

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

**CR-1337-2016
Decided on:-01.09.2022**

M/s Bharti Airtel Ltd. and anotherPetitioners...

vs.

M/s Shakti Floor Roller MillsRespondents.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr.Sanjiv Pabbi, Advocate,
for the petitioners.

Mr. Santosh Sharma, Advocate,
for respondent No.1.

HARKESH MANUJA J.

By way of present revision petition, the petitioners-tenants have challenged the eviction, ordered against them on the basis of order dated 30.01.2014 passed by learned Rent Controller, Ludhiana, upheld vide order dated 04.08.2015 passed by the learned Appellate Authority, Ludhiana.

2. In the present case, the respondent-landlord filed an eviction petition against the petitioners on the ground of non-payment of rent. Vide order dated 06.01.2014, the learned Rent Controller, Ludhiana, assessed provisional rent to the tune of Rs.5,87,500/-along with interest & costs of the proceedings and the matter was adjourned to 30.01.2014, for payment of the amount assessed. On the date fixed i.e. 30.01.2014, petitioners did not deposit the amount, as such, on account of non-compliance of the provisional assessment order,

eviction was passed against the petitioners and they were directed to hand over the vacant possession of the tenanted premises to the respondent herein.

3. It would be relevant to mention here that between 06.01.2014 to 30.01.2014, the petitioner-tenant did not question the validity of the provisional assessment order passed against it by the learned Rent Controller on 06.01.2014, neither on the ground of fraud nor regarding quantum of rent payable. Subsequently, the eviction order dated 30.01.2014 was challenged by way of first appeal filed before the Appellate Authority, Ludhiana. However, relying upon the ratio of law decided in case of ***“Rakesh Wadhawan vs. M/s Jagdamba Industrial Corporation, 2002 (1) RCR, 266 (SC)***, the appeal filed by the petitioner was also dismissed mentioning therein that once the tenant had failed to deposit the provisional rent assessed by the learned Rent Controller, an order of eviction had to follow.

4. In the present revision petition, the petitioners have challenged two orders dated 30.01.2014 and 04.08.2015 passed by learned Rent Controller, Ludhiana and the learned Appellate Authority, Ludhiana respectively.

5. It has been contended on behalf of learned counsel for the petitioners that the tenancy was terminated on its behalf through letter dated 30.09.2004, vide which, three months notice was given to the respondent/landlord regarding termination of tenancy w.e.f. 01.01.2005. In view thereof, learned counsel for the petitioners submitted that once the tenancy stood terminated w.e.f. 01.01.2005, the tenants were not supposed to pay any rent after that date and, as

such, the eviction petition filed at the instance of respondent/landlord was liable to be dismissed.

6. On the other hand, learned counsel for the respondent has relied upon judgment passed by Hon'ble Division Bench of this Court in **“Rajan @ Raj Kumar vs. Rakesh Kumar, 2010 (2) PLR 201**, to contend that once the petitioners failed to challenge the validity of assessment of provisional rent determined vide order dated 06.01.2014, prior to the passing of the eviction order dated 30.01.2014, they were estopped from questioning the amount payable by it as rent and eviction was to follow. He relied upon para 13 and 14 of the aforesaid judgment to support his contention, which reads as under:-

“13. This Court is of the view that the ratio of judgment in Rakesh Wadhawan's case (supra) leaves no manner of doubt that the provisional rent and other ancillary charges assessed by the Rent Controller had to be deposited by the tenant on the next date of hearing alongwith arrears, interest and costs etc., as may be determined by the above said authority. The ‘first date of hearing’ has also been interpreted to mean, the first date of hearing after determination of provisional rent and other expenses by the Rent Controller. A reading of conclusions drawn in para No. 30 of the judgment in Rakesh Wadhawan's case (supra) leaves no doubt that if after determination of the provisional rent, a tenant fails to deposit the same, nothing remains to be done and an order of ejectment of a tenant has to be passed. The language of conclusion No. 4 in the said para is very clear and needs no further interpretation. The Court is further of the view that the benefit of conclusions No. 5 and 6 would become

available to a tenant only on his making a deposit of the provisional rent and other ancillary charges determined by the Rent Controller and not otherwise. It was implicitly made clear that it is the bounden duty of the tenant to deposit the provisional rent determined by the Rent Controller; otherwise it will entail the tenant's ejectment from the premises in dispute. This Court feels that if a tenant is dissatisfied with the interim order passed by the Rent Controller, he has an opportunity to challenge the same before the date fixed for payment, in the higher forum.

14. *We have gone through the findings given in Rajinder Lal case (supra). We respectfully are unable to agree with the proposition of law laid down therein. The rationale of the assessment as laid down in Rakesh Wadhawan's case (supra) is to be discerned from the view as expressed in para No. 29 of the said judgment because the Hon'ble Supreme Court has balanced the interests of the landlords and tenants so as to ensure that the tenants get an adequate opportunity to deposit the rent consequent upon determination of the provisional rent. Whatever may be the extent of emphasis, which have been put on the view taken in the judgment relied upon by the petitioner, this Court is bound by the conclusions arrived at by the Supreme Court in Rakesh Wadhawan's case (supra) wherein it has been held that if a tenant does not comply with the order on the first date of hearing after determination of the provisional rent and other ancillary expenses by the Court, then eviction has to follow.*

7. Having heard, learned counsel for the parties, I find no merits in the contention raised on behalf of the petitioners. Once, the petitioners did not choose to challenge the provisional assessment order dated 06.01.2014 passed against it before its culmination into

the eviction order dated 30.01.2014, the pleas now sought to be raised, questioning the ejectment order or also the amount of rent payable or any plea of fraud as alleged are not available to him, in view of the law laid down by this Court in ***Rajan @ Raj Kumar's case (supra)*** which has again been followed by this Court in subsequent judgment passed in case of ***“Parshotak Das Goel vs. Rajender Jain”***, reported as, 2012 (4) RCR (Civil)71. Relevant portion of para 4 is referred hereunder:-

“4. However, a division Bench judgment of this Court in Rajan @ Raj Kumar v. Rakesh Kumar, 2010(1) RCR (Rent) 386 has held that once the provisional rent has been assessed and the tenant objects to pay the arrears of provisional rent, then the order of ejectment has to be passed as nothing else remains. It was also laid down that the tenant, if he was dissatisfied with the order passed by the Rent Controller, he has a liberty to challenge the same before the date fixed before a higher forum.”

If at all, the petitioners were dissatisfied with the provisional assessment order dated 06.01.2014 passed by the learned Rent Controller, Ludhiana, they had an opportunity to challenge the same before the date fixed for payment i.e. 31.01.2014. Having failed to do so, the petitioner now cannot turn round and question the amount of rent payable under the provisional assessment order dated 06.01.2014 and the eviction order. In addition, it has also been pointed out by learned counsel for the parties that the premises in question has already been vacated by the petitioners and possession has been handed over to the respondent-landlord.

In view of the reasoning recorded herein above, the present revision petition is dismissed being devoid of merit with no order as to costs.

01.09.2022
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/ No