

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

CR-1931-2020 (O&M)

Date of decision: 15. 09.2021

Sunil Kumar

....Petitioner

Versus

Rewati Raman

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sudhanshu Makkar, Advocate for the petitioner

Mr. Neeraj Gupta, Advocate for the respondent

ANIL KSHETARPAL, J

The petitioner (tenant) assails the correctness of the orders of eviction passed by the Rent Controller as well as by the Appellate Authority. The eviction has been ordered on the ground that petitioner has failed to pay the rent for three months i.e October, November and December, 2012. This was the only ground to seek eviction.

Facts:-

The respondent-landlord filed a petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973, (hereinafter referred to as 'the 1973 Act') claiming that he had let out the shop to the petitioner for a period of 11 months with effect from 01.08.2012 to 30.06.2013 at a monthly rent of Rs.2500/- by executing a rent note dated 22.08.2012. The petitioner agreed to pay the rent, in advance, against a proper receipt, however, he has failed to pay the same.

The petitioner, while filing the written statement, submitted

that the landlord is habitual of disturbing his peaceful possessory right as a tenant and he has forcibly tried to get the vacant possession. It was further asserted that the landlord has cheated the petitioner by writing a bogus rent deed while taking his signatures on a blank paper on the pretext of installing a meter in the aforesaid shop. He asserted that a family panchayat was held and the bogus rent deed was cancelled. The petitioner claims that he is tenant under Manmohan Sharma s/o Mangesh Sharma since 2003 and has been timely paying the rent to him.

During the pendency of the eviction petition, applications by the landlord and the tenant for provisional assessment of rent were filed. The Rent Controller vide an order dated 25.02.2014 declined to assess the provisional rent while observing that if the landlord succeeds in proving the relationship then the question of assessment of provisional rent shall be decided in due course of law. The operative part of the order passed by the Rent Controller on 22.02.2014 is extracted as under:-

“4. It is however further made clear that there is no other case pending between parties except this rent petition. Before proceeding further, this Court find justification to direct the petitioner to establish relationship of landlord and tenant and if petitioner succeeds in doing so then the question of assessment of provisional rent shall be decided in due course of law. Without commenting upon merit or demerit of this petition, at this stage, the present application for assessment of provisional rent stand declined. Case is adjourned to 12.5.2014 for settlement of issues. Rejoinder, if any, be also filed on that date.”

From the perusal of the file of the Rent Controller, it is evident that thereafter the Rent Controller never assessed the provisional rent in order to give an opportunity to the tenant to pay the rent.

Section 13 (2)(i) of the 1973 Act provides that if the tenant has not paid or tendered the rent, due to him, in respect of rented building or land, within 15 days after the expiry of the time fixed in the agreement of tenancy with his landlord, he shall be liable to be evicted. However, proviso to Section 13 (2)(i) provides that if the tenant, within a period of 15 days, of the first hearing of the application for ejectment, after the due service, pays or tenders the rent or the arrears of rent and interest to be calculated by the Controller at 18% per annum on such arrears, together with such costs of the application, the tenant shall be deemed to have paid or duly tendered the rent within the aforesaid time. Section 13 of the 1973 Act is extracted as under:-

“13. Eviction of tenants.—(1) A tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of this section.

(2) A landlord who seeks to evict his tenant shall apply to the Controller, for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied,—

(i) that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable:

Provided that if the tenant, within a period of fifteen days of the first hearing of the

application for ejectment after due service, pays or tenders the arrears of rent and interest, to be calculated by the Controller, at eight per centum per annum on such arrears together with such costs of the application, if any, as may be allowed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid:

Provided further that the landlord shall not be entitled to claim arrears of rent for a period exceeding three years immediately preceding the date of application under the provisions of this Act;”

The aforesaid provision came up for interpretation before the Hon'ble Supreme Court in '**Rakesh Wadhawan and others vs. Jagdamba Industrial Corporation and others**' (2002) 5 SCC 440. The Hon'ble Supreme Court after interpreting the pari materia provisions of East Punjab Urban Rent Restriction Act, 1949, held that it is the responsibility of the Rent Controller to assess the provisional rent and if the tenant deposits the same within the time prescribed, the payment shall be deemed to have been made within time. The Court further held that if there is a variance between the provisional assessment and the final assessment and the tenant is further required to pay some amount then the Rent Controller will pass a conditional order granting opportunity to the tenant to pay the rent. Para 30 of the judgment in Rakesh Wadhawan (supra) is extracted 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.”

In the present case, as noticed above, the Rent Controller did not assess the provisional rent as required in accordance with the statutory provision. Rather, it is clear that the Rent Controller declined to assess the rent in the facts of the case. It is important to note that originally the rented premises were owned by late Sh. Madan Mohan Sharma, who died on 17.09.2002. He has left behind four sons, namely Dwarka Nath, Jawala Prashad, Mangesh and Rewati Raman (respondent). In the eviction petition, Rewati Raman (respondent) claimed that the tenant had taken the shop on rent vide a rent deed dated 22.08.2012 and he has failed to pay the rent for the three consecutive months. On the other hand, the tenant has denied the relationship on the ground that he has been continuously in possession of the premises since 2003 and has been paying the rent previously to Madan Mohan Sharma and subsequently to Mangesh and thereafter to Man Mohan Sharma. Man Mohan Sharma is the nephew of Rewati Raman (respondent) (in other words Manmohan Sharma is son of brother of respondent). He has not appeared in evidence. Both the courts have ordered eviction on the ground that the tenant has failed to tender the rent. The courts have held

that since the tenant denied the relationship, the petitioner is not entitled for an opportunity to tender the rent. There are series of precedents on this aspect. However, in the present case, the tenant does not dispute his status as a tenant. He has only asserted that he is tenant under other members of the family of the landlord. Hence, the denial of tenancy is not absolute. The respondent (landlord) while filing the petition has not explained as to how he became the landlord of the premises. Subsequently, in evidence he claims that the aforesaid property has come to his share in an oral family settlement. It has come on record that in the written statement the tenant has taken a stand that he is in occupation of the premises as tenant since the year 2003. In deposition also he reiterated that fact. On careful perusal of the cross examination, it is clear that the correctness of the aforesaid statement has not been impeached in the cross examination. No doubt, the tenant is entitled to an opportunity to tender the rent, nevertheless, if the tenant takes the risk of denying relationship of the landlord and tenant then he runs a risk of eviction, without getting an opportunity to tender the rent. After the judgment passed by the Hon'ble Supreme Court in Rakesh Wadhawan's case (supra) there are series of judgments on this aspect. Reference in this regard can be made to **Yash Pal Singh vs. Vijay Kumar (2004) 1 RCR (Rent) 603**, **Narinder Singh vs. Sarabjit Singh 2007 (2) PLR 405** and **Hukma Devi Vs. Bhagwan Dass 2003 (2) PLR 371**.

The learned counsel representing the petitioner contends that since the petitioner-tenant has not been granted an opportunity to tender the rent, as a consequence, the order is liable to be set aside. Per

contra, learned counsel representing the respondent contends that once the tenant has denied the relationship, on that count, no opportunity is required to be given.

On careful perusal of Ex.P1, the rent note dated 22.08.2012, it is crystal clear that the petitioner executed a rent note for a period of 11 months. Even if he was in possession of the premises before the execution of the agreement, yet he is bound by the rent note executed. Thus, the petitioner cannot claim that he did not know that the respondent is the landlord. Although, the petitioner has averred that his signatures on the aforesaid rent note were taken deceptively on some other pretext, however, he has failed to prove that fact. A perusal of the rent note, Ex.P1 proves that the petitioner has signed on each page of the rent note in the English language which indicates that the petitioner is an educated person. On the last page, he has signed at two different positions/spots. The petitioner also signed the stamp paper at the time of its purchase which proves that it is the petitioner who had bought the stamp paper for the execution of the rent deed. Furthermore, the rent note was duly notarized. The Notary Public Sh. B.N.Bansal, Advocate, has also deposed that the petitioner and respondent landlord brought the document to him for getting it notarized and the petitioner signed in his notebook. The petitioner himself has appeared in evidence. He has failed to substantiate his assertion that his signatures on the rent note were taken by practising deceit.

Both the courts have held that the petitioner is a tenant under the respondent w.e.f 01.08.2012. Hence, the denial of relationship

cannot be said to be honest on the part of the petitioner. Additionally, a Five Judge Bench of the Hon'ble Supreme Court in **Hindustan Petroleum Corporation Limited vs. Dilbahar Singh 2014 (9) SCC 78**, has held that the scope of revisional jurisdiction is narrow and the High Court while exercising the revisional jurisdiction is not expected to re-appreciate the evidence.

In view of what has been discussed above, the revision petition is dismissed. The petitioner is granted two months time to hand over the vacant physical possession of the tenanted premises to the landlord.

15.09.2021

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE