

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.3388 of 2022 (O&M)

Reserved on : 25.08.2022

Date of Decision : 30.08.2022

Dinesh Soni

....Petitioner

VERSUS

Kamlesh Rani

...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sushil Saini, Advocate for the petitioner.

ALKA SARIN, J.

The present revision petition has been filed impugning the order dated 27.05.2019 passed by the Rent Controller, Ludhiana and order dated 12.07.2022 passed by the Appellate Authority, Ludhiana 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 no.B-34-9241 (New) and 2246/2 (Old) measuring 20.21 sq. yards on the grounds of non-payment of rent and personal *bona fide* necessity. The Rent Controller, vide order dated 30.08.2018, provisionally assessed the arrears of rent at the rate of Rs.2500/- per month w.e.f. January 2017 to August 2018 amounting to Rs.50,000/- along with interest of Rs.3,000/- and costs of Rs.1000/- totaling Rs.54,000/- which was ordered to be paid by the petitioner-tenant to the landlord-respondent. The tenant-petitioner made the tender of this amount on 29.09.2018. However, both the

parties also filed appeals against the order dated 30.08.2018. Vide order

dated 19.12.2018 the Appellate Authority partly accepted both the appeals ordering *inter-alia* as under :

“12. As a result of above discussion, both the appeals are partly accepted and the impugned order is modified to the extent that the respondent shall make the payment of provisional rent at the rate of Rs.1500/- per month for the period from June, 2013 to August, 2017 along with interest at the rate of 6% per annum and cost of Rs.2000/- imposed by the learned Rent Controller which works out as under :

$$1500 \times 51 = \text{Rs.}76,500/-$$

$$\text{Interest } \frac{76500 \times 52 \times 3}{1200} = \text{Rs.}9945/-$$

$$\text{Total } 76500 + 9945 = \text{Rs.}86,445/-$$

The respondent shall make the payment of rent within a period of one month from today failing which the learned Rent Controller shall be at liberty to pass an appropriate order for non-payment of provisional rent”.

The petitioner-tenant deposited the balance of the arrears of rent (Rs.32,500/-) under a wrong head as a result of which the respondent-landlord was unable to withdraw the same. On 20.03.2019 the respondent-landlord filed an application for passing an ejectment order against the petitioner-tenant for having failed to deposit the arrears of rent as ordered by the Appellate Authority on 19.12.2018. Vide order dated 29.04.2019 the Rent Controller directed the District Treasury Officer, Ludhiana that the amount of Rs.32,500/- be released to the petitioner-tenant and the petitioner-tenant was also directed that he shall make the payment of the rent amount

of Rs.32,500/- to the respondent-landlord on or before 27.05.2019 in the Court itself.

The petitioner-tenant failed to make payment of the amount of arrears of rent to the landlord-respondent within the time as allowed by the Rent Controller on 29.04.2019. Rather, the petitioner-tenant filed an application before the Rent Controller for extension of time to hand over the amount of Rs.32,500/-. However, on 27.05.2019 the Rent Controller passed an order of eviction against the petitioner-tenant and also dismissed his application for extension of time. The petitioner-petitioner filed an appeal against the ejectment order which appeal was dismissed by the Appellate Authority on 12.07.2022. Hence, the present revision petition by the petitioner-tenant.

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 30.08.2018 were tendered within the time given and even the arrears as determined by the Appellate Authority on 19.12.2018 were deposited by the petitioner-tenant. It is submitted that the petitioner-tenant did not make the payment of the rent amount of Rs.32,500/- to the respondent-landlord on or before 27.05.2019 since the District Treasury Officer, Ludhiana did not release the said amount to the petitioner-tenant and that in any event the petitioner-tenant had sought extension of time to handover the amount of Rs.32,500/- which application ought to have been accepted by the Authorities below.

I have heard learned counsel for the petitioner-tenant.

In the present case, the arrears of rent were initially assessed by

the Rent Controller vide order dated 30.08.2018. However, the Appellate

Authority modified the amount of arrears of rent vide order dated 19.12.2018. The petitioner-tenant deposited the arrears under a wrong head. Subsequently, on an application filed by the respondent-landlord for ordering eviction of the petitioner-tenant, the Rent Controller vide order dated 29.04.2019 gave another opportunity to the petitioner-tenant to make the payment of the rent amount of Rs.32,500/- to the respondent-landlord on or before 27.05.2019. By the same order the District Treasury Officer, Ludhiana was also directed to release Rs.32,500/- to the petitioner-tenant which had been deposited by him under the wrong head. The payment of Rs.32,500/- to the respondent-landlord on or before 27.05.2019 was not dependent upon release of the same amount by the District Treasury Officer, Ludhiana to the petitioner-tenant. Admittedly the petitioner-tenant did not make payment of Rs.32,500/- towards the arrears of rent to the respondent-landlord on or before 27.05.2019 and as such the Rent Controller was within jurisdiction to pass the order of ejectment against the petitioner-tenant.

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/Appellate Authority along with 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 Appellate Authority were not tendered within the period given by the Rent Controller vide its order of 29.04.2019 and, therefore, the petitioner-tenant would be liable to be evicted from the premises in question. There were no conditions in the order dated 29.04.2019 that the payment of the arrears was dependent upon return of Rs.32,500/- by the District

Treasury Officer, Ludhiana to 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 Appellate Authority on 19.12.2018 were deposited under a wrong head when the arrears determined earlier by the Rent Controller on 30.08.2018 were deposited under the correct head.

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.

30.08.2022
jk

(ALKA SARIN)
JUDGE

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