

(215)

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

**CR-1054-2011 (O&M)
Date of Decision: 31.08.2023**

M/s Madhu Bakers

.....Petitioner

Versus

Rakesh Kumar @ Cheeku Ram Dass

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. S. S. Dinarpur, Advocate, for the petitioner.

Mr. Amit Jaswal, Advocate, for the respondent.

HARKESH MANUJA, J.(ORAL)**CM-12559-CII-2023**

This is an application for directing the petitioner-tenant to pay *mesne* profits for use and occupation of the shop in question.

Learned counsel for the petitioner-tenant does not press the application.

Dismissed as not pressed.

MAIN CASE:

1. By way of present revision petition, challenge has been laid to the judgment dated 02.11.2010 passed by the Appellate Authority; whereby an eviction order has been passed against the petitioner-tenant on account of non-payment of arrears of rent and the order dated 12.06.2009 passed by the Rent Controller granting opportunity to petitioner-tenant to pay arrears of rent within a period of 2 months, has been set aside, thereby resulting into his eviction.

2. Briefly stating, respondent-landlord filed an eviction petition against the petitioner-tenant qua the tenanted premises measuring 200

square yards bearing Nos.55-56 situated in Kailash Mandir, Hathi Khana, Ambala Cantt, on the ground of arrears of rent from 01.11.1995 to 31.10.1998.

3. Upon notice, petitioner-tenant appeared and admitted himself to be tenant over the demised premises under Baba Kanshi Dass with rent @ Rs.300/- per month, however, it was further stated that after the death of Baba Kanshi Dass, there was no other legal heir and thus, respondent had no locus to file the eviction petition. The petitioner-tenant, however, denied the liability towards arrears of rent while submitting that the same already stood paid.

4. As a matter of fact, in the present case, no provisional assessment of rent was ever made by the learned Rent Controller. Upon trial, learned Rent Controller vide its decision dated 12.06.2009 recorded a positive finding that the petitioner-tenant was in arrears of rent @ Rs.300/- per month for the period as claimed by respondent-landlord i.e. from 01.11.1995 to 31.10.1998. However, instead of passing an eviction order, learned Rent Controller, relying upon the decision of **Rakesh Wadhawan Vs. Jagdamba Industries Corporation and others 2005(5) CCC 440**, granted one month's time to the petitioner-tenant to deposit the arrears of rent. In pursuance thereof, the petitioner-tenant deposited arrears of rent on 15.06.2009.

5. Aggrieved of the judgment dated 12.06.2009 passed by the Rent Controller, the respondent-landlord filed first appeal with the submissions that once the petitioner-tenant had denied the fact of he being in arrears of rent, he was not required to be granted time for deposit of the same and straight away eviction order was required to be passed. Accepting the argument of the landlord, Appellate Authority

vide judgment and decree dated 2.11.2010 allowed the appeal; while setting aside the order dated 13.06.2009 passed by the Rent Controller. Aggrieved thereof, the present revision has been filed.

6. Learned counsel for the petitioner places reliance upon the cases of **Gurpreet Singh and another Vs. Brijinder Bhardwaj and another, 2011(2) RCR (Civil) 770, Puneet Ahluwalia (NRI) Vs. Dr. Mrs. Gurjeewan Garewal passed in Civil Revision No.5170 of 2009, Badri Parshad Vs. Sham Lal, 2001(2) R.C.R (Rent) 590, Vinod Kumar Vs. Prem Lata, 2003(2) R.C.R.(Rent) 329 and Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation, 2002(1) RCR (Rent) 514** to contend that once the stand taken by the petitioner-tenant in the written statement was that he was not in arrears of rent, the Rent Controller was required to make the provisional assessment of rent and grant opportunity to the petitioner-tenant to clear the arrears of rent. He further submits that the petitioner-tenant did not deny the relationship of landlord tenant with Baba Kanshi Dass but only with the present respondent who was not his legal heir while having no malafide intention or oblique motive behind this. He further submits that in the absence of any proper authorisation in favour of respondent in this regard, there could be other claimants as well qua the demised premises. He also draws attention of the Court towards the documents brought on record as Annexures P-1 and P-2 in support to substantiate his submissions.

7. On the other hand, learned counsel for the respondent-landlord submits that once there was a specific denial in the written statement on the part of tenant as regards the arrears of rent with the stand that he had already paid the rent, the petitioner-tenant was not

required to be afforded an opportunity to clear the arrears of rent by relying upon decision made in **Rakesh Wadhawan's** case. In support, he places reliance upon the judgment in the cases of **Ameek Singh Vs. D. N. Gaur, Chief Engineer, Nuclear Power Corporation of India Limited. 2010(1) RCR (Rent) 22, Mohd. Fiaz Vs. Mohd. Gulzar and another 2011(2) RCR (Rent) 538, Raunki Ram Vs. Sham Lal Jain, 2014(2) RCR (Civil) 902 and M/s Belliss India Limited 18, Community Centre, East of Kailash, New Delhi Vs. Shri Ram Chand Gupta (dead) through his LR's and others.**

8. I have heard learned counsel for the parties and gone through the paper-book as well as the law cited at Bar. I do not find substance in the arguments raised by the learned counsel for the petitioner.

9. Sum and substance of the arguments advanced by counsel for the petitioner is that in view of **Rakesh Wadhawan's** case (supra), Rent Controller has rightly given him time to deposit the arrears of rent which he duly submitted within the given time frame and thus no interference was warranted by the Appellate Authority. While on the other side, the argument of respondent is that since petitioner denied the landlord-tenant relationship as well as any arrears of rent, petitioner was not entitled for any opportunity regarding calculation and deposit of arrears of rent and the Appellate Authority has rightly passed the order of his ejection. In this background, it is first necessitated to examine the legal position governing these circumstances.

10. Let us first examine the judgments cited by the Appellate Authority as well as learned counsel for the respondent-landlord. In

RCR (Civil) 185, this Court held that when a tenant, denies the relationship of landlord and tenant, such a tenant in essence, asserts a positive plea of refusal to tender rent. Relevant paras of this judgement are reproduced here under:

“12. The aforementioned contention, in my considered opinion is without merit. Where a tenant, proceeds to dispute the locus standi or the ownership of the landlord and thereupon denies the relationship of landlord and tenant, such a tenant in essence, asserts a positive plea of refusal to tender rent. Whether such a tenant would be entitled to the protection of Section 13 of the Act, as interpreted by the Hon'ble Supreme Court in Rakesh Wadhawan's case (supra) has been answered in a host of judgements by this Court, namely; Ramanand Shastri v. Gian Singh (supra).....

14. A similar view was taken in Hukama Devi and others, Narinder Singh v. Sarabjit Singh and Jagdish Singh v. Mohan Lal's cases (supra). The aforementioned precedents, make it abundantly clear that where the plea denying the relationship of landlord and tenant, or laying challenge to the locus standi of the landlord, to file a petition for ejectment is mala fide and asserted with a motive to prolong proceedings, evade responsibility for payment of rent or to harass the landlord, the ratio in Rakesh Wadhawan's case (supra) would not apply. I find no reasons to differ with the aforementioned judgements, as they apply to the facts of present case with all their vigor.”

10 (i). In **"Harish Chander (deceased) through LR. v. Mohinder Singh"**, reported as 2009 (3) RCR (Civil) 206, this Court held that if there is denial by tenant with regards landlord's title, the question of affording an opportunity to pay rent by a particular date as contemplated in **Rakesh Wadhawan's** case (supra) did not apply.

Relevant para of this judgment is reproduced hereunder:-

“7. If the tenant had denied his relationship, the other consequence is what follows for non-payment of rent. Admittedly, the rent which was determined by the Court as being payable from 01.05.1983 has not been paid yet. The directions of the Court already made on 09.09.1985 which required the respondent to pay the rent before 17.09.1985 still remains unfulfilled. The non-payment of rent which affords a ground for eviction under Section 13(2)(i) is clearly attracted and the tenant is liable for eviction. The learned Senior Counsel also relies on the decision of this Court in *Narinder Singh v. Sarabjit Singh*, 2006(2) RCR (Rent) 226 : (2007-2) PLR 405 that when a tenant denied the relationship of landlord and tenant, there would be hardly any justification for the Rent Controller to frame an assessment order in pursuance to the provisions to proviso to Section 13(2)(1) of the Act. The judgment was rendered in the context of explaining the decision of the Hon'ble Supreme Court in *Rakesh Wadhawan v. Jagdamba Industrial Corporation*, 2002(1) RCR (Rent) 514 : (2003-2)113 PLR 370. There have been several other decisions of this Court affirming the said view that **if there was a denial by tenant of landlord's title, the question of even affording an opportunity to pay rent by a particular date as contemplated in Rakesh Wadhawan's case (supra) did not apply.** I find myself bound and in full agreement with the statement of law as expressed and the tenant is liable to be evicted. The order passed by the Rent Controller directing eviction is restored and the order of the Appellate Authority reversing the decision is set aside.”

10 (ii). In **Ameek Singh's** case (supra), this Court held that there would not be any requirement for determination of any provisional rent where the tenant pleaded a case of full discharge of liability by alleged prompt payments and such a facility will not obtain to a tenant, who had been making a false contention that he had made all

the payments and when the Rent Controller found that no amount at all had been paid. Relevant para of this judgment is reproduced hereunder:

“6. The reference to the applicability of the Hon'ble Supreme Court in Rakesh Wadhawan's case itself is wholly misplaced. If the dispute was only with reference to the quantum of rent and the Court had made provisional assessment of the rent during the pendency of proceedings and in the ultimate final adjudication, the Court found that larger sum was due, the Rent Controller could not have directed eviction without affording an opportunity to make the payment. To apply the said decision to this case, if the contention of the landlord had been that the rent was Rs. 4,000/- and the tenant was contending that it was only Rs. 3,000/- and he had also paid at that rate, it would be open to the Rent Controller to make a provisional assessment as either Rs. 3,000/- or Rs. 4,000/- and also make an interim direction for making a payment on the amount which he determined as payable in the final adjudication. At such final adjudication if the rent were to be assessed at Rs. 4,000/- and the Court had also found that the tenant had paid till the conclusion of the proceedings amounts @ Rs. 3,000/-, the Rent Controller was bound to give an opportunity to the tenant to make good the shortfall. Such a facility will not obtain to a tenant, who had been making a false contention that he had made all the payments and when the Rent Controller found that no amount at all had been paid. The question of grant of opportunity to a tenant did not arise in a case where the tenant pleaded a case of full discharge of liability by alleged prompt payments. There arose no occasion for determination of any provisional rent and a final adjudication in variance to the former interim order. On the other hand, when the Rent Controller was completely rejecting the contention of the tenant, there ought to be no occasion for grant of any further time. The tenant had indeed disintitled

himself to any kind of favourable discretion by taking a further false plea of an alleged agreement of sale and the so- called payment of advance which was liable for adjustment. Both the Rent Controller and the Appellate Authority found that there had been no such agreement and the so-called payment of Rs. 3 lakhs was not true. The contention of the tenant has been found to be false on every one of the counts and there is no scope for making any modification in the order.”

10 (iii). Similarly in **Mohd. Fiaz’s** case (supra), this Court held that when there is neither a dispute with regard to period of rent nor rate of rent, which could have been provisionally decided by the Rent Controller, tenant cannot save his tenancy in terms of the decision of the Supreme Court in **Rakesh Wadhawan’s** case (Supra). Relevant paras of this judgment are reproduced hereunder:-

“8. To my mind, the facts of this case are altogether different from the facts of the case of Rakesh Wadhawan and others (Supra) because in the present case, the tenant had contested the eviction petition throughout on the ground that he had already made the entire payment of rent till the finality of the eviction petition against the receipts issued by the landlord, meaning thereby, there was no occasion for the Rent Controller to fix provisional rent as the tenant was totally denying his liability to pay the rent. Thus, there was neither a dispute with regard to period of rent nor rate of rent, which could have been provisionally decided by the Rent Controller so as to enable the tenant to save his tenancy in terms of the decision of the Supreme Court in the case of Rakesh Wadhawan and others (Supra).

9. In view of the above discussion, it is held that in a case where the tenant denies his liability of arrears of rent on the ground of documentary evidence (receipts) and claims a trial on the issue of his liability and if it is ultimately found that the documentary evidence does

not support the tenant, he cannot take support of the decision of the Supreme Court in the case of Rakesh Wadhawan and others (Supra). Moreover, the tenant has already been evicted in a subsequent Eviction Petition No.52 of 18.9.2002.”

11. Similar proposition of law has been reiterated in other judgments cited by counsel for landlord-respondent. I have gone through the judgments cited by learned counsel for the petitioner as well, but the same do not counter the above proposition of law and are easily distinguishable in the facts and circumstances of the present case. In **Gurpreet Singh’s** case (supra), there was dispute qua the rate of rent to be paid by the tenant and after provisional assessment, a bonafide error while calculating the arrears of rent was allowed to be corrected and tenant was allowed to deposit the deficiency in payment, but arrears of rent as per the calculation of petitioner were deposited by him timely as per the statutory requirement. In **Puneet Ahluwalia’s** case (supra) , tenant has taken the plea in written statement to tender the arrears of rent at the assessed rate from the due date and thereafter provisional assessment was made by the Rent Controller which was paid by the tenant within the statutory time frame. In **Badri Prashad’s** case (supra), on account of stay by High Court, operating in favour of tenant, subsequent provisional assessment of arrears of rent was justified which is not the scenario in present case. Similarly the judgment of **Vinod Kumar’s** case (supra) is also not applicable to the facts and circumstances of the present case and it has already been discussed in **M/s Belliss** case (supra) cited by the respondent.

12. The gist of the above discussion can be laid out in the terms that when the tenant either denies the relationship or claim that

he is not in arrears of rent; there is neither a dispute with regard to period of rent; nor rate of rent, the tenant cannot claim protection of decision of the Supreme Court in **Rakesh Wadhawan's** case (Supra).

13. Now, we can proceed ahead to apply the above discussed principles of law in the facts and circumstances of the present case. In the case in hand, the petitioner-tenant denied the relationship of landlord-tenant with the respondent in his written statement as well as the fact that any arrears of rent were pending on his part. Contrarily, there is concurrent finding of fact by the Rent Controller & Appellate Authority that respondent was having authority to accept the rent from the petitioner and relationship of landlord and tenant existed between them. Rent Controller & Appellate Authority also concurrently held that the petitioner was not able to prove any payment of rent and he was in arrears of rent as claimed by the landlord. It is pertinent to note here that these concurrent findings of fact have not been assailed by the petitioner in the present revision petition and his core argument has been that once in pursuance of order dated 12.06.2009 passed by Rent Controller, assessing the amount to be paid and granting one month time; petitioner-tenant having deposited the arrears of rent on 15.06.2009; Appellate Authority could not have passed the order of eviction in view of the mandate of **Rakesh Wadhawan's** case.

14. It is the admitted case of the petitioner that he entered into tenancy with Baba Kanshi Dass and a rent petition for his ejection on account of default of payment of rent was filed by him only by claiming that petitioner has not paid any rent since 1990. Though, on account of statutory restrictions, claim was restricted only for the last 3 years.

Even if it was doubtful whether respondent was legally entitled to

receive the rent or not, it cannot be denied that the petitioner was in default of payment of rent. Even after filing of the present rent petition before the Rent Controller, petitioner did not make any effort to discharge his liability by depositing the arrears of rent.

15. Additionally, respondent was held entitled to accept rent as he was found to be one of the 'chelas' of late Baba Kanshi Dass and it was admitted by the witness RW-1 Mahant Manmohan Dass, examined by the petitioner - tenant that entire rent was being collected by respondent in a joint account with Baba Kanshi Dass. It was further admitted by the said witness that respondent was giving this entire amount to him who propounded to be the person managing the affairs of the mandir as per the claim of the petitioner-tenant himself. Besides it, no other person made any contrary claim with respect to the demised shop during the pendency of the eviction petition before the Rent Controller and Appellate Authority. Though a suit for declaration filed by Mahant Manmohan Das has been brought on record as Annexure P-2, however, it merely seems to be an afterthought and in collusion with petitioner especially considering the fact that Mahant Manmohan Dass- RW1 while appearing in the proceedings before the Rent Controller did not make any such claim. This rather exposes the malafides of the petitioner to avoid the payment of rent by any means, while, the rate of rent was only Rs.300/- per month agreed in the year 1983-84 and is a very nominal amount in the present circumstances. It is pertinent to note here that title cannot be determined strictly in the rent proceedings and thus, this Court is in respectful agreement with the findings of the Rent Controller as well as Appellate Authority that

respondent is entitled to receive the rent in the facts and circumstances of the present case.

16. Therefore, in view of the factual circumstances of the present case, when the petitioner has denied the landlord-tenant relationship as well as any arrears of rent, which were rejected by both the Courts below, petitioner cannot claim that he is entitled for an opportunity to deposit the arrears of rent after determination thereof by the Rent Controller. In view of the proposition of law discussed above, once relationship is denied by the petitioner in his written statement as well as the fact that no dues of rent are pending on his part, and subsequently it is found by the Rent Controller as well as the Appellate Authority that petitioner-tenant was in default of payment of rent, only outcome possible is the termination of tenancy on account of non-payment of arrears of rent.

17. In view of the discussion held above, no interference is warranted in the order dated 02.11.2010 passed by the Appellate Authority and thus, the present revision petition is dismissed.

18. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARKESH MANUJA)
JUDGE

31.08.2023
sanjay/anil

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No