

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

Civil Revision No. 6312 of 2017 (O&M)

Date of decision : February 21, 2019

Onkar Singh and another

.....Petitioners

Versus

Smt. Manpreet Kaur and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. B.R. Rana, Senior Advocate with
Mr. Kshitij Sharma, Advocate
for the petitioners.

Mr. Rajbir Singh Guron, Advocate
for respondent No. 1.

None for respondents No. 2 to 4.

Mr. Vikas Sheel Verma, Advocate
for respondents No. 5 and 6.

LISA GILL, J.

The petitioners are aggrieved of order dated 17.08.2017 passed by the learned Additional Civil Judge (Senior Division), Chandigarh whereby application under Order 9 Rule 13 CPC for setting aside exparte order dated 18.03.2016 and exparte judgment dated 20.09.2016 has been dismissed.

Learned counsel for the petitioners argues that impugned order dated 17.08.2017 is unjustified, unwarranted and liable to be set aside. Present petition had been filed by the respondent-landlords seeking eviction of the petitioners solely on the ground of non-payment of rent from 12.01.2012 till 31.01.2013. It is submitted that during the pendency of the present rent petition, another rent petition i.e. Rent Petition No. 1290 of 2011 filed by the respondent – landlords, claiming eviction of the

petitioners on the ground of personal bonafide necessity was allowed by the learned Rent Controller on 31.07.2015. Appeal against decision dated 31.07.2015 filed by the present petitioners was pending before the learned Appellate Authority. In the said proceedings, the entire arrears of rent were deposited by the petitioners on 12.01.2016, which included the period of rent from 12.01.2012 till 31.01.2013 i.e. the subject matter of the present rent petition, which was allowed exparte on 20.09.2016. The said tender was duly accepted by the respondent – landlords in the proceedings before the Appellate Authority i.e. the petitioners' appeal against decision dated 31.07.2015. Thereafter, the present rent petition was placed before the Lok Adalat for exploring the possibility of an amicable settlement of the entire dispute on 13.02.2016. However, no compromise could be arrived at. The matter was sent back before the learned Rent Controller. However, the petitioners were under a genuine bonafide belief that once entire arrears stood paid in another petition, the present proceedings would come to an end. Therefore, the petitioners did not appear before the learned Rent Controller on 18.03.2016 and they were proceeded against exparte. Learned Rent Controller vide exparte order dated 20.09.2016 allowed the present rent petition filed by the respondents - landlord.

It was vehemently argued that the petitioners had been regularly appearing in the proceedings in the instant case before the matter was sent to the Lok Adalat on 13.02.2016, after payment of entire arrears of rent in the other proceedings. Some witnesses were also examined on behalf of the present petitioners (respondents in the rent petition). It is only due to genuine bona fide belief that once the entire agreed rent including mesne profits as assessed by the learned appellate authority in parallel

proceedings initiated by the respondents - landlord was deposited and duly accepted by the landlord, the present eviction petition based solely on the ground of non-payment of rent would come to an end. Learned Rent Controller, it is submitted has ignored these vital aspects and wrongly dismissed the application under Order 9 Rule 13 CPC. It is, thus, prayed that this petition be allowed and the impugned order dated 17.08.2017 be set aside, consequently, setting aside order ex parte order dated 18.03.2016 as well as ex parte judgment dated 20.09.2016.

Learned counsel for the respondents while refuting the arguments raised by learned counsel for the petitioners submitted that tender of arrears of rent and mesne profits in separate proceedings cannot be deemed to be valid tender in the present petition. He relied upon the judgment of this Court in **Hukma Devi versus Bhagwan Dass 2003 (1) RCR (Rent) 533** and Full Bench decision of this Court in **Kalu Ram alias Gurcharan Dass versus Gonda Mal 1980 (1) RCR (Rent) 289**. Learned counsel for the respondents further argues that the petitioners had disputed the relationship of landlord and tenant and they avoided making payment for all this while. Moreover, the rent/mesne profits was deposited by the petitioners under orders of the competent authority and not on their own. In any case, tender of rent and mesne profits of the period in question in other proceedings cannot of any benefit to the petitioners. It is, thus, prayed that this petition be dismissed.

Heard learned counsel for the parties and have gone through the file with their able assistance.

It is not in dispute that in the present proceedings i.e. petition under Section 13 of the East Punjab Urban Rent Restriction Act (for short –

'the Act') was filed by the respondents/landlords. Eviction of the petitioners was sought from the demised premises solely on the ground of non payment of arrears of rent for the period, 12.01.2012 till 31.01.2013. During the pendency of the said proceedings, eviction of the present petitioners was ordered in another rent petition No. 1290 of 2011 filed earlier by the respondents/landlords on 31.07.2015. Rent appeal No. 3191 of 2015 was preferred by the present petitioners impugning judgment dated 31.07.2015. It is not in dispute that the agreed rent as reflected in lease deed (Annexure P-2) and the mesne profits, as ordered, was deposited by the petitioners and duly accepted by the respondents as reflected in order dated 15.12.2016 in rent appeal No. 3191 of 2015 (Annexure P-6). Thereafter, the present matter was referred by the learned Rent Controller before the Lok Adalat to explore the possibility of an amicable settlement between the parties. However, settlement could not be arrived at and the matter was returned to the learned Rent Controller. It is the categorical case of the petitioners that they were under a genuine, bona fide belief that once the arrears of rent including the one for the period in question, stood deposited, the present proceedings would come to an end. In the present proceedings, the petitioners had challenged the relationship of landlord and tenant, therefore, provisional rent had not been assessed and neither tendered. Keeping in view the sequence of events and the peculiar facts of this case, there is merit in the argument raised by learned counsel for the petitioners. It can well be countenanced that in such a situation the petitioners could hold a bonafide belief that the present proceedings may not continue. There is sufficient explanation for non-appearance of the petitioners before the learned Rent Controller in the present proceedings.

Much stress has been laid by learned counsel for the respondents on the Full Bench decision of this Court in **Kalu Ram's** case (supra) and the judgment of this Court in **Hukma Devi's** case (supra) to argue that tender of rent in separate proceedings cannot be treated to be a valid tender of rent in the present case,. It is pertinent to note that in **Kalu Ram's** case (supra), it has been held that if the landlord files a subsequent petition claiming rent falling due subsequent to the first application but also adds rent for the earlier period for which an order of eviction had already been passed and the tenant pays the entire rent on the first date of hearing, this by itself does not take away the right of the landlord to eject the tenant in the earlier application. In **Hukma Devi's** case (supra), the tenant had denied the title of the landlord. His ejectment was ordered. This Court in **Hukma Devi's** case (supra) held that learned Rent Controller is not under an obligation to pass an interim order assessing the rent, mesne profits etc. in a case where the tenant had denied his relationship and furthermore once ejectment was ordered, the protection of the rent law are denied to a tenant who has denied the relationship of landlord – tenant. There can be no quarrel or dispute with the preposition of law as laid down by the Full Bench of this Court and delineated in **Hukma Devi's** case (supra).

However, in the present petition the question is regarding setting aside of the exparte order dated 18.03.2016 and exparte judgment dated 20.09.2016. The question involved in the present petition is not whether the rent petition itself is to be dismissed or has been rendered infructuous due to the tender of rent in separate proceedings but whether the exparte orders dated 18.03.2016 and 20.09.2016 are to be set aside on account of the sequence of events, which is duly admitted by the

respondents. It is reiterated at this stage that learned counsel for the respondents have admitted that the petitioners had deposited the arrears of rent and mesne profits which were duly accepted as reflected in order dated 15.12.2016 in rent appeal No. 3191 of 2015 and furthermore the petitioners are regularly paying the agreed rent as well as mesne profits (₹80,000/-) as directed by the learned appellate authority in the other proceedings. Therefore, observation of the learned Additional Civil Judge (Senior Judge), Chandigarh in order dated 17.08.2017 that the conduct of the tenants lacks bonafides and discloses an ulterior motive on their part to somehow evade the eviction order passed by the learned Rent Controller is not justified.

In the facts and circumstances of the case, it is, considered just and expedient to set aside the impugned order dated 17.08.2016. Consequently, ex parte orders dated 18.03.2016 and 20.09.2016 are set aside. Learned Rent Controller to accordingly decide the matter afresh in accordance with law, while proceeding from stage immediately before passing of order dated 18.03.2016. Parties to appear before the learned Rent Controller on 15.03.2019. As the rent petition was filed in the year 2013, learned Rent Controller shall endeavour to decide the same expeditiously and preferably within four months from receipt of certified copy of this order. It is clarified that none of the observations in the present order are a reflection on the merits of the case and shall have no effect thereon.

The amount of agreed rent deposited before the Registrar (General) of this Court in terms of order dated 15.09.2017 be released to the respondent – landlord qua adequate proof of identity.

Present petition is, accordingly, allowed.

February 21, 2019

rts

Whether speaking/reasoned

:

Yes/No

Whether reportable

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Yes/No

(Lisa Gill)
Judge