

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

CR No.3221 of 2019 (O&M)

Date of Decision: May 24, 2019

Smt. Santosh Kumari

.... Petitioner

Versus

Pushp Lata Mehta & Ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Lokesh Sinhal, Advocate for the Petitioner.

Mr. Vishwajit Bedi, Advocate for the Caveator-
Respondent No.1.

SUDIP AHLUWALIA, J.

This Revisional Application is directed against the Judgment dated 29.04.2019 passed by the Ld. Appellate Authority, Faridabad in Rent Appeal No.4 of 2018 affirming the Judgment of the Rent Controller, vide which the Eviction Petition filed by the Respondents/Landlords under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 had been allowed.

2. Background of the matter is that the Eviction Petition was filed against the Petitioner/Tenant seeking her ejectment from the demised premises essentially on two grounds being, firstly, that she had defaulted in payment of rent for the demised premises, and secondly, that the premises were required by the Landlords for their own bonafide personal necessity.

3. From the impugned Judgment, it transpires that at an earlier

stage on 15.11.2016, during pendency of the Eviction Petition, the Ld. Rent Controller had calculated the arrears of rent to the tune of Rs.3,60,000/- including interest and costs. Such amount was not deposited on behalf of the Petitioner/Tenant on the designated date for that purpose, which happened to be 29.11.2016. She preferred an Appeal against that Order of Provisional Assessment, operation of which was, however, stayed by the Appellate Authority. On 9.12.2016, which was clearly well after the date of payment as directed by the Rent Controller (29.11.2016) had already passed, and so, the Petitioner on that date was not protected by any stay order. During pendency of the Appeal, however, the original Eviction Petition itself was decided in favour of the Landlady/present Respondent No.1, on account of which, the Appeal against the Provisional Order of Assessment was rendered infructuous.

4. It now needs to be mentioned that eviction originally had been sought for on two grounds being, firstly, the alleged default in payment of rent on the part of the present Petitioner/Tenant, and secondly, the reasonable requirement of the Landlady of the demised premises for her own use and occupation. The Ld. Rent Controller after taking evidence of both sides came to a negative finding in respect of the alleged bonafide personal necessity of the Landlady. No Appeal against such decision of the Rent Controller was preferred on behalf of Landlady/present Respondent No.1, and as such, the decision of the Rent Controller in this regard has attained finality.

5. However, the eviction of the Petitioner/Tenant was still ordered as according to the Ld. Rent Controller, she had failed to pay the

arrears of rent amounting to Rs.7,18, 531/-, which were found to have accumulated from 16.7.2014 till the date of final Judgment passed by the Rent Controller (26.2.2018), for which purpose, she was granted time of one month to tender the said amount, and, in default thereof, she was held liable to be evicted from the rented House.

6. It has been stressed on behalf of the Petitioner/Tenant before this Court that the Eviction Petition had been instituted on 8.5.2014, and Issue No.2 was framed therein, which happens to be -

“2. Whether the petitioners have already received the rent for the period as mentioned in the petition ? OPR”

7. Thereafter in answering the said issue, the Ld. Rent Controller observed *“Hence, in view of my above said discussion, it can be concluded that the respondent had tendered the rent upto 15th July, 2014, hence this issue is decided in favour of respondent.”*

8. It is in this backdrop, that the Petitioner's Counsel has argued that since no arrears of rent at least upto the date on which the Eviction Petition was filed (8.5.2014), and even thereafter till 15.7.2014 were found to be due, his client could not have been ordered to be evicted on the basis of the ground of default as specifically pleaded in the Eviction Petition. In other words, the contention raised before this Court is that non-payment of rent for the period subsequent to filing of the Eviction Petition, where it has been established that the allegations of default in payment of rent as originally pleaded were no longer outstanding, the Tenant cannot be penalized on the ground of future defaults for which, obviously, no cause of action could have accrued in the Eviction Petition as filed.

9. Reliance in this regard has been placed on the decision of the

Supreme Court in “**Shrikrishna Oil Mill Versus Radhakrishan Ramchandra**” (2002) 2 Supreme Court Cases 23, in which, it was noted -

“6. Learned counsel for the appellant has placed reliance on a decision of three-Judge Bench of this Court in S. Sundaram Pillai v. V.R. Pattabiraman [1985 (1) SCC 591]. In that case though the tenant had committed default but he had paid the entire rent before filing of the suit by the landlord. The court observed that in fact, the suit for eviction was filed by the landlord only to penalise the tenant for having defaulted in the past and, therefore, it was held that such a suit cannot be entertained because once the entire dues are paid to the landlord, the cause of action for filing of a suit completely vanishes.

7. Next decision of this court, which has been placed before us by the learned counsel for the appellant is in K.A. Ramesh v. Susheela Bai [1998 (3) SCC 58]. In that case arrears of rent were due from July, 1988 to December, 1988. Before filing of the eviction petition, the tenant made full payment of arrears of rent by bank draft, which was accepted by the landlord. On these facts it was held that there was no default at all, much less willful default on the part of the tenant in paying the rent for the months in question and, therefore, the application for eviction ought to have been summarily rejected. It was urged on behalf of the landlord that even during the pendency of the eviction proceedings there was default on the part of the tenant as no rent was paid and, therefore, the tenant was liable to be evicted. The court rejected the contention inter alia on the ground that as the eviction petition became infructuous, for subsequent default eviction cannot be ordered.

8. We are of the opinion that in the case in hand at the time of filing of the present eviction petition, landlord had no cause of action as the arrears of rent were paid and accepted

by the landlord and, therefore, the petition became infructuous and liable to be rejected. For subsequent default also eviction cannot be ordered in view of the stated legal position and in absence of any legal provision in the Act. In view of the above legal position, the contention of the learned counsel for the respondent has no substance. This contention is also not sustainable in view of the decisions of this Court in S. Sundaram Pillai (supra) and Teegala Satyanarayana (supra).”

10. The Ld. Appellate Authority, however, found that the aforesaid decision in **“Shrikrishna Oil Mill” (supra)** and the Citations referred to in the same were not applicable to the present case, since those were passed in the context of specific Acts as applicable in the relevant States, from where, the Appeal had been preferred, whereas in this case, the decision of the Apex Court in **“Rakesh Wadhawan and others Versus Jagdamba Industrial Corporation and others” (2002) 5 Supreme Court Cases 440** would apply, since it was pronounced in relation to the eviction proceedings conducted specifically under Section 13(2) (i) of the East Punjab Rent Restriction Act, 1949, which is virtually identical with Section 13 (1) (ii) of the Haryana Urban (Control of Rent & Eviction) Act, 1973.

11. This Court has considered the decisions of the Supreme Court in **“Shrikrishna Oil Mill” (supra)** as well as **“Rakesh Wadhawan” (supra)** and finds itself in agreement with the observations of the Ld. Appellate Authority.

12. The relevant conclusions of the Apex Court in its decision in **“Rakesh Wadhawan” (supra)** pertaining to aftermath in an eviction proceeding, subsequent to passing of the Provisionally assessed rent ordered by the Rent Controller as laid down are as follows -

“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 the 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.”

13. However, the conceivable possibilities regarding the correctness of Rent Controller's adjudication pertaining to the Tenant's rental liability had also been discussed in detail by the Apex Court in Para 29 of the aforesaid Judgment, which happens to be -

“29. The result of the discussion may be summarized. Under proviso to Section 13(2)(i), the Controller having discharged his obligation of passing an order under the proviso, either suo motu or on his attention in this regard being invited by either of the parties, it will be for the tenant to pay or tender

the amount provisionally assessed by the Controller on the first date of hearing of the application for ejectment. On compliance, the Controller would proceed to adjudicate upon the controversy arising for decision by reference to pleadings of the parties and by holding a summary enquiry for the purpose. Such adjudication shall be provisional and subject to the later final adjudication. The finding that may ultimately be arrived at by the Controller may be one of the following three: the Controller may hold that the quantum of arrears as determined finally is (i) the same as was found to be due and payable under the provisional order, (ii) is less than what was determined by the provisional order, or (iii) is more than the one what was held to be due and payable by the provisional order. In the first case the Rent Controller has simply to pass an order terminating the proceedings. In the second case the Controller may direct the amount deposited in excess by the tenant to be refunded to him. In the third case, it would not serve the purpose of the Act if the tenant was held liable to be evicted forthwith as is the view taken by the Punjab High Court in the case of Dial Chand v. Mahant Kapoor Chand, (1967) 69 Punj LR 248. The Controller directing the eviction of the tenant may pass a conditional order affording the tenant one opportunity of and a reasonable time for depositing the amount of deficit failing which he shall be liable to be evicted. This power in the Rent Controller can be spelled out from the use of the word "may" in the expression "The Controller may make an order directing the tenant to put the landlord in possession", as also from the principle of equity and fair play that the tenant having complied with provisional order passed by the Controller should not be made to suffer if the finding arrived at by the Controller at the termination of the proceedings be different from the one recorded in the provisional order. While exercising the discretion to make a conditional order of eviction affording the tenant an opportunity of purging himself of the default the Controller may also take into consideration the conduct of the tenant whether he has even after the passing of the provisional order continued to pay or

tender the rent to the landlord during the pendency of the proceedings as a relevant factor governing the exercise of his discretion. Such a course would be beneficial to the landlord too as he would be saved from the trouble of filing a civil suit for recovery of rent which fell due during the pendency of proceedings for eviction before the Controller.”

(Emphasis added)

14. It is thus seen that discretion has been granted to the Rent Controller to take into consideration the conduct of the Tenant on whether even after passing of the provisional order, he continued to pay or tender the rent during pendency of the proceedings, with a view to secure benefit to the Landlord, and to save him from the trouble of filing a Civil Suit for recovery of rent which fell due during pendency of the proceedings. These particular observations are what distinguish the decision of the Supreme Court in **“Rakesh Wadhawan” (supra)**, which was pronounced on 26.4.2002 from that in **“Shrikrishna Oil Mill” (supra)**, which was delivered by a different Bench a few months earlier on 9.1.2002. In such situation, conduct of the Petitioner/Tenant in not having paid or tendered the subsequent rent to the Landlords throughout pendency of the Eviction Proceedings even under protest or without prejudice to her right to challenge the correctness of the provisional rent assessed, and failure to pay the finally determined amount of Rs.7,18,531/- instead of having been specifically granted an opportunity for that purpose is clearly fatal to her case.

15. Even otherwise, there is a subtle but significant distinction in the facts of the present case from those in **“Shrikrishna Oil Mill” (supra)**. As seen from the facts transpiring from Para 6 of the

decision in “**Shrikrishna Oil Mill**” earlier, the Tenant had committed default, but had paid the entire rent before filing of the Eviction Suit by the Landlord, on account of which, the Court had observed that the Suit was filed only to penalize the Tenant for having “defaulted in the past”, on account of which, it could not be entertained because once the entire dues were paid, the cause of action for filing the same completely vanished.

16. In the present matter, however, it is nowhere the case that the Petitioner/Tenant had already paid up all the admissible dues to the Landlords before filing of the Eviction Petition. On the contrary, she had been consistently disputing the rate of rent itself, as also to a lesser extent even the competence of the Landlady to continue to collect the rent from her. In any case, she was determined to be in arrears of rent at least with effect from 16.7.2014 i.e. during pendency of the eviction proceedings, but instead of making payment of provisionally assessed rent and outstanding dues, challenged the Rent Controller's order in appeal, which ultimately was rendered infructuous due to disposal of the Eviction Petition itself in the meantime. Thereafter, she did not deposit, pay or tender the amount of Rs.7,18,531/-, which she was directed to do so to protect herself for eviction vide the Rent Controller's impugned Judgment. Such conduct on her part would undoubtedly lead to the appropriate consequences mentioned in Para 4 of the conclusions of the Apex Court in “**Rakesh Wadhawan**” (*supra*), and so no indulgence can be granted to her by relying upon the decision in “**Shrikrishna Oil Mill**”, when infact subsequent decision in “**Rakesh Wadhawan**” has

been pronounced specifically in relation to the proceedings conducted under The East Punjab Rent Restriction Act/The Haryana Urban (Control of Rent & Eviction) Act.

17. No grounds are, therefore, made out to interfere with the impugned Judgments passed by the Rent Controller and Appellate Authority.

18. Dismissed.

(SUDIP AHLUWALIA)
JUDGE

May 24, 2019
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|--------------------------------|--------|
| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |