In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 5249 of 1999(O&M)
Date of Decision:23.5.2019

Ram Chander (since deceased) through LRs

---Petitioner

vs.

Abhey Singh

---Respondent

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. S.K.Garg Narwana, Senior Advocate
with Mr. J.S.Johal, Advocate
for the petitioner

Mr. Zorawar Singh Chauhan, Advocate
for the respondent

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Rekha Mittal, J.

The present petition directs challenge against orders dated 14.10.1998 passed by the Rent Controller, Mahendergarh and dated 14.6.1999 by the Appellate Authority, Narnaul whereby application for eviction on the ground of non-payment of rent plus house tax was dismissed by the Rent Controller and appeal preferred by the landlord did not find favour with the Appellate Authority.

The petitioner claimed arrears of rent @ Rs. 600/- per month for the period from 20.8.1993 to 20.8.1995 and house tax for the said period total amounting to Rs. 15,116/-. Counsel for the respondent-tenant therein made a statement dated 2.12.1995 (Annexure P-6) to the effect that rent from 20.8.1993 to 20.8.1995 i.e. of eight months @ Rs. 600/- per month, Rs. 4800/- and Rs. 1200/- rent from 20.4.1994 to 20.6.1994 of two months vide treasury challans No. 136 of 18.4.1994 and No. 95 dated 22.8.1995 respectively stood paid and balance rent of 14 months total Rs. 8400/- and Rs. 450/- of house tax and interest and costs was being deposited. Counsel for the petitioner would apprise that later the Rent Controller assessed interest on Rs. 8400/- and costs which were paid by the respondent.

Counsel would argue that the respondent appeared in the witness box and recorded his statement Annexure P7. He did not produce the challans vide which he purportedly deposited the rent as had been stated in statement recorded on 2.12.1995 nor he examined a witness from the Treasury office to prove deposit of rent. It is further argued that even otherwise in view of provisions of Section 6A of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short "the Act"), the tenant can deposit the rent in court with the permission of the court if a landlord refuses to receive or grant a receipt for any rent payable in respect of the building or rented land when tendered to him by a tenant. It is argued with vehemence that respondent not only failed to prove deposit of rent in the treasury but he otherwise cannot take advantage of any such deposit. in view of the provisions of Section 6A of the Act. It is argued with vehemence that since the respondent did not deposit the outstanding arrears of rent along with house tax, interest and costs, judgments passed by the courts rejecting plea of the petitioner for eviction on the ground of arrears of rent cannot be allowed to sustain and liable to be set aside.

Counsel for the respondent, on the contrary, would argue that as the respondent had already deposited rent for the period 20.8.1993 to 20.4.1994 in the treasury prior to filing of eviction application, he had rightly tendered rent for the remaining period of 14 months along with house tax, interest and costs.

Be that as it may, counsel for the respondent has not disputed that the respondent did not prove the challans with regard to deposit of rent for the period as claimed in the statement dated 2.12.1995 made by Sh. Sajjan Singh, Advocate, counsel for the respondent. Nevertheless, it remains an undisputed position of the case that Rent Controller did not assess provisional rent to be paid by the tenant on first date of hearing.

Hon'ble the Supreme Court in **Rakesh Wadhawan vs. M/s Jagdamba Industrial Corporation 2002(1) RCR(Rent) 514** in para 25 of the judgment, held, reads thus:-

> "What follows from the abovesaid discussion is that the proviso to clause (i) of sub-section (2) of Section 13 must be read as obliging the Controller to assess, by means of passing an order, the arrears of rent, the interest and the cost of litigation all the three, which the tenant shall pay or tender on the first date of first hearing of the main petition following the date of such assessment by Controller. Such order based on an opinion formed prima facie by perusal of the pleadings and such other material as may be available before the Controller on that day would be an interim or provisional order which shall have to give way to a final order to be made on further enquiry to be held later in the event of there being a dispute between the parties calling for such determination. The Controller would, however, at the outset assess the rent, the interest and the cost of application in the light of and to the extent of dispute, if any, raised by the tenant. Such amount, as determined by Controller

shall be liable to be paid or tendered by the Controller on the 'first date of hearing' falling after the date of the preliminary or provisional order of Controller. The expression "the date of first hearing" came up recently for the consideration of this Court in **Mam Chand Pal Vs Smt. Shanti Agarwal (C.A. No.1187 of 2002 decided on 14.2.2002)**. It was held that 'the date of first hearing' is the date on which the Court applies its mind to the facts and controversy involved in the case. Any date prior to such date would not be date of first hearing. For instance, date for framing of issues would be the date of first hearing when the Court has to apply its mind to the facts of the case. Where the procedure applicable is the one as applicable to Small Cause Courts, there being no provision for framing of the issues, any date fixed for hearing of the case would be the first date for the purpose. The date fixed for filing of the written statement is not the date of hearing. Keeping in view the interpretation so placed on 'the date of first hearing' the obligation cast by the proviso under consideration can be discharged by the Controller on any date fixed for framing of the issues or for hearing. It would be the obligation of the parties to place the relevant material on record, in the shape of affidavits or documents, which would enable the Controller to make a provisional judicial assessment and place it on record to satisfy the spirit of the proviso. It would be desirable if the Rent Controller specifically appoints a date for the purpose of such assessment and order so that the parties are put on adequate notice and bring the relevant material on record to assist the Controller. A litigant cannot be expected to be ready to comply with the order of the Controller on the very day on which the order is made. How could he anticipate what order the Controller would be making?"

Since in the case at hand, the Rent Controller did not make provisional assessment of arrears of rent, interest and costs of application, the judgments impugned are liable to be set aside and the matter needs remittance to the Rent Controller for assessment of provisional rent, in the light of judgment in **Rakesh Wadhawan's case (supra).** In the given circumstances, this court would refrain from expressing any opinion qua merits of the case, lest it may cause prejudice to either of the parties at the time of final adjudication by the courts below.

In view of what has been discussed hereinabove, the petition is disposed of. The judgments impugned are set aside. The matter is remitted to the Rent Controller for decision of the application afresh after making provisional assessment, in the terms indicated above.

The parties through their counsel are directed to appear before the Rent Controller, Mahendergarh on 8.7.2019.

(Rekha Mittal)
Judge

23.5.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No