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

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Reserved on: 11.08.2023

Pronounced on: 27.09.2023

Paramjit Kaur

.....Petitioner

Versus

M/s Parkash Jewellers

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr Harsh Kinra, Advocate,
for the petitioner.

Mr. Rajveer Singh, Advocate and
Mr. Vikram Anand, Advocate,
for the respondent.

NAMIT KUMAR, J.

1. The instant revision petition has been preferred by the petitioner under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the 1949 Act') impugning the order dated 19.04.2022 (Annexure P-1) passed by Rent Controller, Jalandhar, in Rent Petition No.202 of 2014 titled "Paramjit Kaur v. Parkash Jewellers", whereby application filed by the petitioner/landlord for ejectment of the respondent/tenant on account of non-deposit of provisional assessed rent, has been dismissed.

2. Brief facts relevant for the disposal of the present revision petition are that petitioner/landlord filed a petition under Section 13 of the 1949 Act for ejectment of the respondent/tenant from the shops shown in red colour in the site plan attached with the petition, situated

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at Gujrat Complex, Rainak Bazar, Jalandhar, on the ground of arrears of rent. Learned Rent Controller, Jalandhar, vide order dated 19.01.2018 provisionally assessed the rent and directed the respondent/tenant to make the payment on the next date of hearing i.e. 19.03.2018. Respondent/tenant challenged the said order by way of appeal before the Appellate Authority, which was dismissed vide order dated 01.09.2018. However, on 19.03.2018 respondent/tenant did not deposit the provisional rent as assessed by the Rent Controller vide order dated 19.01.2018. Consequently, petitioner/landlord filed an application for passing of ejectment order against the respondent/tenant for non-tendering the provisionally assessed rent. The Rent Controller vide impugned order dated 19.04.2022 dismissed the application of the petitioner/landlord and directed that the demand draft already tendered by the respondent-tenant on 28.03.2018 be re-validated on or before 02.05.2022.

3. Learned counsel for the petitioner contended that the Rent Controller has wrongly dismissed the application of the petitioner for ejectment of the respondent for non-payment of provisional rent on the first date of hearing inasmuch as no stay was operating against order dated 19.01.2018 whereby provisional rent was assessed by the Rent Controller. He further contended that respondent/tenant was liable to tender arrears of provisional rent on the first date of hearing after the date of assessment of the same i.e. on 19.03.2018. He further contended that respondent/tenant gave a wrong statement before the Rent Controller with regard to stay of the order of provisional

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assessment of rent and got the case adjourned. He further contended that impugned order passed by the Rent Controller is erroneous and not sustainable in the eyes of law. In support of his contentions, learned counsel placed reliance on the judgments of this Court in ***Rajan alias Raj Kumar v. Rakesh Kumar, 2010(1) R.C.R.(Rent) 386; Anil Kumar v. Ghanshyam Dass, 2012(1) R.C.R.(Rent) 153; Dharam Vir v. Raj Kumar Book Binder, 2012(1) R.C.R.(Rent) 546 and Vijay Singla v. Lajwanti (since deceased through her LRs) and others, 2022(2) R.C.R.(Rent) 247.***

4. *Per contra*, learned counsel for the respondent refuted the contentions of the learned counsel for the petitioner and contended that order passed by the Rent Controller rejecting the application of the petitioner for ejectment of the respondent is legal and valid.

5. I have heard learned counsel for the parties and perused the record.

6. In the present case, provisional rent was assessed by the Rent Controller on 19.01.2018 and respondent was directed to make the payment of the same on the next date of hearing i.e. 19.03.2018. However, on 19.03.2018, respondent/tenant made the following statement before the Rent Controller: -

“Statement of Anil Parkash Prop. M/s Parkash Jewellers respondent along with counsel.

Stated that a civil revision bearing no.6235/17 filed before Hon’ble High Court of Punjab and Haryana against the order of dismissal of application under Order 6 Rule 17 was filed by me which was fixed today. I have received telephonic information from my counsel in High Court

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that Hon'ble High Court has adjourned Civil Revision to 22.3.2018 i.e. Thursday and directed this Hon'ble court to adjourn the matter for payment of provisional rent to any date beyond 22.3.2018 which shall be treated as first date of hearing for payment of provisional rent as assessed by this court. Prayed accordingly.

RO & AC

Sd/- Anil Parkash

*Sd/- (Puneet Mohinia), PCS
RC/Jalandhar 19.3.2018"*

7. On the basis of the above statement, the following order was passed by the Rent Controller: -

*"Present: Sh. Deepak Chawla, Adv., counsel for the petitioner.
Sh. Kishore Sareen, Adv., counsel for the respondent.*

Today, the case was fixed for payment of rent. But respondent alongwith counsel suffered a separate statement that he has preferred civil revision before Hon'ble Court which was fixed for today in which Hon'ble High Court has directed this Court to adjourn the matter beyond 22.03.2018. This Court is of the considered opinion that there is no copy of any order of High Court but since respondent has suffered separate statement and if the same found to be false the D.H. can initiate proceedings against him under appropriate provisions of law. But still in the interest of justice one opportunity is given to respondent to placing on record order of High Court. As such, case is fixed 22.03.2018 for producing order of Hon'ble High Court by respondent.

*Date of order: 2018-03-19 (Puneet Mohinia)
Civil Judge (Junior Division)-12"*

8. It is relevant to extract the order dated 19.03.2018 passed

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dismissal of the application for amendment of the written statement by the respondent, is as under: -

“CR-6235-2017 (O&M)

M/S PARKASH JEWELLERS VS PARAMJIT KAUR

*Present: Mr. Vikram Anand, Advocate,
For the petitioner.*

As per report, service upon respondent is complete. Since is the case is taken up out of the turn, I deem it appropriate to adjourn it to enable the petitioner to appear.

In the meantime, trial Court is directed to give one more opportunity to the petitioner to deposit the rent on the date after a date fixed by this Court.

Adjourned to 22.3.2018.

To be shown in the urgent list.”

9. It is pertinent to mention here that the order of provisional assessment of rent was passed on 19.01.2018 and the said order was challenged by the tenant before the Appellate Authority/ADJ, Jalandhar and the same was dismissed on 01.09.2018. Thereafter, the tenant challenged the aforesaid orders by filing CR-7444 of 2018 before this Court along with an application for condonation of delay of 41 days, in which no stay was granted.

10. The Hon’ble Supreme Court in the case of ***Rakesh Wadhawan and others Vs. M/s Jagdamba Industrial Corporation and others : 2002(5) SCC 440*** and this Court in ***Barinder Khullar Vs. Maninder Singh : 2011(2) RCR (Civil) 751***, held that when the tenants fails to deposit the provisional rent, ejectment order has to follow and Rent Controller has no jurisdiction to extend the time. Hon’ble

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the provisions of Section 13(2)(i) of the 1949 Act to conclude that the 1949 Act has been framed for the benefit of the tenants and therefore, the tenants should not suffer on account of self assessment or for short tender. On that basis, the provision was so interpreted to conclude that the Rent Controller is under an obligation to pass a provisional order of assessment calling upon the tenants to make payment of arrears of rent and if they fail to make the payment of rent in accordance with the assessment order, then nothing requires to be done except ordering the tenants' eviction. The observations of the Supreme Court in ***Rakesh Wadhawan's*** case (supra) read as under :-

“23. The purpose of enacting such a provision as in Section 13(2)(i) proviso, which acts almost in terrorem on the tenant, in several rent control laws is dual. It ensures recovery of rent to the landlord and saves him from the recalcitrant tenant by building pressure on tenant to make payment under pain of eviction. At the same time it protects the tenants from the unscrupulous devices of landlords. Both the purposes are defeated by too simplistic an interpretation placed on Section 13(2)(i) proviso of the Punjab Act by the High Court of Punjab and Haryana, as already referred to.

xx xx xx xx xx

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.”

11. 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 along with 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.

12. In view of the above, it is clear that the interim amount of rent is to be tendered by the tenant on the first date of hearing after provisional rent is assessed by the Rent Controller. If the tenant does

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not comply with the orders of tendering the provisional arrears of rent on the first date of hearing after decision of the Rent Controller, then there is no option except to pass the ejectment order. No extension of time can be granted to the tenant for depositing the arrears of rent. Once the rent is assessed, the tenant has no option except to deposit the rent as assessed by the learned Rent Controller.

13. In view of the aforesaid discussion, it is clear that the respondent/tenant has failed to tender provisionally assessed rent on the first date of hearing. Therefore, order dated 19.04.2022 passed by the Rent Controller is not sustainable in the eyes of law.

14. Consequently, present revision petition is allowed. Respondent/tenant is directed to handover the vacant possession of the property in dispute within three months from today along with payment of arrears of rent and ancillary charges, failing which petitioner/landlord is at liberty to get possession through process of Court.

27.09.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No