

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

CR-3107-2016 (O&M)

Date of decision: January 09, 2023

Aviva Life Insurance Company India Limited

...Petitioner

Versus

Pal Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Manish Jain, Advocate,
Mr. Mayur Kanwar, Advocate,
Mr. Siddhant Jain, Advocate for the petitioner.

Mr. A.P.S. Sandhu, Advocate for the respondents.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside the impugned judgment/ order dated 15.07.2015 passed by learned Rent Controller, Amritsar whereby application filed by the respondent-landlords for eviction of the petitioner-tenant from the property in question was allowed; and impugned judgment/ order dated 23.11.2015 passed by learned Appellate Authority, Amritsar whereby appeal filed by the petitioner-tenant against the aforesaid judgment/order dated 15.07.2015, was dismissed.

2. I have heard learned counsel for the parties and gone through the case file.

3. No interference is called for in the impugned orders assailed herein. The learned Rent Controller, after having thread-bare gone into the evidence adduced by the parties, allowed the ejectment application, which is premised, *inter alia*, on the following reasoning:

“6. I have considered the rival submissions of the learned counsel for the parties and have also gone through the record available on the file. After going through the same, I am of the considered opinion that the respondent has failed to assign a cogent and plausible explanation for adjournment of the case for making the tender provisionally assessed by this court. The circumstances do show that the respondent has willfully committed default in making the payment of arrears of rent to the applicant compelling the latter in launching the instant proceedings u/s. 13 of the Act *ibid*. There is nothing for the Ld. counsel for the respondent to argue that no law contrary has been referred on behalf of the respondent. As such, I do not find any ground to adjourn the case for tendering rent by respondent, in view of the ratio of law discussed and laid down in the authoritative pronouncement in *Rakesh Wadhawan's case (supra)* wherein it has been specifically laid down by the Hon'ble Supreme Court of India that 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. It has been further laid down that "Of necessity, 'the date of first hearing of the application' would mean the date falling after the date of such order by Controller". It has further been laid down that "on the failure of the tenant to comply, nothing remains to be done and an order of 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". The facts and circumstances of the case in hand are squarely applicable to *Rakesh Wadhawan's case (supra)*.

7. Keeping in view above made discussion, as the respondent has failed to make the payment or tender the rent provisionally assessed by this court on the first date of hearing, therefore, nothing remains to be done and an order for eviction of the respondent from the demised premises deserves to be passed on the ground of non-payment of arrears of rent and hence I hereby allow the ejectment application with costs filed by the applicant on the ground of non-payment of arrears of rent and an ejectment order with regard to the demised premises is hereby passed in favour of the applicant and against the respondent. The respondent is directed to vacate and hand over the vacant physical possession of the demised premises to the applicant within a period of three months from today, failing which the applicant shall be at liberty to take possession of the demised premises in due course of law. Memo of cost be prepared. File be consigned to the record room, Amritsar, after due compliance.”

3.1 The above judgment/order challenged before the Appellate Authority, which inturn upheld the same giving independent reasons, which are as below:

“8. After hearing learned counsel for the parties, I am of the considered opinion that it is an admitted fact that a notice dated 18.6.2013 was served by the appellant/tenant upon the applicants/landlords and copy whereof has been placed on record, but a perusal thereof goes to show that it was not in conformity with the clauses of lease agreement dated 20.9.2011, copy of which has also been placed on record and a perusal thereof transpires, that there was a condition in such agreement being condition No.9.5, as to how the possession of the leased premises was to be delivered to the landlord by the tenant. It has been mentioned in such condition that on termination of this agreement in accordance with Article or accordance with any of the other terms and conditions of this Agreement, the LESSEE shall hand over the keys of the leased premises to the LESSOR and shall, at its own cost and expenditure, remove any fixtures and fittings that may have been effected by it in the lease premises. In the present case, any of such act was not done by the appellant/tenant. In case *H.S.Bedi vs National Highway Authority of India*, 2015(2) RLR 131, passed by Hon'ble Delhi High Court, while discussing Section 11 of Transfer of Property Act, 1882 it has been held that in case of lease agreement/deed, if a dishonest landlord deliberately delays the taking over of the possession, the tenant should vacate the tenanted premises; take photographs of the vacant premises; seal the property in the presence of a Notary Public and thereafter, deposit the keys in the Court in a suit for refund of security deposit to rule out any possibility of the landlord setting up a false defence that the property was not vacated at the time of the surrender of the lease. But, the appellant/tenant has failed to comply such provisions enshrined in Section 11 of Transfer of Property Act, as well as condition 9.5 of the lease agreement when appellant/tenant was fully aware about the same. It has also come on record that the appellant/tenant had filed a suit for recovery of Rs. 6,82,353/- balance security deposit against the applicants/landlords and they have also sought relief for mandatory injunction, directing the defendants to allow the plaintiff to remove all their infrastructure, record, policies of the insured/general public and other documents illegally retained by the defendants i.e. appellant/landlord. Such suit was filed by the appellant/tenant on 10.10.2013. A notice dated 12.8.2013, has been placed on record, which was served upon applicants/landlords by the appellant/tenant, stating specifically that in case the security deposit is not refunded, they would withhold the possession of the premises. So, possession of demised premises was within the appellant/tenant at the time of sending the notice. Thereafter, civil suit for recovery of balance security amount was filed on 10.10.2013. So, it comes out that appellant/tenant was in possession of the property in question, on the date when this rent petition was filed against it. Though the appellant/tenant has strongly contended that the possession was delivered on 23.8.2013 and on 24.8.2013, appellant/tenant came for taking remaining infrastructure but the applicants/landlords put their locks and not allowed the appellant/tenant to remove the said policies and safe/infrastructure, though cash was allowed to be taken with the intervention of the police,

but then, the appellant/tenant has not placed on any application allegedly moved to the police for that purpose nor any other writing/document has been placed on record, which may support the version of appellant/tenant that possession of the property was delivered to the applicants/landlords. There is nothing on the file that possession of demised premises was ever handed over to appellant/landlord.

9. *It is settled law that an order of eviction follows as a matter of course if there is non compliance of the order determining the provisional rent. The appellant/tenant did not comply with the order passed by the trial court and failed to pay the provisional rent assessed by the trial court. On the failure of the appellant/tenant to comply, nothing remained to be done and an order for eviction was to follow. It has been so held in landmark authority titled as Rakesh Wadhwan and others vs M/s. Jagdamba Industrial Corporation and others, AIR 2002 SC 2004. Following such guidelines, the trial court has passed the impugned order when appellant/tenant failed to make payment of rent as assessed by the trial court. So, in view of my foregoing discussion. I am of the considered opinion that a legal and valid order has been passed by the trial court and the same does not call for any interference of this court. The learned counsel for the appellant/tenant has failed to show as to how the impugned order is not legal or valid.*

10. *In view of my discussion as above, I have come to the conclusion that the impugned order does not suffer from any illegality or infirmity and the same is upheld. The appeal is found to be without any merit and same stands dismissed, with no order as to cost, in appeal. Counsel fee is assessed as Rs.3000/-. Memo of costs be prepared. Appeal file be consigned to the record room and record summoned from record room, be returned.”*

4. Having heard the arguments and applied my mind on the impugned orders passed by the Court below, I am of the view that there is no irregularity either in facts or in law warranting interference by this Court under the revisional jurisdiction.

5. Be that as it may, learned counsel for the petitioner submits that findings rendered by the Courts below will come in the way of his pressing the claim for the excess amount paid towards rental on account of non-adjudication *qua* effective date of eviction of the premises in question by the Insurance Company.

5.1 *Per contra* learned counsel appearing on behalf of the respondent-landlords submits that the said dispute, in any case, is subject matter of separate suit bearing Civil Suit No.370, vide which petitioner-Insurance Company has already sought recovery of alleged excess amount paid to the respondent-landlords. He points out that said suit has been decided against the plaintiff/ petitioner herein. A counter Civil Suit No.129 filed by the respondent-Landlords was decreed in favour of the respondents-landlord.

6. On a Court query, it transpires that petitioner-Insurance Company has already taken legal recourse by filing appeal *qua* both the decrees, which are pending before the competent Court.

7. Be that as it may, it is not for this Court to adjudicate on the controversy about the effective date of having vacated the premises as the same is subject matter in the litigation stated to be pending.

8. There is no room for interference in the aforesaid valid reasons recorded by the Courts below, with which I am in agreement.

9. Dismissed.

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

(ARUN MONGA)
JUDGE

January 09, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No