

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

1. **CR-7058-2014(O&M)**
Date of Decision : October 23, 2019

Ashok Kumar @ Chunni LalPetitioner

VERSUS

Gurdev SinghRespondent

2. **CR-8543-2014(O&M)**

Ashok Kumar @ Chunni LalPetitioner

VERSUS

Gurdev SinghRespondent

3. **CR-474-2015(O&M)**

Ashok Kumar @ Chunni LalPetitioner

VERSUS

Gurdev SinghRespondent

4. **CR-498-2015(O&M)**

Ashok Kumar @ Chunni LalPetitioner

VERSUS

Gurdev SinghRespondent

5.

CR-3028-2018(O&M)

Ashok Kumar @ Chunni Lal

.....Petitioner

VERSUS

Gurdev Singh

.....Respondent

6.

CR-3035-2018(O&M)

Ashok Kumar @ Chunni Lal

.....Petitioner

VERSUS

Gurdev Singh

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Mr. Sanjiv Gupta, Advocate
for the petitioner(s).

Mr. Gurcharan Dass, Advocate
for the respondent(s).

NIRMALJIT KAUR, J. (Oral)

All the above mentioned revision petitions shall stand disposed of by this common order as the parties involved are the same and the issue involved too is identical.

All the above mentioned revision petitions have been filed against the impugned order of the Rent Controller, Ludhiana as well as the Appellate Authority upholding the eviction order passed against the

petitioner-tenant on the ground of non-payment of rent.

For the convenience of the Court, the facts are taken from Civil Revision-7058 of 2015.

The petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 was filed against the petitioner-tenant on the ground of arrears of rent and personal necessity. It was alleged in the eviction petition that the rent was @ Rs.3,000/- per month and the petitioner-tenant was in arrears of rent w.e.f. 20.1.2005. The Rent Controller passed the order of provisional rent by taking the rent as Rs.3,000/- per month. The petitioner-tenant did not tender the arrears of the assessed provisional rent. Accordingly, the ejectment order was passed against the petitioner-tenant. The petitioner-tenant chose to file appeal against the order of the ejectment. The same came to be dismissed by the Appellate Authority, Ludhiana vide judgment and order dated 14.8.2014.

The present revision petitions are, therefore, filed on the ground that once he had challenged the order of provisional assessment of rent by way of appeal, he cannot be evicted till as such time the appeal is decided and opportunity is thereafter granted to him to make the payment and since in the present case, he had filed an appeal against the fixation of the provisional rent which was excessive, the order of eviction could not have been passed against him.

The only question, therefore, requires to be determined in the present revision petitions is as to whether the order of eviction can be

passed during the pendency of the appeal against the order of eviction which was passed on the basis of non-payment of the provisional rent which is also the subject matter of challenge before the Appellate Authority in the appeal.

Reliance is placed by learned counsel for the petitioner on the judgment rendered by the Hon'ble Apex Court in the case of **Harjit Singh Uppal Vs. Anup Bansal** 2011(3) R.C.R.(Civil) 247 to contend that the order of determination of provisional rent is an interlocutory order and, therefore, there is no impediment in his way to challenge the same in the appeal against the final order of eviction and his eviction could not have been ordered while he was availing the statutory right of his appeal. There was no reason for him to deposit the rent when the very rent was under challenge and had not been determined.

As per the judgment rendered in the case of Harjit Singh Uppal (supra), the right to challenge the provisional rent is not lost by way of filing appeal. There is no dispute with the law laid down by the Hon'ble Apex Court in the judgment rendered in the case of Harjit Singh Uppal (supra) laying down the law that the tenant in an appeal against the order of eviction is entitled to question the correctness of the order of provisional assessment as the appeal is his statutory right. However, what has to be determined in this case is whether the tenant is required to pay the provisional rent before filing the appeal or not.

The position that emerges in law as held by the judicial pronouncements of this High Court as well as by the Hon'ble Apex Court

is that in case the tenant does not deposit the rent so determined on or before the first hearing of the application for ejectment, he is entitled to be evicted on the ground of non-payment of the rent/provisional rent determined by the Rent Controller. The Hon'ble Apex Court in the case of **Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation**, 2002(1) R.C.R.(Rent) 514 has already clarified the position as under:-

“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 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.”

The said view was followed by the learned Single Bench of this Court in **Madan Lal and another** Vs. **Baldev Raj**, 2004(2) Rent LR 556 that in case the tenant does not comply with the order of deposit of assessed provisional rent, the tenant was not even liable for extension of time in case the time limit had been fixed for deposit under Section 148 of the CPC or under Section 5 of the Limitation Act. The Division Bench of this Court in the case of **Rajan @ Raj Kumar** Vs. **Rakesh Kumar**, 2010(1) R.C.R.(Rent) 386 followed the ratio laid down in the case of Rakesh Wadhawan (supra) and held in para No. 13 as under:-

“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 ejection 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."

A perusal of the above judgment has held in unequivocal terms that eviction must follow the non-payment of rent which includes the provisional rent.

It has been consistently held that once the provisional rent was assessed and not deposited by the tenant within the time stipulated, a right accrues in favour of the landlord to seek eviction and the tenant cannot escape or avoid the consequences of the eviction which is almost automatic as held in various judgments rendered by this Court in the cases of Chand Kumar Ahuja Vs. Gurdarshan Singh Gill, 2012(3) R.C.R.(Civil) 530, Raj Bala Vs. Surender Singh, 2012(1) R.C.R.(Rent) 90, Anil Kumar Vs. Ghanshyam Dass, 2012(1) R.C.R.(Rent) 153, Mrs. Birinder Khullar Vs. Maninder Singh, 2011(2) CivCC 438, Kanta Vs. Avinash Kaur, 2014(2) L.A.R. 214, Ajit Singh Vs. Harjit Kaur, 2017(3) R.C.R. (Civil) 882, Dhrinder Pal Gupta Vs. Jiya Lal, 2014(1) RentLR 39 and M/s Imperial Gardens Pvt. Ltd. Vs. J.P.Singla and others, 2012(1) R.C.R.(Rent) 558.

Infact, the issue is no more res-integra in view of the

judgment rendered by the Constitution Bench of three Hon'ble Judges of the Hon'ble Apex Court in the case of **Dalip Kaur Brar Vs. M/s Guru Granth Sahib Sewa Mission (Regd.) and another**, 2017(1) R.C.R. (Rent) 447. Para No.27 of the said judgment reads as under:-

“One line of interpretation for construing the provisions of Section 13 is that which has been suggested on behalf of the respondents. According to this interpretation (which seeks to draw sustenance from the observations in Harjit Singh Uppal (supra)), the tenant would be at liberty to ignore the order of provisional assessment passed by the Rent Controller and upon the passing of an order of eviction for non-compliance, to pursue the remedy of an appeal under Section 15(1) (b). According to this line of interpretation, in the appeal under Section 15(1)(b) the tenant may demonstrate that the order of provisional assessment was erroneous and as a consequence thereof, the order of eviction must fail. The issue is whether such an interpretation must be adopted invariably in all cases. In our view, the interpretation of the provisions of Section 13 must bring about a just balance between the rights of the tenant and those of the landlord. On the one hand, there is a need for protecting the tenant against being subjected to a disproportionate demand by the landlord and of suffering in consequence, an unjust decree of eviction. On the other hand there is a need to protect the landlord against the tactics which a recalcitrant tenant may adopt by deploying every gambit in the rule book to defeat the just claims of the landlord to the payment of rent. The judgment rendered by this Court in Wadhawan (supra) and reaffirmed by a Bench of three Judges in Vinod Kumar

(supra) brings about a just balance by interposing the function of the Rent Controller who determines on a provisional basis the arrears of rent, interest and costs. This determination ensures on the one hand that while the tenant is protected against an unjust demand by the landlord, the landlord in turn is not deprived of the just dues owing on account of the use and occupation of the property by the tenant. Upon a provisional determination being made by the Rent Controller, the tenant must deposit the amount of the demand, on the first hearing of the application for ejectment. What needs to be kept in mind is, that the proviso under 13(2) (i) is a concession, and also, that it is based on a provisional “assessment”. A tenant admitting to be in arrears of rent, within the parameters provided for under Section 13(2)(i), is liable to eviction forthwith. To avail of the concession, the provisional “assessment”, must be complied with. If the tenant does so the payment is deemed to have been made within time. If the tenant fails to do that, the Rent Controller is empowered to pass a decree for eviction. The manner in which a wrongful provisional “assessment” will be remedied have been laid down in Wadhawan and Vinod Kumar (supra). The tenant upon complying with the order of the Rent Controller is not left without a remedy. When the Rent Controller subsequently makes a final determination of the rent payable, if it is found that the tenant has paid an amount in excess, the Rent Controller can issue directions for refund or adjustment, as the case may be. A tenant who complies with an order of provisional assessment by the Rent Controller is to be protected against eviction. At the same time, the tenant is entitled to pursue the challenge to the

assessment made by the Rent Controller. A tenant who fails to observe the order of provisional assessment will not be protected against an order of eviction. That will, however, not deprive the tenant of a right of appeal, as held in Harjit Singh Uppal (*supra*).”

The argument of learned counsel for the petitioner-tenant that the said judgment pertains only qua the admitted rent and not qua the provisional assessment is misconceived. The ratio of the judgment rendered in the case of Dalip Kaur Brar (*supra*) is clear. Similarly, the principle is clearly laid down in the Wadhawan (*supra*) that a tenant is liable to be evicted in case he does not deposit the provisional rent. The right to appeal against the provisional rent is duly available but payment of provisional rent is almost a prerequisite to safe guard against eviction.

The next argument that there is no remedy available to him in case the provisional assessment is found to be excessive was subsequently also answered by the Hon'ble Apex Court in the judgment rendered in the case of Dalip Kaur Brar (*supra*) itself which is reproduced below even for the sake of repetition:-

“The tenant upon complying with the order of the Rent Controller is not left without a remedy. When the Rent Controller subsequently makes a final determination of the rent payable, if it is found that the tenant has paid an amount in excess, the Rent Controller can issue directions for refund or adjustment, as the case may be. A tenant who complies with an order of provisional assessment by the Rent Controller is to be protected against eviction.”

In the present case, it is evident that there is a stubbornness and unwillingness on the part of the petitioner-tenant not to deposit the provisional rent and to comply with the order passed by the Rent Controller. The tenant having failed to deposit the provisional rent as assessed, he cannot be protected just because he has filed the appeal against the order of assessment and eviction order. Thus, this Court finds no ground to interfere in the impugned order of eviction passed by the Rent Controller as well as by the Appellate Authority.

Dismissed accordingly.

October 23, 2019

ajay-1

(NIRMALJIT KAUR)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No