

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

227

CR-3855-2018 (O&M)

Date of decision: 08.01.2019

JASWINDER SINGH

...Petitioner

Versus

SURJIT KAUR @ MAYA DEVI

...Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ravish Bansal, Advocate for the petitioner.
Mr. Daman Dhir, Advocate for the respondent.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 11.05.2018 passed by the Additional Civil Judge (Sr. Div.), Dhuri though the Court was actually exercising the powers of Rent Controller.

A brief backdrop of the case is that Surjit Kaur @ Maya Devi respondent filed an application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') for ejectment of the petitioner from a shop, detailed in head note of order dated 07.08.2015 (Annexure P2) whereby the Rent Controller made provisional assessment of rent. The eviction was sought on the ground of arrears of rent and bona fide personal necessity of the respondent landlady. The petitioner, admittedly deposited the provisional rent assessed by the Controller in compliance with order dated 07.08.2015 whereby the Rent Controller assessed due rent from 01.10.2011 to 30.07.2015 @ 1,03,200/-, interest for the said period @ 6% per annum to the tune of Rs.12,126/- and cost of application being Rs.2000/- making total sum to the extent of Rs.1,17,126/-. The eviction application was finally decided vide order dated 29.01.2018 (Annexure P3) whereby plea of the respondent for eviction on the ground of personal necessity was rejected but the Rent Controller decided rate of rent as per claim made by the respondent and accordingly in the concluding para 20, it was held to the following effect:-

In view of my issue wise findings, the present petition stands dismissed on the ground of bonafide requirement. However, the respondent is directed to deposit the remaining arrears of rent and the property tax as paid by the petitioner vide form Ex.A6 i.e. Rs.2430/- within two months from today, in case the respondent fails to do so within the stipulated period, then he will be liable to be evicted from the demised shop on the ground of non payment of arrears of rent and property tax.

Subsequent thereto, the petitioner filed application dated 26.03.2018 to deposit remaining arrears of rent, property tax etc. in view of order dated 29.01.2018 (Annexure P3). He actually deposited a sum of Rs.9000/- vide receipt challan dated 26.03.2018 (Annexure P5). The respondent filed reply dated 18.04.2018 to the application (Annexure P6).

Having heard counsel for the parties, the Rent Controller decided the application of the petitioner vide order impugned.

Counsel for the petitioner has vehemently argued that application for eviction was filed by the respondent in January, 2015, therefore, the petitioner/tenant was obligated to pay arrears of rent that became due till 31.12.2014 but as an abundant precaution firstly he deposited provisional rent assessed upto 30.07.2015 and thereafter filed application for deposit of arrears of rent along with property tax and interest due upto 30.07.2015 by filing application (Annexure P4). It is further argued that the Rent Controller has committed a gross error rather illegality by holding that the petitioner was under an obligation to pay arrears of rent, property tax and interest even for the period subsequent to 31.07.2015. It is further argued that as arrears of rent, property tax and interest w.e.f 01.08.2015 was not the subject matter of eviction application, there was no obligation of the petitioner to deposit arrears of rent of the subsequent period more so in the peculiar circumstances that the respondent had already filed another eviction application for arrears of rent w.e.f August, 2015 and there was no specific order by the Rent Controller that he would pay arrears of rent etc. upto the date of order passed on 29.01.2018.

Counsel for the respondent, on the contrary, has refuted

contention of the petitioner by referring to the concluding para of order dated 29.01.2018 (Annexure P3) passed by the Rent Controller while disposing of the application for eviction. It is further argued that as the petitioner never challenged the eviction order on any ground whatever, he cannot be heard to say that he was not obligated to pay arrears of rent, property tax and interest for the period w.e.f 01.08.2015 till 29.01.2018. Another submission made by counsel is that even the arrears sought to be deposited or so deposited vide challan Annexure P5 are not complete even uptill 31.7.2015.

I have heard counsel for the parties, perused the paper book particularly the impugned order and various annexures appended with the petition.

There is no dispute that the petitioner paid provisional rent assessed by the Rent Controller in compliance with order dated 07.08.2015 (Annexure P2). The order dated 29.01.2018 (Annexure P3) directing the petitioner to deposit the remaining arrears of rent and the property tax paid vide form Ex.A6 does not specify the exact amount outstanding against the petitioner much less that he is liable to pay arrears of rent even subsequent to 31.07.2015. Counsel for the petitioner is right in his submissions that in the ejectment application filed in January, 2015, the petitioner was liable to pay arrears of rent, property tax and interest as had become outstanding at that point of time or at the best upto 31.07.2015 as the Rent Controller assessed provisional rent upto 30.07.2015 and the said order was not challenged by the petitioner either before this Court or by way of an appeal before the Appellate Authority. In this view of the matter, findings recorded by the Rent Controller vide order impugned that the petitioner was obligated to pay arrears of rent even from 01.08.2015 till date i.e. 29.01.2018 cannot be allowed to sustain and accordingly set aside.

So far as plea of the respondent that arrears of rent sought to be deposited by filing application dated 26.03.2018 or deposited vide receipt challan (Annexure P5) are not complete qua petitioner's outstanding

liability till 31.07.2015, the learned Rent Controller has not adverted to this issue and as such did not record any finding in this regard. The matter is remitted to the Rent Controller to decide this limited question, in accordance with law.

In view of what has been discussed hereinbefore, the petition is partly allowed. The impugned order is set aside and the matter is remitted to the Rent Controller for decision afresh, if the arrears sought to be deposited by the petitioner by filing application (Annexure P4) is in complete discharge of liability due upto 31.07.2015 or otherwise. Parties through their counsel are directed to appear before the Rent Controller on 25.01.2019. The Rent Controller shall decide the application afresh within one month of the parties putting in appearance.

08.01.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No