

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

CR No.7348 of 2018 (O&M)

Date of Decision: August 14th, 2019

Jagjit Singh @ Jagjit Singh Ahluwalia @ Jagjit Singh Walia @ J.S.
Ahluwalia @ J.S.Walia

.... Petitioner

Versus

Rajesh Bansal & Others

.... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Kanwaljit Singh, Senior Advocate assisted by
Mr. Ajavir Singh, Advocate for the Petitioner.

Mr. Manish Jain & Mr. Pankaj Chandgotia, Advocates
for the Respondents.

SUDIP AHLUWALIA, J.

This Revisional Application is directed against the order dated 07.09.2018 passed by the Ld. Rent Controller, U.T., Chandigarh, vide which the Application filed by the Petitioner on 11.7.2018 for assessment of provisional rent in the Eviction Petition filed by the Respondents/Landlords under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 was dismissed.

2. Background of the matter is that the Rent Petition was filed on behalf of the Respondents seeking eviction of the Petitioner from the demised premises being certain Shop Portions on the Groundfloor of SCF No.22-23, Sector 28-C, Chandigarh (Annexure P-1) on 12.9.2017. In his Written Statement filed on 11.4.2018 (Annexure P-2), the Petitioner/Tenant made certain averments, which were interpreted by the Ld. Rent Controller to mean that he had denied the

Landlord-Tenant relationship between himself and the Respondents/Landlords. Consequently, the Ld. Rent Controller in its order passed on 17.5.2018 (Annexure P-4) observed, “*Replication to the written statement filed on behalf of the Petitioner. As respondent has denied relationship of Landlord-Tenant between the parties, the provisional rent cannot be assessed.....*” Thereafter, the Rent Controller framed issues on the same date and posted the matter to 11.7.2018 for PWs. On that subsequent date, the Petitioner filed his aforesaid Application seeking assessment of provisional rent, which was dismissed vide the impugned order.

3. Before proceeding further to consider the arguments and submissions raised on behalf of both sides, it would be appropriate to first take note of the relevant averments, which were made by the Petitioner/Tenant in his Written Statement, which were interpreted by the Ld. Rent Controller as denial of the Landlord-Tenant relationship, in the context of the Claim of the Respondents/Landlords in Para 2 of their Eviction Petition that they “*are the co-owners and landlords of SCO 22-23 Sector 28-C, Chandigarh, hereinafter referred to as “the building in question”. The copies of the Transfer Letters dated 23.12.2008 are annexed as Annexures P-1 and P-2*”.

4. On 15.3.2018, the Petitioner had filed an Application under Order VII Rule 14 read with Order 11 Rules 12 & 14 read with Section 151 of the CPC seeking direction upon the Respondents to produce the documents relied upon by them in the Rent Petition, apart from documents pertaining to some previous litigation involving the Petitioner in Para 2 of the Application, in which it was mentioned -

“2. That the petitioner has relied upon, certain document and the same are required to be produced in compliance of order 7 rule 14 CPC. The said documents including the petition have not been supplied.”

5. The Respondents opposed the said Application and their response qua the concerned documents in Para 4 of their Reply (Annexure A-2) was -

“4. That despite of the fact copy of the petition as well as the documents annexed with have been already supplied to the applicant/ respondent however, copy of the petition as well as documents annexed with the petition are again attached herewith.”

6. It is noteworthy that the said Reply alongwith the set of documents (Annexures A-4 & A-5) were filed before the Rent Controller on the very date (i.e. 15.3.2018) on which the Petitioner had moved his aforesaid Application under Order VII Rule 14 CPC. He was thereafter given time till 11.4.2018 to file his Written Statement, which he did. The relevant disputed averments in his Written Statement are contained in Paras 3 & 4 of his Preliminary Objections and thereafter in Paras 1, 2 and 6 of his Reply on Merits. Those relevant averments are reproduced below -

PRELIMINARY OBJECTIONS :-

“3. That the petitioners have not attached copy of the sale deeds along with the petition to establish their ownership of SCF site no.22-23, Sector – 28C, Chandigarh.

4. That subsequently Ajit Singh sold the building in question on 14.10.2005 in favour of Deepak Sarin, Pooja Gupta, Shalini Bansal, Wife of Rajesh Bansal and Sunaina Bansal wife of Vikram Bansal. Thereafter Deepak Sarin filed a petition of ejectment against the respondent on 26.07.2008

but he could not produce any document and ultimately the petition was got dismissed in default on 14.06.2009 it was never got restored. Copies of the same are attached herewith. There was no relationship of landlord and tenant between Deepak Sarin and the respondent. The petitioner(s) were never assigned by Sh. Deepak Sarin to file the present petition. After the dismissal of the petition Shalini Bansal, Wife of Rajesh Bansal petitioner no.2 in the present and Sunaina Bansal, wife of Vikram Bansal petitioner no.1 in collision with the petitioners got the property in question transferred in the name of petitioners number 1 to 3.

ON MERITS :

“1. That para no.1 of the petition is not correct as stated hence denied. There is no relationship of landlord and tenants between the parties as the petitioner(s) did not induct the respondent into the demised premises. The petitioners have claimed themselves to be the co-owners and landlords of the premises under ref. It is worth to mention that the other co-owners have not been arrayed as the necessary parties. The 50% Share as per ANNEXURE P-1 is the domain of the petitioner no.1 and 2. The petitioner(s) have claimed themselves to be the Co-Owners of the demised premises, nevertheless, the respondent without prejudice to his rights is willing to tender the amount towards Rs.1000/- for Walia Auto Store and Rs.2000/- P.M for Jagjit Singh (himself) as there are two separate tenancies. The said tenancies cannot be termed as composite tenancies as they are with different identity and with different rate of rent(s). The rent was paid vide statement ANNEXURE R-1 when the earlier rent was assessed and thereafter the rent was paid vide ANNEXURE R-2 and R-3. The petition so filed earlier is ANNEXURE R-4 and the written statement is ANNEXURE R-5.

2. That para no.2 of the petition is not correct as stated hence denied. The petitioner never intimated the respondent about the purchase of the building in question nor provided copy of the sale deed to the respondent. The copy of the transfer letter is not legal, valid and genuine one and transfer

is sham transaction so no right vests in the petitioners to institute the present petition.

6. *That para no.6 of the petition is wrong hence denied. The averments made in this paragraph are wrong, incorrect and hence denied. The same is vague and indefinite. The rate of rent is not Rs.25,000/- PM thus the pleadings do not gain any sanctity in view of the earlier litigation. The respondent did not make any promise. The respondent is willing to tender the rent in accordance with the earlier round of litigation, the respondent did not make any false promise, it is also a matter of serious concern that the petitioner(s) have viewed a self generated theory to carve out the said ground of the non payment of rent. The respondent did not even make any promise for the vacation of the premises, no date, month, year has been reflected in the pleadings as the same cannot sustain. The said pleadings are no-nest. It is apparently a falsehood as no reason has been assigned for maintaining a stoic silence from the year 2009 to 2018. No prudent Landlord would sit upon the said issue, thus the grounds so, weaved is false.”*

7. It has been urged on behalf of the Petitioner that his purported denial of Landlord-Tenant relationship between himself and the Respondents, which was so inferred by the Ld. Rent Controller, was actually not an absolute denial, but only a qualified one inasmuch as the Petitioner had no knoweldge as to how Title of the demised premises had been passed on in favour of the Respondents, since they had not attached any copy of Sale Deed to show their ownership and copies of their Transfer Letters mentioned as **Annexures P-1 & P-2** in the Complaint had not been supplied at the initial stage, and that actually, the Petitioner was a Tenant for a very long time under the previous Landlord Shri Ajit Singh (since deceased), and no official

intimation or letter of attornment in favour of any other person including the Respondents, after the demise of Shri Ajit Singh was ever served upon him. He therefore, had a bonafide doubt regarding the ownership of the Respondents or their Claim of being his Landlords. Yet, as can be seen from the underlined extracts in Para 6 of his Written Statement, he had nevertheless expressed his willingness to tender the rent admitted by him in the abovesaid Para already reproduced above.

8. After the Ld. Rent Controller vide his order dated 17.5.2018 observed that provisional rent could not be assessed on account of denial of Landlord-Tenant relationship, the Petitioner in his Application dated 11.7.2018 (Annexure P-5) raised the following contentions -

“2. That the petition which has been filed has been articulated to state that Jagjit Singh is a tenant whereby the earlier records of the litigation which was filed by the previous owners is contrary to the petition filed by the petitioner now. The rate of rent has been falsely claimed.

3. That para 1 of the written statement on merits would make it specifically clear that the respondent was willing to tender the rent without prejudice to his rights however, this fact was not highlighted by the petitioner on the last date of hearing though it was said by the respondent.

4. That in view of the said submission the respondent is willing to tender the rent and be assessed provisionally by this Hon'ble Court, in view of the submissions made in the written statement.

5. That this Hon'ble Court is a Tribunal while conducting the proceedings under the Rent Act, this Hon'ble Court can device

its own procedure to reach at a justifiable and a fair conclusion.

6. That the respondent had always been willing to tender the rent however, it was only as per the earlier litigation so ensured between the earlier owners, the respondent had negated the rent to be Rs.25,000/- p.m.”

9. The Ld. Rent Controller however, dismissed the Application vide impugned order after observing inter-alia -

*“It is settled law that where the relationship of landlord and tenant has been denied by the tenant in the written statement, the rent cannot be assessed provisionally and issues have to be framed and vide order dated 17.05.2018, the order has been passed of framing the issues and matter has been listed for petitioner evidence. It is very clear in para No.1 on merits in the reply that relationship of landlord-tenant has been denied by the respondent. No doubt, the previous litigation between the previous owners has been shown by the applicant but as he denied the relationship with the present petitioner, the order has already been passed. Furthermore, as held in **Jagdish Parshad's case** (supra), this Court cannot review its own order as Rent Restriction Act is a complete Code and the fact has already been determined that relationship of landlord-tenant has been denied and there is no reason to review the earlier order vide which the issues were framed and matter was listed for petitioner's evidence.”*

10. The specific grievance of the Petitioner in the circumstances is that the Ld. Rent Controller fell into a manifest error by observing that the Petitioner had denied existence of Landlord-Tenant relationship in the case on account of which, the provisional rent could not be assessed, even though nowhere in his entire Written

Statement, the Petitioner had denied his status as a Tenant in the concerned premises, but had only highlighted his reasonable doubt about actual status of the Respondents, who admittedly had never inducted him in the premises nor any official intimation of letter of attornment in their favour was communicated to him before filing of the Rent Petition and that inspite of such reasonable doubt, the Petitioner had still categorically offered to deposit the rent at the rate admitted by him, which averment was altogether ignored by the Ld. Rent Controller before framing the issues.

11. It has been stressed on behalf of the Respondents/Landlords that the Revisional Application is liable to be dismissed outright, since the law is well settled that in the event of denial of the Landlord-Tenant relationship by a Tenant, there is no scope for assessment of provisional rent or arrears. As already seen, even while purportedly denying the Landlord-Tenant relationship, the Petitioner in Para 6 of his Written Statement had at the same time also offered to deposit the rent at the rate admitted by him.

12. The following decisions have been relied upon by the Respondents in opposing the Revisional Application -

- i) Hukma Devi Vs. Bhagwan Dass (2003) 1 RCR (Rent 533
- ii) Yashpal Singla Vs. Vijay Kumar (2004) 1 RCR (Rent) 718
- iii) Narinder Singh Vs. Sarabjit Singh (2006) 2 RCR (Rent) 226
- iv) Gawritex Industries Limited, Panchkula Vs. Sqn. Ldr. Gurdial Singh (Retd.) & others (2009) 2 RCR (Rent) 213
- v) M/s Manchanda Glass House Vs. Sudesh Kumar Kalra 2017

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13. In each of the above decisions, the proposition has been affirmed that the Rent Controller is under no obligation to determine the provisional rent when existence of the Landlord-Tenant relationship is denied by the Tenant in a Rent Petition. In fact, this position of law is entirely consistent with the reliance of the Ld. Rent Controller in the case of “**Sandeep Shahi Vs. Smt. Asha Rani, 2011 (1) R.C.R. (Civil) 103** in the impugned order, in which, it had been held that -

“If tenant denied the relationship of landlord-tenant or tenders lesser amount, he does so at his own risk and if at the final stage, the courts come to the conclusion that the relationship of landlord-tenant was wrongly denied and the petitioner was the landlord of property, eviction must follow and no opportunity should be given to tenant to make good the deficiency in arrears of rent”.

14. But the controversy in the present case is somewhat different. This is not a case of absolute denial of relationship by the Tenant, but in spite of contending that the Respondents/purported Landlords are not owners of the concerned Building he had nevertheless also offered to deposit the rent at the rate admitted by him. This Court is, therefore, to consider whether such stance of the Petitioner can be regarded reasonable and bona fide, or ought to be simply thrown aside as done by the Ld. Rent Controller on a conclusion that by his averments in the Written Statement, the Petitioner had denied the existence of any Landlord-Tenant relationship, and was thus not entitled to be given a chance to have the rent assessed provisionally or to deposit the same.

15. In this regard, the Petitioner's side has relied upon a decision of

this Court in “**Meena Sharma Vs. Rakesh & another**” (CR No.2862 of 2017). It may be mentioned that the Revisionist in this decision happened to be the Landlord, who had challenged the Rent Controller's order fixing the payment of provisional rent, which according to the Revisionist was illegal inasmuch as the relationship by the Tenant had been denied. The Court dismissed the Landlord's Revision after observing inter-alia -

“The Appellate Authority also came to the conclusion that there it was no absolute proposition that in every case where the tenant denies the existence of relationship of landlord-tenant between the parties, he is to be denied the opportunity to tender the rent. It was held that the denial of relationship was not mala fide and the judgments, as such, which were relied upon, were not applicable. The rate of rent, as claimed by the landlord, if accepted without there being any cogent material, then the tenant may have to face the eviction even without having been afforded an opportunity of proving his plea and resultantly, the appeal was dismissed.

Thus, it would be apparent from the above discussion that the respondents are not denying that they are tenants in the property. The only issue is as to who would be their landlord and they have only put forward the plea that the brother-in-law of the petitioner, as such, namely, Pawan Kumar is the landlord.

In the present case, as noticed, an application had been filed by the tenant to deposit the rent, and the rent had, accordingly been tendered. The Rent Controller was bound to frame an issue on the basis of the pleadings, on the relationship aspect and parties will have to lead their evidence on the basis of the said pleadings. The Rent Controller would, then come to the final conclusion as to whether the stand taken is correct or not regarding the relationship and the rate of rent. A prima facie view has, thus, been taken and therefore, the objection, as such, which has

now taken to the orders passed, is without any basis as the same does not suffer from any procedural infirmity or irregularity which would warrant interference by this Court under revisional jurisdiction.”

16. The facts involved in the pending proceedings are somewhat similar. The Petitioner does not deny his status as a Tenant in the demised premises. On the contrary, his submission is that he has been a Tenant therein for a very long time, and that his admitted Landlord was one Shri Ajit Singh (since deceased). He has denied having received any communication regarding ownership of the premises being passed on to the Respondents. While thus contending that they were not owners and consequently not his Landlords, he still in his Written Statement offered to deposit the rent at the rate admitted by him. Now to appreciate the relative merits and credibility of these contentions, it would be appropriate to consider the version put forward by the Petitioner, which is supported by relevant documents. He claims to have been a Tenant since the time of Shri Ajit Singh. He has placed on record copy of Civil Suit No.112 of 2003 dated 9.4.2003 filed by said Ajit Singh seeking his eviction from the demised premises, which is Annexure P-11. His own Written Statement dated 12.9.2003 filed against the said Eviction Petition is Annexure P-12. Annexure P-13 is a copy of Order dated 10.10.2005 passed by the Ld. Civil Judge (Junior Division), which goes to show that the aforesaid Eviction Petition was dismissed as withdrawn at the instance of the Petitioner's erstwhile Landlord, and Annexure P-14 is a copy of the Petitioner's own statement made on 10.11.2003 before the Rent Controller/Civil Judge (Junior Division), in which, he

admitted that the rent payable by him was Rs.1000/- per month and Rs.2000/- per month for two different portions of the demised premises, which was otherwise consistent with the Claim of the Landlord that the rent for the demised premises was Rs.3000/- per month. Annexure P-15 is a copy of the Challan running into two Pages showing deposit of the rent for two months at the rate of Rs.2000/- and Rs.1000/- per month for two separate portions of the demised premises made on behalf of the Petitioner on 3.8.2005 i.e. two months before the Eviction Suit was withdrawn by the then Landlord Shri Ajit Singh. Annexure P-3 is a letter dated 2.11.2006 written by the Petitioner to Shri Harpal Singh son of Landlord Ajit Singh, who had died by that time, in which, the Petitioner had requested the said Harpal Singh to inform as to whom he should pay the rent after the demise of Shri Ajit Singh, and communications of the said letter to Shri Harpal Singh both by Registered Post on the same date (2.11.2006) and thereafter by Courier on 10.11.2006 also form a part of Annexure P-3.

17. Further claim raised by the Petitioner in his Written Statement was that subsequently another Rent Petition seeking his eviction was filed against him by one Deepak Sarin on 26.7.2008, a copy of which is Annexure P-7. The Petitioner in contesting that Eviction Petition filed an Application under Order VII Rule 14 read with Order 11 Rules 12 & 14 read with Section 151 CPC (Annexure P-8) on 10.12.2008 and seeking a direction upon the Petitioner/Landlord Deepak Sarin to produce the relevant documents to show how he had become owner of the demised premises since the admitted Landlord

was the deceased Ajit Singh. Now it transpires that instead of any document being furnished in pursuance of the said Application, the Eviction Petition itself was got dismissed in default on 14.6.2009. Therefore, as already reproduced in Para 4 of his Written Statement above, the Petitioner had denied the relationship of Landlord-Tenant between himself and Deepak Sarin and further contended that in any case, the said Deepak Sarin never assigned the present Respondents to seek the Petitioner's eviction.

18. It is now noteworthy that in Para 2 of their Eviction Petition in the present case already reproduced above, the Respondents merely described themselves as co-owners and Landlords of the demised premises without giving any indication as to how they had become such co-owners. The copies of the Transfer Letters purportedly annexed as **Annexures P-1 & P-2** to the Plaint were not apparently delivered to the Petitioner alongwith a copy of the Eviction Petition. But such copies were subsequently supplied alongwith their Reply to the Petitioner's Application (Annexure A-1) on 15.3.2018. He thereafter filed his Written Statement on the very next date fixed for that purpose, in which, he while thus denying the ownership of the Respondents nevertheless also offered to deposit the rent at the rate admitted by him. It is now to be noted that there are no copies on record of any actual Sale or Transfer Deeds in favour of the Respondents or their purported co-owner Mahender Partap Singla as mentioned in the Transfer Letter dated 23.12.2008 purportedly sent to them by the Chandigarh Administration (**Annexure A-4**) on record. The Petitioner in his Written Statement specifically mentioned non-

filing of any such Sale Deed. From the entire narration of facts in the original Eviction Petition, it has not become clear as to how Deepak Sarin at any stage had become owner of the demised premises after the Petitioner's admitted Landlord Ajit Singh, nor by which Deed or Instrument executed by the said Deepak Sarin, the transfer of ownership to the extent of 50% in favour of the Respondents was accepted by the Chandigarh Administration. Averment of the Respondents in their Eviction Petition is that the Petitioner had verbally agreed to vacate the demised premises by 31.3.2009, which has been specifically denied by him in his Written Statement. Whether or not any such meeting or talk between the parties actually took place is a matter of evidence to be led in the actual trial. But undeniably at no point of time, there appears to have been any kind of intimation served upon the Petitioner through any document or letter to apprise him as to who would be his Landlord after the demise of Shri Ajit Singh, or when or how ownership of the concerned Building itself had been passed on from the original Landlord to any one else. The Transfer Intimation Letter (Annexure A-4) was admittedly brought to the knowledge of the Petitioner only after the present Eviction Petition against him was filed. In such circumstances, this Court is of the view that the Petitioner certainly had good reasons to doubt the credence of the Respondents qua their ownership of the demised premises and consequently of their Claim of being his Landlord. While thus putting on record his aforesaid doubt, he nevertheless also offered to deposit the outstanding rent at the admitted rate in his Written Statement. But this specific averment in

Para 6 of the Written Statement was apparently lost sight of by the Court, which was of the view that his denial of Landlord-Tenant relationship was absolute. Thereafter his Application for assessing the provisional rent filed on the very first date after framing of issues, which undisputedly happens to be “first date of hearing” within the meaning of proviso to Section 13 (2)(i) of the East Punjab Urban Rent Restriction Act, 1949 as held by the Supreme Court in “**Rakesh Wadhawan and others Versus Jagdamba Industrial Corporation and others**” (2002) 5 Supreme Court Cases 440 was dismissed vide the impugned order. It is noteworthy that in dismissing such Application, the Ld. Rent Controller has not observed that there was no denial of the Petitioner's own status as a Tenant in his Written Statement any where, or that his contention that he had in his Written Statement also offered to deposit the rent at the admitted rate was incorrect. On the other hand, the Ld. Rent Controller relying upon the decision in “**Jagdish Parshad Vs. Mehar Chand and another**”, 1993(1) RCR (Rent) 459, rejected the Petitioner's Application by holding that the earlier order holding that provisional rent cannot be assessed could not be changed/reviewed by the Court of Rent Controller itself.

19. In view of the aforesaid circumstances narrated in the preceding Paragraph, this Court is of the view that the earlier decision of a Coordinate Bench of this Court in **Meena Sharma's case (supra)** is more applicable to the facts and circumstances of the present case and therefore, the Court has no hesitation in coming to the conclusion that denial of opportunity to the Petitioner to pay up

the outstanding rent by way of not assessing the same provisionally on the premise that the Landlord-Tenant relationship had been denied in the case would appear to be an instance of miscarriage of justice, considering that Petitioner had promptly prayed for such assessment “on the first date of hearing” after framing of issues, which actually was the first occasion for application of judicial mind in the eviction proceedings. The impugned order is therefore, liable to be set aside.

20. With these observations, the present Revisional Application is allowed.

21. The Ld. Rent Controller is directed to defer the trial at this stage and decide upon the provisional rent and arrears payable by the Petitioner in accordance with the Statute after giving an opportunity of hearing to both sides in the matter. Such exercise may be completed within a month from the date of communication of this order, after which, a reasonable time may be granted to the Petitioner to deposit the amount so assessed to be payable.

(SUDIP AHLUWALIA)
JUDGE

August 14, 2019
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|--------------------------------|--------|
| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |