

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

**CR No.1164 of 2022 (O&M)**  
**Date of Decision : 10.05.2022**

Vijay Singla

....Petitioner

VERSUS

Lajwanti (since deceased through her LRs) and Others

...Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Sumeet Goel, Senior Advocate with  
Mr. Samir Rathaur, Advocate for the petitioner.

**ALKA SARIN, J.**

The present revision petition has been filed impugning the order dated 11.10.2019 passed by the Rent Controller, Kaithal and order dated 22.02.2022 passed by the Appellate Authority, Kaithal whereby the eviction of the petitioner-tenant has been ordered on account of non-payment of rent.

The brief facts relevant to the present *lis* are that the respondent-landlord filed a petition for ejectment under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the 'Haryana Rent Act') seeking eviction of the petitioner-tenant from a shop measuring 7 ft. x 24.3 ft. with *verandah* bearing MCK No.4/10 and ID No.112C273U229 Ward No.14, Zone situated at Pehowa Chowk falling within the municipal limits of Municipal Council, Kaithal on the ground of *bona fide* personal requirement and non-payment of rent. The Rent Controller, vide order dated 07.10.2016, assessed the provisional rent in the case and adjourned the matter to 14.10.2016 for tendering the rent. On 14.10.2016, since the Rent Controller was on leave, the file was put up before the Duty Judge who adjourned the same to 24.10.2016. On 24.10.2016 the petitioner-tenant filed an application for permission to tender

a statement that he was not ready to accept the rent. The respondent-landlord contested the application filed by the petitioner-tenant for tendering the rent. Thereafter, the petitioner-tenant filed an application dated 03.08.2018 for treating the rent tendered on 24.10.2016 to be valid. The said application was also contested by the respondent-landlord. Thereafter, the petitioner-tenant once again filed an application on 24.04.2019 requesting the Rent Controller to pass appropriate order. The said application was also contested by the respondent-landlord by filing a reply. Vide the impugned order dated 11.10.2019 all three applications were decided and eviction of the petitioner-tenant was ordered on the ground of non-payment of rent. Aggrieved by the said order, the petitioner-tenant filed an appeal under Section 15 of the Haryana Rent Act before the Appellate Authority, Kaithal and vide impugned order dated 22.02.2022 the appeal of the petitioner-tenant was dismissed. Aggrieved by the orders passed by the authorities below, the present revision petition has been filed.

Learned senior counsel for the petitioner has contended that the authorities below have erred in law in ordering the eviction of the petitioner-tenant on the ground of non-payment of rent. Learned counsel has argued that on 19.09.2016 the matter was adjourned to 25.10.2016. However, the date was subsequently changed to 07.10.2016 without notice to the petitioner-tenant. It is further the contention that the said fact was clearly borne out from perusal of the dates fixed on the record file of the Rent Controller. It has further been contended by learned counsel for the petitioner-tenant that when the matter was listed on 07.10.2016 and 14.10.2016, no one appeared on behalf of the petitioner-tenant but the presence of the counsel for the petitioner was wrongly marked in routine by

fastened upon the petitioner-tenant for not tendering the rent on 14.10.2016. Learned counsel has further contended that judgment in **Rakesh Wadhawan vs. M/s Jagdamba Industrial Corporation & Ors. [2002(1) RCR (Rent) 514]** does not consider the provision of the Haryana Rent Act wherein under Section 13(2)(i) a *proviso* has been inserted which is not there in the Punjab Rent Act and which proviso reads as under :

*“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 cent 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:”*

Learned counsel for the petitioner-tenant would contend that the contents of the said *proviso* to Section 13(2)(i) of the Haryana Rent Act have not been noticed in **Rakesh Wadhawan’s case (supra)**. It is further contended that as per the said *proviso*, 15 days’ time ought to have been given after the assessment of rent and since the order was passed on 07.10.2016 assessing the rent and the case was listed for 14.10.2016 for tendering of the rent, the said order was not sustainable in law. In support of his arguments, learned counsel has relied upon the judgments in **Rakesh Wadhawan’s case (supra)** and **Vinod Kumar vs. Prem Lata [AIR 2003 (SC) 3854]**.

I have heard learned counsel for the petitioner.

In the present case, the matter came up on 07.10.2016 when the

the petitioner-tenant and tendering of rent. The argument of learned senior counsel that the presence of the counsel for the petitioner-tenant has been marked though none was present his behalf on 07.10.2016 and 14.10.2016 cannot be accepted in the face of the judicial record. The *zimni* orders of 07.10.2016 and 14.10.2016 clearly reveal that the said orders were passed in the presence of counsel for the petitioner-tenant. Further, the *zimni* order of 07.10.2016 also records that “*arguments on the assessment of rent heard*” and, thereafter, the rent was assessed. On a pointed query put by the Court as to whether the said statement that the orders dated 07.10.2016 and 14.10.2016 were passed in the absence of the counsel for the petitioner-tenant and the appearance was marked in the said orders in routine is supported by any affidavit filed by the counsel for the petitioner-tenant, learned senior counsel has candidly admitted that no such affidavit had been filed with the petition and further that he was not in a position to place any such affidavit on the record. The argument raised is hence rejected.

The second argument raised by learned senior counsel that earlier the case was adjourned to 25.10.2016 and later the date was changed to 07.10.2016 behind his back is also belied by the photocopy of the brief maintained by the counsel for the petitioner-tenant before the Rent Controller which photocopy has been produced by learned senior counsel at the time of hearing. On this photocopy, the date ‘25/10’ and next to it the word ‘cross’ are written which have both been crossed-out. Below it the date ‘7/10/16’ is mentioned with the words ‘assessment rent’. In the next column the date ‘14/10/16’ is written. Thus, in view of the *zimni* orders passed and the photocopy of the brief produced by the learned senior counsel, it cannot be accepted that any date was changed on the back of the counsel for the

petitioner-tenant. The argument is, thus, rejected.

The third limb of the argument of learned senior counsel that the judgment of the Hon'ble Supreme Court in Rakesh Wadhawan's case (*supra*) does not apply in view of the *proviso* to Section 13(2)(i) of the Haryana Rent Act is also not sustainable. In Rakesh Wadhawan's case (*supra*) it was held 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 East Punjab Urban 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 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 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 Vinod Kumar’s case (*supra*), it was noted that “*The learned senior counsel for the review-petitioner tried to draw a distinction between*

*phraseology employed in the two Acts is different, and, therefore, the decision in Rakesh Wadhawan's case which is under the Punjab Act has no relevance and applicability insofar as the provisions of the Haryana Act are concerned. We find no merit in the submission so made. Except for a difference in the manner of constructing the sentences there is no substantial difference in effect between the two provisions and the crux of the issue emerging for decision under the relevant provisions of the two Acts remains the same".* In the same decision it was also held that *"The decision in Rakesh Wadhawan's case correctly lays down the law and is re-affirmed. The interpretation placed by this Court in Rakesh Wadhawan's case on Section 13(2)(i) with the proviso in the Punjab Act applies for interpreting Section 13(2)(i) and the proviso as contained in the Haryana Act".* Therefore, the contention that the judgment of the Supreme Court in Rakesh Wadhawan's case (*supra*) does not apply in view of the *proviso* to Section 13(2)(i) of the Haryana Rent Act is rejected it having been authoritatively held that the interpretation by the Supreme Court in Rakesh Wadhawan's case applies to interpret Section 13(2)(i) and its *proviso* of the Haryana Rent Act.

It may be added here that the order passed by the Rent Controller assessing the provisional rent has been held to be an appealable order. The petitioner-tenant never challenged in appeal the order dated 07.10.2016 passed by the Rent Controller assessing the rent and fixing the matter a week later on 14.10.2016 for payment. This Court in the matter of **Rajan alias Raj Kumar vs. Rakesh Kumar [2010(2) PLR 201]** has held 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."*

In the case of **Mrs. Birinder Khullar vs. Maninder Singh** [2011(1) RCR (Rent) 307] it was held that :

*“19. Thus, after considering the facts of this case and law applicable thereto, the first question is decided in affirmative and it is held that the Rent Controller has no jurisdiction to order extension of time of payment of provisional rent by the tenant. Insofar as the second question is concerned, that too is decided in favour of the petitioner herein because even if it is assumed that the application for re-assessment was a review application, the Rent Controller had no jurisdiction to grant further time to the tenant for tendering the provisional rent when he did not agree with him on his application for review. In that circumstance, he was left with no other alternative but to simply dismiss the application as he had actually done in the impugned order but faulted by granting time to the tenant to make the payment of arrears of rent beyond the date, which was given initially when the provisional rent was fixed.”*

In the case of **Sat Paul Jindal vs. Smt. Sushma** [2011(45) RCR (Civil) 19], which is a case pertaining to the Haryana Rent Act, the following observations were made :

*“13. Admittedly, the provisional rent was assessed by the Rent Controller on 28.3.2011 and the tenant was directed to make the payment by 29.3.2011. The aforesaid order of provisional assessment was never challenged by the tenant within the statutory period as*

*provided and in this view of the matter since the tenant had committed the default by not paying the provisionally assessed rent upto the stipulated date, the Rent Controller had no jurisdiction to extend the time for tendering of provisionally assessed rent. If there is a fault on the part of the tenant, the eviction order has to follow, the order dated 22.4.2011 granting opportunity to the tenant to make the payment of provisionally assessed rent cannot be sustained and is liable to be quashed, to that extent.”*

From a perusal of the above reproduced extracts from judicial decisions, there is no manner of doubt that the first date after assessment of rent is the cut off date when the petitioner-tenant has to tender the rent. On failure to do so the Rent Controller has no jurisdiction to extend the period and the consequences as laid down in Rakesh Wadhawan’s case (*supra*) would have to follow.

Keeping in view the fact that the rent was assessed on 07.10.2016 and the date for tendering the same was 14.10.2016, it was incumbent upon the petitioner-tenant to have deposited the rent on or before the said date i.e. 14.10.2016. On his failure to do so nothing remained to be done and an order of eviction was to follow. The undisputed fact is that the rent as assessed was not tendered on the first date of hearing i.e. 14.10.2016 and, therefore, the petitioner-tenant would be liable to be evicted from the premises in question.

The impugned orders passed by the authorities below do not suffer from any illegality or infirmity. The present revision petition, which is

devoid of any merit, is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

( ALKA SARIN )  
JUDGE

10<sup>th</sup> May, 2022

jk

NOTE : Whether speaking/non-speaking : Speaking  
Whether reportable : YES/NO