

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

CR No. 669 of 2005 (O&M)

Date of decision: February 27, 2019

Jai Parkash

...Petitioner

Versus

Om Prakash

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Parveen Hans, Advocate,
for the petitioner.

Mr. C.B. Goel, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. Aggrieved against the order dated 21.2.2003 of eviction passed by the Rent Controller, Hansi and against the order dated 28.9.2004 of the Appellate Authority dismissing the appeal, the instant petition has been filed.

2. In brief, the facts as stated are that an eviction petition was filed by Om Parkash, the respondent herein, on the grounds that there is a relationship of landlord and tenant between the parties. It was stated that the petitioner tenant defaulted and is in arrears of rent from 01.06.1998 at the rate of ₹265/- per month, which had not been paid despite repeated demands. It was also stated that the shop was required by the landlord for starting business for his son Sanjeev Kumar, while further stating that the said shop had become unfit for human habitation and can fall at any time.

The eviction petition was contested and the tenant took the preliminary objections to the effect that the respondent herein had no locus standi to file the present petition; no rent was due to be paid by him, as all payment had been made by him to the landlord; there was no bona fide requirement or necessity to get shop vacated for his business and that the shop in question was in a good condition. Replication was filed, wherein the contents of the eviction petition were reiterated. On completion of pleadings, the following issues were framed by the Rent Controller.

1. Whether the respondent is in arrears of rent w.e.f. 1.6.1998 @ Rs. 265/- per month and respondent is liable to be ejected on this ground? OPP
 2. Whether the shop in question is required by the petitioner for his personal necessity and respondent is liable to be ejected on this ground? OPP
 3. Whether the demise shop is unfit and unsafe for human habitation and respondent is liable to be ejected on this ground ? OPP
 4. Whether the petitioner has no cause of action and locus standi to file the present petition ? OPR
 5. Whether the civil court has no jurisdiction to try and entertain the present suit? OPR
 6. Relief.
3. Evidence was led by both parties concerned and thereafter the

Rent Controller, decided the issues. Issue No. 1 was decided against the

petitioner holding him to be in arrears of rent. However, on the question of personal necessity, the plea was found to be not genuine, even the plea set up that the shop was in dilapidated condition was not believed, as there was no cogent evidence available on the record. Ejectment of the petitioner came to be ordered on the ground that he was in arrears of rent. The order of ejectment was affirmed in appeal. Aggrieved, the instant petition has been filed.

4. Learned counsel appearing on behalf of the petitioner urges that both the courts below have erred in law in not complying with the mandate of provisions of section 13 (2) (i) of Haryana Urban (Control of Rent and Eviction) Act 1973 (hereinafter referred to as '**the Act**'). It is contended that as per the provisions of Section 13 (2) (i) of the Act, the Rent Controller was duty bound to make an order of assessment of arrears of rent with interest and the cost. It is argued that the Rent Controller was duty bound to make assessment of arrears of rent with interest and give an opportunity to the petitioner tenant to deposit the same before he could order eviction on the grounds of non-payment of rent and since no such assessment had been made and no opportunity was given, the order of eviction is not sustainable. It is also argued that as per law laid down by the Supreme Court in **Rakesh Wadhawan Vs. Jagdamba Industrial Corporation, JT 2002 Supplementary SC 11**, the petitioner was entitled to one opportunity to tender arrears of rent.

5. Per contra, learned counsel appearing on behalf of the respondent—landlord would argue that the petitioner has rightly been ordered to vacate the premises, as he was a defaulter and was in arrears of

rent.

6. I have heard learned counsel for the parties and have also perused the pleadings of the case and the case law cited.

7. Admittedly, an eviction petition came to be filed at the behest of the respondent herein on the ground that the petitioner was in arrears of rent; the demised premises is required for the bona fide necessity of his son; the same was in a dilapidated condition and unfit for human habitation. The Rent Controller, and subsequently, the appellant authority ordered eviction only on the ground that the petitioner herein was in arrears of rent.

8. An argument has been raised by the counsel for the petitioner that the Rent Controller was duty bound as mandated under section 13 (2) (i) of the Act to frame an issue as to the provisional assessment of rent and give an opportunity to deposit the same. However, this argument is without force in the instant case .

9. The petitioner in the present case had taken a categorical plea that he was not in arrears of rent and that the rent had been paid up to date. In the reply filed the petitioner did not take a specific stand as to what the rate of rent was so as to create a dispute regarding the rate of rent. In view of the definite stand taken that he was not in arrears of any rent, there was no occasion for the Rent Controller to make a provisional assessment of rent in terms of the law as settled in **Rakesh Wadhawan's cases (supra)**

10. In fact, in a similar case, **Hukma Devi Versus Bhagwan Das 2003 (1) RCR (Rent) 533** , eviction was sought on the ground of arrears

of rent. The tenant denied the relationship of landlord and tenant. Thereafter an issue arose, whether it was incumbent on the Rent Controller to frame issue regarding assessment of rent and gave an opportunity to the tenant to pay arrears of rent along with interest and cost. It was held that the Rent Controller would not be under an obligation to pass an interim order assessing the rent, interest and cost of application in a case where the tenant denied his relationship with the landlord. It was held that after the tenant has taken the stand that he is not a tenant and the findings recorded by both the courts below have gone against him, then the consequences must follow, namely that he is a tenant but in order to avoid payment of rent he has set up a false plea of denying the relationship of landlord and tenant. This view was reiterated in **Yashpal Singla versus Vijay Kumar 2004 (2) RCR (Rent) 718**.

11. Therefore, in view of the same principle as held in **Hukma Devi's case (supra)**, when the petitioner himself denied the liability to pay rent and claimed rent was upto date, then there was no occasion for the Rent Controller to pass an interim order to assess the rent and give the petitioner an opportunity to tender the same. Therefore, the ratio of judgment of **Rakesh Wadhwan's case (supra)** does not apply to the facts of the present case.

12. For the reasons afore-stated, this revision is dismissed being bereft of merit.

February 27, 2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No