

113-2

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

CR No.2084 of 2022 (O&M)
Reserved on : 17.11.2022
Date of Decision : 30.11.2022

Jaswant Singh

....Petitioner

VERSUS

Amarjit Kaur & Ors.

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vikas Jain, Advocate for the petitioner.

Mr. Amit Arora, Advocate
for the caveator-respondent Nos.1 & 2

ALKA SARIN, J.

The present revision petition has been filed impugning the order dated 11.04.2019 passed by the Rent Controller, Tarn Taran and order dated 28.03.2022 passed by the Appellate Authority, Tarn Taran 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 East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Rent Act') seeking eviction of the petitioner-tenant from the premises in dispute bearing MC No.B2-18, Amritsar Road, Tarn Taran on inter-alia the grounds of non-payment of rent and personal bonafide necessity. The Rent Controller, vide order dated 11.01.2018, provisionally assessed the arrears of

rent at the rate of Rs.200/- per month w.e.f. 01.04.2012 to 31.03.2017 amounting to Rs.12,200/- alongwith interest of Rs.2,135/- and costs of Rs.1000/- totaling Rs.15,335/- which was ordered to be paid by the petitioner-tenant to the landlord-respondent on 19.02.2018 which was to be considered as the first date of hearing. On 19.02.2018 the petitioner-tenant did not tender the amount assessed by the Rent Controller and his counsel made a statement that the payment of rent as assessed shall be made on the next date. This was recorded in the order dated 19.02.2018 passed by the Rent Controller and the case was adjourned to 05.03.2018 for payment. On 05.03.2018 the respondent-landlord filed an application before the Rent Controller for ordering ejectment of the petitioner-tenant for non-compliance of order dated 11.01.2018. During the pendency of the said application, the respondent-landlord filed an appeal before the Appellate Authority against the order dated 19.02.2018 passed by the Rent Controller extending the date for depositing the provisional rent. The Appellate Authority dismissed the appeal vide it's order dated 29.10.2018. The respondent-landlord filed CR-31-2019 before this Court. That since the application of the respondent-landlord for ordering ejectment of the petitioner-tenant for non-compliance of order dated 11.01.2018 was still pending before the Rent Controller, vide order dated 03.04.2019 this Court disposed off CR-31-2019 by directing the Rent Controller to decide the said application.

Vide order dated 11.04.2019 the Rent Controller accepted the application and ordered ejectment of the tenant-petitioner holding inter-alia *“Therefore, the amount of rent fixed by the Court having not been paid on the date fixed and the Court extending the date for this purpose without assigning of any reason is not valid. Therefore, in such like circumstances*

and order passed by this Court extending the time of payment of rent from

19.02.2018 to 05.03.2018 suffers from a patent violation of settled provisions of law and hence is not valid. Accordingly, the application for ordering the ejectment of the respondent No.1/tenant for non-compliance of the order dated 11.01.2018 filed by the applicants-landlords is allowed and the tenant-respondent is ordered to be evicted ...”. The petitioner-tenant filed an appeal against the order dated 11.04.2019 which appeal was dismissed by the Appellate Authority vide order dated 28.03.2022. Hence, the present civil revision.

Learned counsel for the petitioner-tenant 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. It is contended that the arrears of rent as assessed by the Rent Controller on 11.01.2018 could not be tendered on the next date i.e. 19.02.2018 as the petitioner suffered a heart attack on 19.02.2018 and had to be rushed to the hospital in Jalandhar for treatment and that is why on 19.02.2018 the counsel for the petitioner-tenant had requested the Rent Controller for extension of time to make the payment on the next date of hearing. It was submitted that the Appellate Authority had not interfered with the order dated 19.02.2018 passed by the Rent Controller and the appeal of the respondent-landlord was dismissed. According to counsel, a humanitarian approach should have been adopted by the Authorities below and ejectment of the petitioner-tenant ought not to have been ordered.

Per contra, learned counsel for the respondent-landlord submitted that there is no power with the Rent Controller to extend the time for making payment of the provisionally assessed arrears of rent. It was argued that the Rent Controller had illegally extended the period on

19.02.2018 passed by the Rent Controller which would even indicate that the petitioner-tenant had suffered a heart attack and had to be admitted in a hospital in Jalandhar on 19.02.2018 and even if any such medical emergency had occurred, there was no requirement for the petitioner-tenant to be present personally before the Rent Controller to tender the provisionally assessed arrears of rent which could have been tendered by his counsel.

I have heard learned counsel for the parties.

In the present case, the arrears of rent were initially assessed by the Rent Controller vide order dated 11.01.2018 and the case was adjourned to 19.02.2018 for making payment of the arrears of rent assessed which was to be considered as the first date of hearing. However, on 19.02.2018 the petitioner-tenant did not tender the amount assessed by the Rent Controller and his counsel made a statement that the payment of rent as assessed shall be made on the next date. Thus, admittedly the petitioner-tenant did not make payment of the provisionally assessed arrears of rent to the respondent-landlord on 19.02.2018 and as such the Rent Controller was within jurisdiction to pass the order of ejectment against the petitioner-tenant on that very date. However, the Rent Controller did not do so and rather adjourned the case to 05.03.2018 for payment. On 05.03.2018 the respondent-landlord filed an application before the Rent Controller for ordering ejectment of the petitioner-tenant for non-compliance of order dated 11.01.2018 which application stands allowed.

In Rakesh Wadhawan & Ors. vs. Jagdamba Industrial Corporation & Ors. [(2002) 5 SCC 440] 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.”*

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.”

From a perusal of the above reproduced extracts from judicial decisions, there is no manner of doubt that on the next date of hearing a tenant has to tender the arrears of rent as determined by the Rent Controller alongwith interest and costs etc. as may be determined. On failure by the tenant 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.

The undisputed fact in the present case is that the arrears of rent as assessed by the Rent Controller were not tendered within the period given by the Rent Controller vide its order of 11.01.2018 and, therefore, the petitioner-tenant would be liable to be evicted from the premises in question. The Rent Controller has no power to extend the period for tendering the arrears of rent provisionally assessed by it. There is nothing in the order dated 19.02.2018 to suggest any reason for the petitioner-tenant for not

making the payment on that date. The order dated 19.02.2018 passed by the Rent Controller reads as under :

“Ld. Counsel of respondent no.1 made a separate statement that she will make the payment of rent as assessed by this court on next date. Now case stands adjourned to 5.03.2018 for payment of rent.”

The statement of the counsel for the petitioner-tenant recorded on 19.02.2018 reads as under :

“Stated that I will make the payment of rent as assessed by this Hon’ble Court on the next date of hearing.”

Thus, neither the order nor the statement disclosed any reason for the petitioner-tenant not to make payment of the provisionally assessed arrears of rent on 19.02.2018. In this scenario, the provisionally assessed arrears of rent not having been tendered, the Rent Controller was bound to pass an order of eviction against the petitioner-tenant. The counsel for the petitioner-tenant is at pains to offer any explanation as to why the arrears as determined by the Rent Controller on 11.01.2018 were not deposited on 19.02.2018 except for submitting that the petitioner-tenant had suffered a heart attack and had to be shifted to Jalandhar. The order passed on 19.02.2018 and the statement of his counsel do not mention any such incident. Further, the medical record of the petitioner-tenant produced before this Court nowhere suggests that he suffered a heart attack on 19.02.2018 and was admitted in the hospital. Only a colour doppler test was done on him on 19.02.2018 in the afternoon. Despite being repeatedly asked the learned counsel for the petitioner was unable to show a single document pertaining to the admission of the petitioner in the hospital on account of a

has no jurisdiction to order extension of time of payment of provisional rent by the tenant.

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.

30.11.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

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