

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

CR-202-2021

Date of decision: 10.02.2021

Neera Chadha

.....Petitioner

Versus

Smt. Pardeep Kaur @ Pooja

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Surender Pal, Advocate for the petitioner.

ALKA SARIN, J.

Heard through video conferencing.

This petition under Article 227 of the Constitution of India has been preferred by the landlady-petitioner against the order dated 11.01.2021 passed by the Rent Controller, Jagadhari dismissing her interim application for eviction of the tenant-respondent on the grounds of non-payment rent, damaging the suit property and for changing the nature of the suit property by raising construction.

The facts in brief are that on 03.07.2019 the landlady-petitioner filed an ejectment petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 before the Rent Controller, Jagadhari seeking eviction of the tenant-respondent from the demised premises on certain grounds including non-payment of rent for two months i.e. from

01.06.2019 to 30.07.2019. Notice was issued to the tenant-respondent. Thereafter, vide order dated 27.02.2020 the Rent Controller, Jagadhari provisionally assessed the rent and passed the following order (Annexure P-1) :

“Today, the case is fixed for provisional assessment of rent. In view of the observation of the Hon’ble Apex Court in the case titled as Rakesh Wadawan Versus Jagdama Industrial Corporation 2000(2) The Punjab Law Reporter 370, after hearing both the parties, the provisional rent is being assessed as under:-

<i>Rate of rent of Rs.10,000/- per month</i>	<i>Rs.20,000/-</i>
<i>w.e.f. 01.06.2019 to 30.07.2019</i>	
<i>i.e. 2 months</i>	

<i>Interest</i>	<i>Rs.1134/-</i>
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<i>Cost</i>	<i>Rs.500/-</i>
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<i>Total</i>	<i>Rs.21634/-</i>
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Now, the case is adjourned to 12.03.2020 for payment of assessed rent.”

On 12.03.2020 the provisional rent as assessed was tendered by the tenant-respondent and the same was accepted by the landlady-petitioner under protest. On 12.03.2020 the issues were also framed and the case was adjourned for evidence of the landlady-petitioner. The order dated 12.03.2020 passed by the Rent Controller, Jagadhari (as available on the Court website) reads as under :

“Provisionally assessed rent has been tendered by respondent and the same has been accepted by applicant under protest vide recorded their separate statements.

From the pleadings of the parties following issues are hereby framed:-

- 1. Whether the respondent is liable to be ejected from the demised premises as prayed for? OPA*
- 2. Whether the present application is not maintainable? OPR*
- 3. Relief.*

No other issue is pressed or claimed. Now, the case is adjourned to 07.04.2020 for evidence of applicant on filing of PF, DM and list of witness etc. within 15 days failing which evidence should be brought at own responsibility. The applicant is directed to tender his evidence first, as per provision of Order 18 Rule 3A, CPC.”

Thereafter, the ejectment petition was adjourned on some dates due to the Covid-19 Pandemic. In August 2020, the landlady-petitioner filed an interim application (Annexure P-2) before the Rent Controller, Jagadhari stating therein that the tenant-respondent had not made any payment of rent w.e.f. 31.07.2019 till date and had violated the order dated 27.02.2020. It was also averred that on 05.08.2020 the tenant-respondent had started collecting building material and threatened to make additions/alterations and that the tenant-respondent had carried out certain additions/alterations illegally and changed the nature of the demised premises. On these

allegations it was prayed in the interim application that the tenant-respondent be evicted on the grounds of non-payment of rent, damaging the suit property and for changing the nature of the suit property by raising construction.

The tenant-respondent contested this interim application and filed reply. Vide order dated 11.01.2021 the Rent Controller, Jagadhari dismissed the interim application (Annexure P-2) of the landlady-petitioner for eviction of the tenant-respondent on the grounds of non-payment rent, damaging the suit property and for changing the nature of the suit property by raising construction. The main ejectment petition was adjourned to 05.02.2021 for evidence of the landlady-petitioner. The order dated 11.01.2021 has been impugned in the present revision petition.

Learned counsel for the landlady-petitioner has contended that the impugned order dated 11.01.2021 is illegal, arbitrary and erroneous. According to the counsel, once the rent had been provisionally assessed on 27.02.2020 @ Rs.10,000/- per month, the tenant-respondent was bound to pay the rent at this rate for the entire period in default upto the date of payment and even thereafter and since the tenant-respondent had failed to do so, the Rent Controller, Jagadhari ought to have ordered her eviction. He also submitted that since the other grounds of eviction on account of damaging the suit property and changing the nature of the suit property by raising construction arose during the pendency of the main ejectment petition, the Rent Controller ought to have taken the same into consideration and ordered eviction of the tenant-respondent by exercising its inherent

powers. The counsel for the petitioner cited '**Rakesh Wadhawan vs. M/s Jagdamba Industrial Corporation**' [2002(5) SCC 440] and '**Parshotam Das Goel vs. Rajender Jain**' [2012(3) PLR 60] in support of his submissions.

After hearing the submissions made by the counsel for the petitioner, this Court is satisfied that there is no illegality in the impugned order dated 11.01.2021 passed by the Rent Controller, Jagadhari. The main ejectment petition was filed by the landlady-petitioner seeking eviction of the tenant-respondent from the demised premises on grounds which included arrears of rent for two months only i.e. from 01.06.2019 to 30.07.2019. Vide order dated 27.02.2020 (Annexure P-1) the Rent Controller, Jagadhari determined the provisional rent for these two months and adjourned the case for payment of the assessed rent which was for two months only. There was no direction in the order dated 27.02.2020 that the rent for the demised premises shall be Rs.10,000/- per month from 01.06.2019 onwards for every month and that the tenant-respondent was to deposit the same on the date fixed. The order dated 27.02.2020 is clear in as much as the provisional rent was determined only for two months (01.06.2019 to 30.07.2019) and the tenant-respondent was called upon to deposit the same on the date fixed. On 12.03.2020 the tenant-respondent tendered the provisionally assessed rent. Learned counsel could not explain as to how the eviction of the tenant-respondent could be summarily ordered by the Rent Controller, Jagadhari once she had tendered the provisionally assessed rent for the period mentioned in the main ejectment petition i.e. 01.06.2019 to 30.07.2019.

In Rakesh Wadhawan's case (*supra*), the conclusions are summed up in para 30 which reads as under :

“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 the East Punjab Urban Rent Restriction Act, 1949 casts an obligation on the 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 the 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 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.”*

Thus, it is only on the failure of the tenant to comply with the provisional assessment of rent that an order for eviction can be passed immediately by the Rent Controller. 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 Rent Controller. The judgement by the Apex Court also makes it clear that if the final adjudication by the Rent Controller is at variance with his provisional assessment of rent then, if the amount deposited by the tenant is found to be in excess, the Rent Controller may direct a refund and, if the amount deposited by the tenant is found to be short or deficient, the Rent 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 he shall be liable to be evicted. The discretion available to the Rent Controller, as mentioned in conclusion number 6 of the judgement, is in the second situation when the amount deposited by the tenant is found to be short or deficient.

In the present case the tenant-respondent has tendered the provisionally assessed rent. The situation of ordering immediate eviction of the tenant-respondent in the light of the decision in **Rakesh Wadhawan's** case (*supra*) has not arisen since the provisionally assessed rent has been tendered by the tenant-respondent. It is yet to be finally determined if this tender was in excess or short. That would be done after the parties lead their respective evidences. The enquiry by the Rent Controller, Jagadhari is in progress and no final adjudication has been made in the main ejectment petition. In any event, each default by a tenant in the payment of rent gives the landlord a fresh cause of action to seek his eviction. In the present case the landlady-petitioner has admittedly filed another ejectment petition against the tenant-respondent on the ground of arrears of rent for the period

after 30.07.2019 which ejectment petition is pending. Reliance by the counsel for the petitioner on the decision in **Parshotam Das Goel's** case (*supra*) is also misplaced as that case related to reassessment of the provisional rent by the Rent Controller which has no application to the case in hand.

The other grounds mentioned in the interim application (Annexure P-2) of damaging the suit property and of changing the nature of the suit property by raising construction, the same cannot be accepted without any evidence having been led. Moreover, the averments in the interim application (Annexure P-2) regarding these grounds are from the period 05.08.2020 i.e. after the filing of the main ejectment petition and thus clearly are not part of the main ejectment petition which was filed on 03.07.2019. The Rent Controller, Jagadhari could not have ordered eviction of the tenant-respondent on grounds which are not part of the main ejectment petition but have been raised subsequently only in the interim application (Annexure P-2).

In view of the discussion above, this Court finds no illegality or perversity in the impugned order dated 11.01.2021 passed by the Rent Controller, Jagadhari. There is no merit in the present revision petition and the same is dismissed.

Dismissed.

10.02.2021
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(ALKA SARIN)
JUDGE

Whether speaking/reasoned **Yes**

Whether Reportable **Yes/ No**