

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

C.R. No. 2763 of 2015 (O&M)

Date of Decision: September 9, 2019

Malkit Kaur

..... Petitioner

VERSUS

Joginder Lal Khurana

..... Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. S.S. Kanwal, Advocate,
for the petitioner.

Mr. Satbir Rathore, Advocate
for the respondent.

JAISHREE THAKUR, J.

1. The petitioner seeks to challenge the order dated 21.3.2015 passed by the Appellate Authority remanding the case back to the Rent Controller to assess provisional rent afresh as per law.

2. The petitioner herein filed and petition under Sections 13 (2) (v) and 13 (2) (i) of the East Punjab Urban Rent Restriction Act 1949 seeking eviction of the respondent from the shop as mentioned in the petition. Eviction was sought on the grounds that respondent was in arrears of rent w.e.f. 01.07.2002 up-to-date; the shop was lying vacant since 18.7.2005, as the respondent had gone abroad and the respondent had ceased to occupy the demised premises for a statutory period of 4 months without any reasonable cause. The eviction petition was contested. During the

pendency of proceedings before the Rent Controller, by an order dated 27.1.2006, the provisional arrears of rent were assessed at ₹150/- per month due from February 1994 to be paid along with interest at 6% per annum and also costs were assessed at ₹200/-. On the same date i.e. 27.01.2006, the respondent made tender of ₹5400/- being rent plus ₹500 as interest plus ₹200 as costs totalling ₹6,100, which tender was accepted by the counsel for the petitioner under protest stating it short. Thereafter, issues were framed and evidence was led and the matter was posted for final disposal. The Rent Controller held that the petitioner had failed to prove that the respondent had ceased to occupy the shop, but ordered eviction on the ground that the tender made by the respondent was not valid being short and not in conformity with the order dated 27.1.2006. Aggrieved against the order of eviction, the respondent filed an appeal before the Appellate Authority, who remanded the matter to the Rent Controller to re-determine the provisional rent while holding that the provisional rent had been assessed without any evidence on the record. An opportunity was also given to the respondent to deposit the arrears of rent. It is against this order that the instant revision petition has been filed.

3. Mr S.S. Kanwal, learned counsel appearing on behalf of the petitioner-landlord, submits that the Appellate Authority has erred in holding that the Rent Controller ought to have assessed provisional rent only after evidence had been adduced in that regard . In support of his argument, he places reliance upon a judgment rendered in **Munish Bhatia vs. Smt Kishni Devi and another 2006 (3) Civil Court Cases 402**, where it has been held that the rent so assessed is only provisional rent and the Rent

Controller is not required to take evidence regarding rate of rent and period of rent. He further argues that once provisional assessment of rent had been made, the tenant could challenge the same but after tendering such rent under protest. It is argued that once there was no challenge to the provisional rent assessed, then the respondent tenant had to comply with the order and failure to do so would invite order of eviction as has been done in the instant case. Reliance has been placed upon a judgment rendered in **Ashwani Kumar and another versus M/s *Amartex* Industries Limited 2013 (1) RCR (Rent) 595.**

4. Per Contra, Mr. Satbir Rathore, learned counsel appearing on behalf of the respondent, would argue that there is no infirmity with the order of the Appellate Authority but does not dispute the fact that the order of provisional assessment of arrears of rent dated 27.1.2006 was never challenged.

5. I have heard the counsel for the parties and with their assistance have gone through the pleadings.

6. Admittedly, an eviction petition was filed on the ground of failure to occupy the premises for a period of more than 4 months without any reasonable cause and non-payment of rent. By order dated 27.1.2006 provisional rent was assessed at ₹150/- per month, which was due and payable from February, 1994 along with interest at the rate of 6% per annum and costs of ₹200. On that very date itself an amount of ₹6100/- was deposited towards arrears of provisional rent as assessed along with costs and interest, which was accepted under protest of being short. The Rent

Controller ordered eviction on the ground that the tender was short and the

said order was set aside by the Appellate Authority on the ground that the provisional rent had not been correctly assessed. The order of the Appellate Authority is clearly unsustainable. Admittedly, the order by which the arrears of rent had been assessed was never challenged by the respondent which had attained finality. The law in this regard is settled that in case the tenant fails to comply with the payment or tender on the 1st date after the passing of the order of assessment, an order of eviction shall follow. In Judgment reported as **Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation, 2002 (5) SCC 440**, it has been held:

“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 Urban Rent Restriction Act, 1949 casts an obligation on the Rent 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.

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.

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 regularity the rent falling due month by month during the pendency of the proceedings.”

7. Furthermore, the Division Bench of this court in in **Rajan alias Raj Kumar v. Rakesh Kumar 2010 (1) RCR (Rent) 386** has held that once the tenant has failed to make the tender of rent within the stipulated period granted by the Rent Controller/authority, nothing remains to be done except to pass an order of eviction. In the said case, after discussing the law laid down by the Hon’ble Supreme Court in **Rakesh Wadhawan's case** (supra) and other judgments, the Division Bench concluded as under:-

“13. This Court is of the view that the ratio of judgment in Rakesh Wadhawan’s case (supra) leaves no manner of doubt that the provisional rent and other ancillary charges assessed by the Rent Controller had to be deposited by the tenant on the next date of hearing alongwith arrears, interest and costs etc.,

as may be determined by the above said authority. The 'first date of hearing' has also been interpreted to mean, the first date of hearing after determination of provisional rent and other expenses by the Rent Controller. A reading of conclusions drawn in para No.30 of the judgment in Rakesh Wadhawan's case (supra) leaves no doubt that if after determination of the provisional rent, a tenant fails to deposit the same, nothing remains to be done and an order of ejectment of a tenant has to be passed. The language of conclusion No.4 in the said para is very clear and needs no further interpretation. The Court is further of the view that the benefit of conclusions No.5 and 6 would become available to a tenant only on his making a deposit of the provisional rent and other ancillary charges determined by the Rent Controller and not otherwise. It was implicitly made clear that it is the bounden duty of the tenant to deposit the provisional rent determined by the Rent Controller, otherwise it will entail the tenant's ejectment from the premises in dispute. This Court feels that if a tenant is dissatisfied with the interim order passed by the Rent Controller, he has an opportunity to challenge the same before the date fixed for payment, in the higher forum.

14. We have gone through the findings given in Rajinder Lal case (supra). We respectfully are unable to agree with the proposition of law laid down therein. The rationale of the assessment as laid down in Rakesh Wadhawan's case (supra) is to be discerned from the view as expressed in para No.29 of the said judgment because the Hon'ble Supreme Court has balanced the interests of the landlords and tenants so as to ensure that the tenants get an adequate opportunity to deposit the rent consequent upon determination of the provisional rent. Whatever may be the extent of emphasis, which have been put on the view taken in the judgment relied upon by the petitioner, this Court is bound by the conclusions arrived at by the

Supreme Court in Rakesh Wadhawan's case (supra) wherein it has been held that if a tenant does not comply with the order on the first date of hearing after determination of the provisional rent and other ancillary expenses by the Court, then eviction has to follow."

8. Once the respondent deposited the provisional rent which was short, nothing remained to be done other than pass an order of eviction which was rightly done by the Rent Controller. The Appellate Authority erred in remanding the case for the respondent tenant to lead evidence and the evidence to be apprised afresh. The judgment rendered in **Ashwani Kumar and another (supra)** is fully applicable to the facts of the instant case.

9. Therefore, this court has no hesitation in setting aside the impugned order and restoring the eviction order of the Rent Controller.

10. Consequently, the revision petition is allowed, impugned order dated 21.3.2015 is hereby set aside and that of the Rent Controller 24.12.2011 is restored with immediate effect.

September 9, 2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No