

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

**CR No.7924 of 2018 (O&M)
Date of Decision: 01.03.2023**

Baldev Raj

...Revisionist-Petitioner

Versus

Gurbachan Kaur (deceased) through her LRs

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Argued by:- Mr. Bhriagu Dutt Sharma, Advocate
for the revisionist-petitioner.

Mr. Vijay Rana, Advocate
for the LRs of the respondent.

* * * * *

MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the order dated 29.08.2017 (Annexure P-3) passed by learned Rent Controller, Jalandhar qua the assessment of the provisional rent in respect of the demised premises as well as the judgment (Annexure P-5), handed down by learned Appellate Authority, Jalandhar on 08.08.2018, dismissing the appeal moved by the petitioner-tenant (here-in-after to be referred as 'the tenant') against the afore-mentioned order (Annexure P-3), he (tenant) has preferred the instant revision petition to lay challenge to the same.

2. At the very outset, it is worth-while to point it out here that it goes undisputed between the parties that the Rent Petition, filed by the

respondent-landlady (since deceased and now represented through her LRs and here-in-after to be referred as 'the landlady') for seeking the eviction of the tenant from the demised premises, wherein the impugned order Annexure P-3 had been passed, has already been decided/allowed by the Rent Controller vide the order dated 24.09.2018 and the appeal preferred by the tenant against the above-said eviction order, is, presently, pending before the Appellate Authority.

3. Though, in view of the final decision of the afore-referred Rent Petition, the present petition has been rendered infructuous but however, learned counsel for the tenant insists that he would address the arguments in the same. Accordingly, I have heard him as well as learned counsel for the LRs of the landlady in this revision petition and have also perused the file carefully.

4. Learned counsel for the petitioner-tenant contends that the tenant is well within his right to challenge the legality of order Annexure P-3 regarding the assessment of the provisional rent, even in the appeal moved by him to assail the eviction order, as handed down in the above-said Rent Petition and hence, he be granted the liberty to do so. To buttress his contentions, he places reliance upon the following observations, made by Hon'ble Supreme Court in Para No.32 of the judgment rendered in

Harjit Singh Uppal vs. Anup Bansal 2011(11) SCC 672:-

“32. We find no impediment for an aggrieved person, on reading Section 15(1)(b) of the 1949 Rent Act, that an interlocutory order which had not been appealed though an appeal lay, could not be challenged in an appeal from

the final order. In our opinion, Section 15(1)(b) does not make it imperative upon the person aggrieved to appeal from an interlocutory order and, if he does not do so, his right gets forfeited when he challenges the final order.”

5. Per contra, learned counsel for the LR of the landlady argues that the Appellate Authority is already seized of the matter involved in the appeal preferred by the tenant against the eviction order and therefore, the tenant cannot raise the afore-discussed plea in the instant revision petition.

6. I do not find any force or merit in the contention as put-forth by learned counsel for the tenant because the appeal filed by the tenant against order Annexure P-3, has been dismissed by the Appellate Authority vide the judgment Annexure P-5 and in the present revision petition, he has laid challenge to the same also, besides assailing the said order. However, as discussed earlier, the Rent Controller, while finally adjudicating the above-mentioned Rent Petition, has passed the eviction order against the tenant and he (tenant) has already availed the remedy of filing the appeal to challenge the said eviction order and presently, the Appellate Authority is, concededly, seized of the *lis* between the parties. The observations made by the Apex Court in **Harjit Singh Uppal (supra)**, are of no avail to the tenant because the facts and circumstances of the afore-referred case are entirely distinguishable from those of the present one. In the above-cited case, the tenant had not availed the remedy of assailing the order qua the assessment of the provisional rent by the Rent Controller and due to the non-payment of the assessed rent, the eviction order had been passed against him and he had filed an appeal against the same and in that eventuality, their Lordships

had made the afore-quoted observations whereas in the instant case, the tenant has already availed the remedy of filing an appeal against the order Annexure P-3, passed for the assessment of provisional rent and the same has already been dismissed by the Appellate Authority vide the impugned judgment Annexure P-5.

7. As a sequel to the fore-going discussion, it follows that the revision petition in hand deserves dismissal. Resultantly, the same stands dismissed accordingly.

March 01, 2023
neetu

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: *Yes*
Whether Reportable: *No*