was allowed. The petitioner did not challenge that order. In case learned Rent Controller had declined the request, the respondent would have arranged the payment and attempted to tender the same on 30.09.2014. Once he was allowed adjournment to make the payment, the lapse does not lie on the part of tenant and for the error of law on the part of Court/Rent Controller, respondent cannot be penalized by ordering his ejectment as he has now deposited the provisional rent as per order of the Court.

I agree with submission of learned counsel for the respondent. It is a case where learned Rent Controller has erred in law while allowing the adjournment to tenant-respondent for making the payment of provisional rent. The course open for learned Rent Controller in the event of non-payment of rent on the date fixed was to order ejectment of the respondent. The respondent did not make the payment of provisional rent after being allowed time upto 10.10.2014 to make the payment. The question, which arises for consideration, is as to whether for the error on the part of learned Rent Controller, respondent-tenant, who tendered the provisional rent on 10.10.2014 can be penalized by passing order of his ejectment from the demised premises. The answer to this, in my opinion, will be in negative. Though, in case of ***Rakesh Wadhawana (supra)***, Apex Court has observed that in the event of non-payment of provisional rent, ejectment order has to follow but in this case, learned Rent Controller by allowing adjournment to make the payment on next date of hearing virtually modified the order assessing provisional rent, so far as it relates to date on which the rent was

to be tendered.

Keeping in view above facts, I find no reason to exercise the revisional power to modify or amend the impugned orders passed by learned Rent Controller.

This revision petition has no merit and the same is dismissed.

March 26, 2019

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No