

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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CR No.4420 of 2018

Date of decision:22.5.2019

Balwinder Singh

... Petitioner

versus

Sarwan Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Hitesh Pandit, Advocate,
for the petitioner
Mr.Piyush Kant Jain, Advocate,
for the respondents
...

AMOL RATTAN SINGH, J. (Oral)

1. By this petition, the petitioner challenges the order passed by the learned Appellate Authority (under the East Punjab Urban Rent Restriction Act, 1949), dated 11.5.2018, by which the appeal of the petitioner against the order of the learned Rent Controller dated 5.3.2015 (copy Annexure P-3), has been dismissed.

Prior to the order presently impugned in this petition, the appeal had been actually allowed by the Appellate Authority vide an order dated 5.5.2015 (copy Annexure P-4), which order was challenged by the respondents-landlords before this Court vide CR No.7310 of 2015, which was allowed without commenting on the merits of the case (for the reasons stated in an order dated 3.11.2017), with the matter remanded to the Appellate Authority.

Thereafter the order as has been impugned in the present

petition, i.e. 11.5.2018, has been passed.

2. When the petition first came up for effective hearing on 18.7.2018, the following order had been passed:-

“This revision petition has been filed against the order of learned Appellate Authority dated 11.05.2018, whereby the appeal of the petitioner against the order dated 05.03.2015 of the learned Rent Controller, Ludhiana assessing the provisional rent at the rate of Rs.600/- per month and directing that arrears w.e.f. 01.04.2004 till the filing of the eviction petition be paid.

The petitioner assails the aforesaid order only to the extent that he has been directed to pay the arrears w.e.f. 01.04.2004 not from 10.09.2014.

Learned counsel for the petitioner contends that the petitioner-tenant had earlier filed suit dated 28.03.2013 for permanent injunction restraining the respondent from evicting him except in due course of law. In that suit, the petitioner had averred that rent have been deposited upto date. The respondent did not file any written statement controverting the aforesaid fact. The suit was eventually decreed. The petitioner also moved an application under Section 31 of the Punjab Relief of Indebtedness Act, 1934 before the Civil Court for depositing the rent from April 2014 to September 2014. The respondent did not file any reply to the application. Relying on the aforesaid, learned counsel contends that as the respondent has not denied the averments regarding payment of upto date

rent by filing written statement in the civil suit or any reply to the application under Section 31 of the Punjab Relief of Indebtedness Act, 1934, he cannot content in the eviction petition that rent was due from 2004.

Notice of motion for 19.09.2018.

Meanwhile, the petitioner may deposit an amount of Rs.50,000/- (Fifty thousand rupees only).

A copy of this order be given to learned counsel for the petitioner under the signatures of Special Secretary of this Court.”

The turn of the case not having come up on the next date of hearing, it was adjourned to 15.5.2019, when again since its turn was not likely to come up in the normal course, it being at sr.no.254 on the ordinary motion list, learned counsel for the respondents had requested for it to be taken up out of turn, as even the aforesaid amount of Rs.50,000/- had not been deposited by the petitioner.

Consequently, the case had been adjourned to 17.5.2019 with it ordered to be shown in the urgent motion list; but on that day it having been adjourned till today on a request made on behalf of learned counsel for the petitioner, he being unwell.

3. Today, Mr.Pandit, learned counsel for the petitioner, could not deny that Rs.50,000/- as had been ordered to be deposited by this Court, had not been deposited by the petitioner. He further submits that despite his best efforts, the petitioner is not answering his phone calls.

4. Learned counsel for the respondents submits that even though

the word “may” has been used by this Court in the order dated 18.7.2018, with regard to the deposit of Rs.50,000/- to be made by the petitioner, it would actually have to be interpreted as a mandatory condition.

In support of the aforesaid contention, he relies upon a judgment of the Supreme Court in Rakesh Wadhawan vs. M/s Jagdamba Industrial Corporation, 2002(1) RCR (Rent) 514, which again was an appeal before the Apex Court on the issue of provisional rent in terms of Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (as is the case in the present petition). He draws attention to paragraph 30 of the judgment, wherein the principles laid down, are summed up as follows:-

“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 Restriction Act, 1949 casts an obligation on the 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.”

He thereafter refers to a judgment of a Division Bench of this Court in Rajan @ Raj Kumar vs. Rakesh Kumar, 2010(1) RCR (Rent) 386, which was a judgment delivered on a reference made to the Division Bench by a learned Single Judge, on the question of interpretation of the aforesaid judgment of the Supreme Court, as to whether non-payment of the rent provisionally assessed, would necessarily entail eviction of the tenant from the premises, or not.

After considering the matter, the Division Bench held as follows:-

“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.” (Emphasis applied in this judgment only).

Mr.Pandit, learned counsel for the petitioner, could not distinguish the ratio of the principles laid down in the aforesaid judgments,

by showing any judgment to the contrary (with obviously there being none).

5. That being so, with the petitioner not having even deposited the amount of Rs.50,000/- as were ordered to be deposited at the time when notice of motion was issued in this case, far less having deposited the provisional rent assessed by the learned Rent Controller vide its order dated 5.3.2015 (upheld vide the impugned order of the learned Appellate Authority also), I see no reason to entertain this petition.

Consequently, it is dismissed.

The Rent Controller would now therefore proceed in accordance with law.

22.5.2019
pk

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No