

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

CR-2780-2022 (O&M)

Date of decision : 19.07.2022

Birinder Singh & Anr.

... Petitioner(s)

Versus

Amarjit Singh & Ors.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Harsh Chopra, Advocate for the petitioners.

ALKA SARIN, J. (ORAL)

The challenge in the present civil revision petition under Article 227 of the Constitution of India is to the order dated 25.04.2022 (Annexure P-4) passed by the Rent Controller, Chandigarh assessing the provisional rent @ Rs.3,19,500/ per month.

The provisional rent along with arrears has been assessed as Rs.92,35,000/- along with interest and costs. Vide order dated 25.04.2022, the case was adjourned to 21.05.2022 for tendering of the provisional rent. On the same date, an application was filed by the tenant-petitioners herein under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amendment of the written statement. Since the counsel for the landlord-respondents had no objection to the said application, the same was allowed and the amended written statement was taken on the record. It is further noticed in the order that a request had been made by counsel for the tenant-petitioners that tenant-petitioner No.1 was not keeping good health and the assessed amount

of arrears of rent is quite high, hence, a long date be given in the 3rd week of July 2022. Since no objection was made to the said prayer by the landlord-respondents, the case was adjourned to 21.07.2022 for tendering of the provisional rent.

Learned counsel for the tenant-petitioners has contended that the ejectment petition was filed on behalf of petitioner Nos.1 to 22 (respondent Nos.1 to 22 herein) and he was willing to deposit the provisional rent as assessed, however, it would be difficult to apportion the rent amongst the landlords (respondent Nos.1 to 22 herein). It is further the contention that the interest has been calculated at a higher rate.

Heard.

In the present case, there is no ambiguity in the order. The tenant as per the law laid down by Hon'ble Supreme Court in the case of **Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation [2002 (5) SCC 440]** has to tender the rent as per the order assessing the provisional rent failing which consequences are to follow. In the present case, the ejectment petition has been filed by 22 co-owners (respondent Nos.1 to 22 herein) and in para 2 of the ejectment petition, it has been stated that besides 22 co-owners who have filed the ejectment petition there are two others who are co-owners to the extent of 2.5% share each. The amount assessed is to be accordingly divided and tendered.

Qua the argument raised by learned counsel for the petitioners that the interest has been calculated at a higher rate, that would be an issue which can be gone into at the time of final adjudication.

In the case of **Rakesh Wadhawan's** case (supra), it has been held as under :

“30. To sum up, our conclusions are :

1 to 4 XXX XXX XXX

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.”

In view of the law laid down by the Apex Court, if at the time of final adjudication by the Controller the same is at variance with the interim or provisional order of assessment, the Controller may direct the same to be refunded if excess amount has been deposited. If on the other hand the amount deposited is found to be short, the Controller can pass an order directing the tenant to place the landlord in possession of the premises

by giving reasonable time for paying the deficit.

In view of the above and keeping in view law laid down by Hon'ble Supreme Court, I do not find any ground to interfere in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

19.07.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

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