

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2748 of 2018 (O&M)

Date of Decision: 11.11.2022

Rajnish Kant

... Petitioner(s)

Versus

Sunil Kumar

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Jatinder Singh Chahal, Advocate
for the petitioner(s).

Mr. Kanwar Pahul Singh, Advocate
for the respondent.

Anil Kshetarpal, J.

1. A serious dispute with regard to *inter se* title between Sh.Sunil Kumar and his brother Sh.Shiv Kumar, is pending adjudication before this Court. The trial Court has held in favour of Sh.Sunil Kumar (the respondent herein) whereas the First Appellate Court has set aside the same.

2. Previously, the property was owned by late Sh. Ram Lal. Sh.Shiv Kumar and Sh.Sunil Kumar are the grandsons of late Sh.Ram Lal. Initially, Sh.Shiv Kumar had filed a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as “the 1973 Act”) which was allowed. Thereafter, Sh. Sunil Kumar filed a petition claiming ownership, on the basis of the trial Court’s judgment. In the aforesaid petition filed by Sh.Sunil Kumar, the petitioner disputed the relationship of landlord and tenant between him and Sh.Sunil Kumar. In the

alternative, he offered to deposit the rent, payable during that time. The Rent

Controller proceeded to assess the provisional rent and on account of the non-payment thereof, an order of eviction was passed. The petitioner's appeal has also been dismissed by the Appellate Authority.

3. In *Rakesh Wadhawan and Others v. M/s Jagdamba Industrial Corporation and Others AIR 2002 SC 2004*, the Supreme Court, while interpreting the provisions of the East Punjab Urban Rent Restriction Act, 1949 and the 1973 Act, held that the Rent Controller is required to assess the provisional rent to enable the tenant to deposit the rent amount. However, if the tenant does not deposit the provisional rent, he shall be liable to be straightway ejected. Thereafter, in this Court, consistently, it has been held that where the relationship of the landlord and tenant is dispute, the Rent Controller is not obliged to assess the provisional rent. Reference in this regard can be made to the judgment *Mrs. Preeti v. Manmohan Singh and Another 2008(2) RCR (Civil) 185*; *M/s Cenlub Engineers v. Master Nimi 2014(2) RCR (Civil) 629* and *Parmanand v. Divisional Commissioner, Patiala Division, Patiala and Others 2014(3) RCR (Civil) 348*.

4. It is evident that the petitioner has not been given any opportunity to contest the case. He has been ordered to be ejected only on the ground of non-payment of the provisional rent. Undoubtedly, a tenant who disputes the relationship runs the risk of ultimate order of eviction on the ground of non-payment of rent. However, that is the risk he consciously takes. In any case, the petitioner is required to be given an opportunity to prove his case. In such circumstances, particularly when there is a serious dispute with regard to the title of the property and there is no evidence of the petitioner having attorned in favour of the respondent, the orders passed by

the Rent Controller as well as Appellate Authority are not sustainable.

5. Keeping in view the aforesaid facts, the present revision petition is allowed and the orders passed by the Rent Controller as well as Appellate Authority are set aside. The matter is remitted back to the Rent Controller to proceed with the ejectment petition and decide the same after granting an opportunity to both the parties. The parties, through their learned counsels, are directed to appear before the Rent Controller on 02.12.2022.

6. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

November 11, 2022

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No