

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

CR No.937 of 2019 (O&M)

Date of Decision: February 25, 2019

Arwinder Kaur

...Petitioner

Versus

Sudesh Gupta

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rahul Bhargava, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

1. This civil revision is directed against the order dated 18.08.2018 passed by the learned Appellate Authority, Amritsar whereby the appeal filed by the petitioner-tenant against the order dated 05.11.2016 passed by the Rent Controller, Amritsar allowing the ejectment petition, has been dismissed

2. In brief, the facts of the case are, that the respondent-landlord filed a petition against the petitioner-tenant under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') seeking his ejectment from the tenanted premises, which comprised of two rooms out of house bearing number 2000, Railway Wali Gali, Bharat Nagar, Batala Road, near Millan Palace, Amritsar on the ground of non-payment of rent, as well

as personal requirement. The said petition was duly contested by the petitioner-tenant by filing her written statement.

3. Since one of the grounds was that the petitioner-tenant is in arrears of rent, the Rent Controller vide its order dated 14.10.2016 assessed the provisional rent for a period of 40 months @ ₹ 1500/- per month along with costs, total amounting to ₹ 70,945/- and the date for tendering the rent was fixed as 29.10.2016. On 29.10.2016, the petitioner-tendered the cheque dated 29.10.2016 for ₹ 70,945/- in the name of the respondent-landlord and the next date was fixed as 05.11.2016 for awaiting the honour of cheque. On 05.11.2016, the respondent-landlord suffered a statement that the said cheque has been dishonoured due to non-matching of signatures. Under these circumstances, while relying upon judgment rendered in ***Rakesh Wadhawan & ors. vs. M/s Jagdamba Industrial Corporation & ors., 2003 (1) Apex Court Judgment page 610***, the Rent Controller vide its order dated 05.11.2016 allowed the petition and the petitioner-tenant was directed to hand over the vacant possession of the tenanted premises to the respondent-landlord within a period of two months. Aggrieved, the said order of the Rent Controller was challenged in appeal before the Appellate Authority, which came to be dismissed by an order dated 18.08.2018. In this civil revision orders of both the courts below are under challenge.

4. Learned counsel appearing on behalf of the petitioner-tenant argues that the cheque issued by the petitioner-tenant could not be honoured on account of a technical defect, and therefore, the petitioner-tenant moved an application to deposit the provisional rent in cash, however, his application had been dismissed and order of eviction was passed against

him. It is argued that the courts below failed to appreciate the bona fide necessity of the petitioner-tenant to tender the provisional rent in cash when the said cheque was dishonoured. It is contended that the orders passed by the courts below are not sustainable, being illegal.

5. I have heard learned counsel for the petitioner-tenant and have gone through the pleadings and the impugned orders.

6. The facts are not in dispute and it is admitted that the Rent Controller assessed the provisional rent and gave time to the petitioner-tenant to deposit the rent by 29.10.2016, on which date the petitioner-tenant instead of depositing the rent in cash, opted to tender a cheque, which was dishonoured. Thereafter, the petitioner-tenant moved an application deposit the rent in cash on the next date so fixed by the Rent Controller for ascertaining the fact as to whether the cheque has been encashed or not, which application was dismissed and eviction order was passed. The appeal filed by the petitioner-tenant has also been dismissed by the Appellate Authority.

7. The law is well settled in **Rakesh Wadhawan's** case supra. It is useful to refer to the conclusion which reads thus:-

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

8. Furthermore the Division Bench of this court in in **Rajan alias Raj Kumar v. Rakesh Kumar 2010 (1) RCR (Rent) 386** has held that once the tenant has failed to make the tender of rent within the stipulated period granted by the Rent Controller/authority, nothing remains to be done except to pass an order of eviction. In the said case, after discussing the law laid down by the Hon’ble Supreme Court in **Rakesh Wadhawan's** case (supra) and other judgments, the Division Bench concluded as under:-

“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. 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 ejectment 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.

14. We have gone through the findings given in Rajinder Lal case (supra). We respectfully are unable to agree with the proposition of law laid down therein. The rationale of the assessment as laid down in Rakesh Wadhawan's case (supra) is to be discerned from the view as expressed in para No.29 of the said judgment because the Hon'ble Supreme Court has balanced the interests of the landlords and tenants so as to ensure that the tenants get an adequate opportunity to deposit the rent consequent upon determination of the provisional rent. Whatever may be the extent of emphasis, which have been put on the view taken in the judgment relied upon by the petitioner, this Court is bound by the conclusions arrived at by the Supreme Court in Rakesh Wadhawan's case (supra) wherein it has been held that if a tenant does not comply with the order on the first date of hearing after determination of the provisional rent and other ancillary expenses by the Court, then eviction has to follow."

9. Once the petitioner-tenant has failed to deposit the rent on the stipulated date, i.e on the first date of hearing after the determination of provisional rent, nothing remains to be done other than to pass an order of eviction. The fact that the cheque issued by the petitioner-tenant has been dishonoured, it would only mean that he failed to comply with the order of the Rent Controller assessing the provisional rent. It was the duty of the

petitioner-tenant to make the payment of the provisional rent on the date, which was so fixed by the Rent Controller. Since the petitioner-tenant failed to make the payment of the rent, his eviction has been rightly ordered by the Rent Controller, in view of the settled legal position.

10. In view of the above, the civil revision in hand is hereby dismissed, being devoid of any merit.

February 25, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No