

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CR No.1812 of 2022 (O&M)****Reserved on: 10.05.2022****Date of Decision: 17.05.2022**

Lalita Devi

....Petitioner

VERSUS

Vivek

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rohit Khullar, Advocate for the petitioner.

ALKA SARIN, J.

The challenge in the present revision petition is to the order dated 21.03.2022 passed by the Rent Controller assessing the provisional rent @ Rs.2,500/- per month from 01.09.2019 till 31.03.2022 along with interest and costs totalling Rs.84,700/- and to the order dated 07.05.2022 passed by the Appellate Authority whereby the appeal preferred by the tenant-petitioner against order dated 21.03.2022 has been dismissed.

The facts in brief are that the landlord-respondent had filed an ejectment application seeking eviction of the tenant-petitioner from the premises in dispute on the ground of non-payment of rent and personal necessity. Vide impugned order dated 21.03.2022 the Rent Controller provisionally assessed the arrears of rent from 01.09.2019 till 31.03.2022 @ Rs.2,500/- per month totaling Rs.77,500/-, interest was assessed at Rs.6,200/- and costs were assessed at Rs.1,000/-. The matter was adjourned to 09.05.2022 for payment of the provisional rent. The tenant-petitioner filed an appeal (RA-44-2022) against the order dated 21.03.2022 passed by the

Rent Controller. However, vide impugned order dated 07.05.2022 the said appeal was dismissed.

Learned counsel for the tenant-petitioner would contend that a total fraud has been committed by the landlord-respondent in the present case inasmuch as a forged and fabricated document has been prepared as a rent agreement dated 01.12.2016 and that the tenant-petitioner has disputed the relationship of landlord and tenant between the parties. It is submitted that the tenant-petitioner is running a typing institute in the premises in dispute since 1990. It has further been contended that the premises in dispute is not mentioned in the transfer deed executed by the grandfather of the landlord-respondent in favour of the landlord-respondent and his brother. It is further the contention that the landlord-respondent is not the landlord in the present case inasmuch as the landlord-respondent wants to grab the property of his grandfather, Bharpur Singh. At the time of making submissions, learned counsel for the tenant-petitioner also produced a copy of order dated 09.05.2022 passed by the Rent Controller. The said order reads as under :

“Order dated 07.05.2022 passed by Ld. Appellate Authority, Chandigarh in Rent Appeal No.44 of 2022 received whereby appeal against order dated 21.03.2022 vide which provisional rent was assessed has been dismissed.

Today Sh. Rohit Khullar Adv. has come present and tendered an amount of Rs.84,700/- in cash in pursuance to order dated 21.03.2022 as arrears of rent. He has stated that he is tendering the rent without admitting the

relationship of landlord and tenant between the parties. Same has been accepted by Sh. RK Bamal, Advocate for the petitioner being short and invalid. Since the provisional rent has been paid by respondent, no ground is made out of ejectment of the respondent at this stage. Heard. From the pleadings of the parties following issues are framed :

- 1. Whether there exists relationship of landlord and tenant between the parties ? OPP*
- 2. Whether the rent tendered by respondent is short, invalid and insufficient ? OPP*
- 3. Whether the respondent is liable to be evicted on the ground that the property in question is required by the petitioner for his personal use and occupation ? OPP*
- 4. Whether the present petition is not maintainable ? OPR*
- 5. Whether the petitioner has conceal true facts from the court ? OPR*
- 6. Whether the petition is liable to be dismissed for non joinder of necessary parties ? OPR*
- 7. Whether the petitioner has not come to the Hon'ble Court with clean hands ? OPR*
- 8. Relief.*

No other issue arises or is pressed. The case is adjourned to 26.07.2022 for evidence of petitioner.

PF/DM, list of witnesses be filed within a week.”

In Rakesh Wadhawan vs. M/s Jagdamba Industrial Corporation & Ors. [2002(1) RCR (Rent) 514] the Supreme Court held that :

“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.”

Thus, in the present case since the tenant-petitioner has on 09.05.2022 already made compliance and paid the provisional rent assessed, the inquiry by the Rent Controller shall continue for finally adjudicating upon the dispute as to the arrears of rent in the light of the contending pleas raised by the parties, as held in Rakesh Wadhawan’s case (*supra*). This Court cannot usurp the jurisdiction of the Rent Controller to adjudicate upon the points in dispute once the tenant-petitioner has paid the provisional rent assessed. Further, no argument was raised by counsel for the tenant-petitioner about the quantum of the arrears of rent provisionally assessed. It is also to be noted that a specific issue has been framed by the Rent Controller regarding existence of relationship of landlord and tenant between the parties. Therefore, no occasion arises now for this Court to interfere with the impugned orders passed by the authorities below.

The present revision petition is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

17th May, 2022
jk

(ALKA SARIN)
JUDGE

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