

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

CR-970-2019 (O&M)

Date of Decision: 08.02.2019

Harmesh Lal

..Petitioner

Versus

Anil Kumar

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vaibhav Sehgal, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

This is a revision petition that has been filed seeking to challenge the order dated 11.12.2018 whereby the Appellate Authority vide its impugned order had stayed the dis-possession of the appellant from the property in dispute subject to him depositing an amount of ₹1.00 Lac as arrears of rent @ ₹1400/- per month from August, 2013.

Learned counsel appearing on behalf of the petitioner-landlord herein contends that provisional rent had been assessed by the Rent Controller vide its order dated 17.07.2018 by giving the tenant 01 month's time to deposit the said rent and since the same was not deposited, eviction was ordered vide order dated 18.08.2018 in terms of judgment rendered in **“Rakesh Wadhavan Vs. M/ s Jagdamba Industrial Corporation 2002(5) SCC 440”**.

Learned counsel for the petitioner contends that the eviction was rightly ordered in terms of the above-said judgment since the tenant-respondent herein had failed to pay or tender the provisional rent as

assessed on the first date of hearing after passing the order of assessment. It is contended that the Appellate Authority had no jurisdiction to extend the time for deposit. Learned counsel for the petitioner contends that since the case is ripe for final disposal, he does not press of notice of motion to be issued or for stay of proceeding but seeks a limited direction to be issued to effect that the Appellate Authority should construe that the petitioner had given up his right to seek for eviction on non-payment of the provisional rent assessed in terms of the judgment rendered in **Rakesh Wadhavan case (supra)**.

I have heard learned counsel for the petitioner and find force in the contention that has been raised. The judgment rendered in **Rakesh Wadhavan case (supra)** is fairly clear which stipulates that on failure of a tenant to comply with the order to make payment of the provisional rent as assessed, the landlord would be entitled to possession of the said property and the date cannot be extended. The judgment has been followed subsequently by the High Court in **Nihal Singh Motors vs. Shama Malhotra, 2005 (1) RCR (Cr.) 40**

In view of the settled propositions of law, this Court deems it appropriate to allow the petition *in limine* with a direction to the Appellate Authority to decide the case in terms of the judgment as rendered in **Rakesh Wadhavan case (supra)**.

Petition stands allowed.

February 08, 2019

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No