

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6959-2017(O&M)

Date of decision: 08.01.2020

Dinesh Kumar

.....Petitioner

Versus

Abdul Rashid

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Sunny K Singla, Advocate for the petitioner

Mr.Puneet Pali, Advocate for

Mr. Mohd. Salim, Advocate for respondent

ANIL KSHETARPAL, J. (ORAL)

Some facts are required to be noticed. Respondent-landlord filed a ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 seeking eviction of the petitioner-tenant from a shop situated at Guruteg Bahadur Colony, Backside Prem Lata Hospital, Malerkotla. Eviction has been sought on the ground of non-payment of rent. Landlord claims that the rate of rent is Rs.5,000/- per month with an agreement to increase the rent @ 5% per year whereas the tenant claims that rate of rent is Rs.2500/- per month. Learned Rent Controller made a provisional assessment of rent at the rate of Rs.3500/- per month alongwith house tax, interest and cost. Such provisional assessed rent was duly deposited by the tenant.

While finally adjudicating the case, the Rent Controller assessed that the rent payable is Rs.5000/- per month. However, the

clause providing for increase of the rent yearly was held to be not enforceable. The Court ordered that the tenant would pay arrears of rent as per the directions of the Court within a period of two months. The relevant extract of the directions in the judgment dated 30.1.2017 are extracted as under:-

“17. Perusal of the file reveals that the respondent has paid the rent at the rate of Rs.3500/- per month along with the house tax. Since, the respondent has been found to be as tenant @ of Rs.5000/- per month therefore, he is directed to pay the rent at the rate of Rs.5000/- per month along with house tax and interest as per the rent note dated 7.2.2010. The rent already tendered by the respondent be adjusted accordingly. It is further mentioned that in case the respondent failed to pay the rent as per the direction of this Court, within the period of 2 months, in that eventuality, the respondent is liable to be ejected on the ground of arrears of rent. Therefore, issue No.1 to 3 are hereby decided against the respondent and in favour of the petitioner/applicant.”

Tenant filed an application for depositing the aforesaid arrears as directed within a period specified i.e on 28.3.2017 which was allowed and the tenant deposited Rs.10,380/- in the Government Treasury as directed by the Executing Court.

The landlord filed an application for execution of the order

of ejectment with the plea that the amount of Rs.9,982/- has not been deposited vide application dated 30.3.2017. The Executing Court without issuing notice and verifying as to whether any amount has been deposited or not, passed the following order on 10.4.2017:-

“Report of Ahlmad seen. As per the report of Ahlmad no stay order received from Appellate Court and the present execution has been filed within period of one year from the date of passing Decree. It be registered.

Accordingly, warrants of possession be issued for 20.5.2017.”

Tenant-petitioner on coming to know of the fact that warrants of possession have been issued, filed an application for recall of the warrants of possession vide application dated 11.5.2017 which was allowed by the Court on 11.5.2017. Order passed by the Court is as under:-

“Report of Ahlmad received vide which it is stated that warrants of possession was issued on 20.5.2017. As per the report of Nazir, no entry in the Civil Deposit Register regarding the deposit of any amount is mentioned/registered in Civil Deposit Register and report of ATO Malerkotla be called.

Since at this stage, it cannot be ascertained as to whether JD has complied with the orders of this court or not, therefore, warrants of

possession, already issued be recalled for the time being and report of ATO Malerkotla be called for the date already fixed i.e 20.5.2017.”

However, in the meantime on the same date i.e 11.5.2017 the possession was delivered to the landlord.

Faced with these circumstances, the tenant filed an application for restoration of possession which has been dismissed by the Court on the ground that there is deficiency of Rs. 1485/- in deposit of arrears of the rent assessed.

It may be noted here that the tenant also subsequently realized that there is deficiency in the deposit of the rent assessed and moved an application for permission to deposit Rs.1485/- which was allowed and the amount stands deposited.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the paper book. In the considered view of this Court, the revision petition is liable to be allowed on the following two grounds:-

i) There are no subsisting warrants of possession in favour of the landlord, particularly, when on 11.5.2017 warrants of possession already issued stood recalled. Therefore, the landlord has no right to remain in possession.

ii) From the reading of the judgment passed by the Court on 30.1.2017 while finally deciding the ejectment petition it is apparent that the Court failed to assess the amount of house tax, interest and the cost, required to be paid by the tenant to the landlord. In such a situation,

tenant made his own calculation and deposited the amount within the time prescribed i.e Rs.10,380/- on 28.3.2017 i.e within the time prescribed. In such situation, the Executing Court without noticing that some amount has been deposited, proceeded to issue warrant of possession. When this fact was brought to the notice of the Court, the warrants of possession were in fact revoked after realizing error. However, it was too late. In these circumstances, the Executing Court committed an error in refusing to restore the possession to the tenant. As per East Punjab Urban Rent Restriction Act, 1949, the Rent Controller is not only required to assess the rent but is also required to assess the amount representing house tax, interest for delayed payment and the cost payable by the tenant. In the present case, the Rent Controller has not assessed either the house tax or the interest payable or the cost.

Keeping in view the aforesaid facts, the deposit of remaining amount of Rs.1485/- by the tenant is considered to be deposited within time. The time granted by the Rent Controller shall stand extended. The Executing Court is directed to get the possession restored to the tenant within one month from today. However, this order would be subject to the decision of the first appeal filed by the tenant.

08.01.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)**JUDGE**

Yes / No

Yes / No