

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR-2809-2022 (O&M)
Reserved on : 23.11.2023
Pronounced on : 14.12.2023

Kultar SinghPetitioner

Versus

Gangeshwar Bansal and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Dr. Rau P.S. Girwar, Advocate for the petitioner.

Mr. Vishal Aggarwal, Advocate for the respondents.

NAMIT KUMAR, J. (ORAL)

CM-8627-CII-2022

Prayer in the instant application filed under Section 151 of CPC is for seeking exemption from filing certified copies of Annexures P-1 to P-8 as well as impugned orders.

Allowed as prayed for subject to all just exceptions.

CM-14280-CII-2023

Prayer in the instant application filed under Section 151 CPC read with Order 7 Rule 14 of CPC is for placing on record certified copy of the application filed by the petitioner before the learned Rent Controller, Bathinda for allowing an adjournment.

Allowed as prayed for subject to all just exceptions.

CR-2809-2022 (O&M)

1. The instant revision petition has been preferred by the

petitioner/tenant impugning the order dated 04.03.2022 passed by learned Rent Controller, Bathinda in Rent Petition No.26 of 2021 titled as 'Gangeshwar Bansal and others Vs. Kultar Singh' whereby an eviction petition filed by the respondents/landlord has been allowed as well as order dated 13.05.2022 passed by learned Appellate Authority, Bathinda in Rent Appeal No.3 of 2022 whereby an appeal filed by the petitioner/tenant against the order dated 04.03.2022 has been dismissed.

2. Briefly stated the facts of the case as pleaded in the petition are that the respondents are the joint owner of entire building bearing M.C. No.4969, Afim Wali Gali, Bathinda. The said building is triple storey building, in which, 16 shops are constructed on the ground floor, which were rented out to the different tenants. On 01.04.1991, respondent No.1 rented out the demised premises to the petitioner and as per the rent note the petitioner was agreed to pay rent @ Rs.1,000/- per month which was enhanced @ 15% on enhanced rate, after every three years. The rent was paid by the petitioner on proper receipt, which was also duly acknowledged by the petitioner, by appending his signatures on the rent receipt and the rent receipt was always having two copies, one of which was handed over to the petitioner and the other receipt was retained by the respondents for the purpose of record. As such, there is a relationship of landlord and tenant between the parties. However, the respondents have filed the eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the 1949 Act') on the ground of non-payment of arrears of rent w.e.f. 01.10.2016. It was further alleged that the demised premises was bonafidely required by respondents No.1 and 3 for their own personal

use and occupation for running business of wholesale medicines and the other respondents have no objection regarding the same. All the other tenants have vacated the demised premises. The respondents made repeated requests to the petitioner to vacate the demised premises but to no effect. Upon notice, the petitioner appeared through counsel and filed written reply raising legal objections that the petition is not maintainable. On merits, it is submitted that the petitioner is a good tenant and has been paying the rent regularly to the respondents. The respondents, illegally with ulterior motive, did not receive arrears of rent and due rent from the petitioner, in order to create a ground for eviction. The respondents filed rejoinder reiterating the averments as made in the petition as correct and denying the allegations as made in the written reply filed by the petitioner. Thereafter, learned Rent Controller, Bathinda vide order dated 02.02.2022, assessed the provisional rent from 01.10.2016 to 31.01.2022 and the petitioner was directed to tender the provisional assessed rent on the next date of hearing i.e. on 04.03.2022. However, on 04.03.2022, the petitioner failed to deposit the arrears of rent and after hearing counsel for both the parties, learned Rent Controller, Bathinda allowed the petition with costs and directed the petitioner to hand over the vacant possession of the demised premises to the respondents within two months, from the date of ejectment order. The said order was challenged by the petitioner before learned Appellate Authority, Bathinda by filing an appeal which was dismissed vide order dated 13.05.2022.

3. Aggrieved against the orders dated 13.05.2022 passed by learned Appellate Authority, Bathinda and 04.03.2022 passed by learned

Rent Controller, Bathinda, the petitioner/tenant has preferred the instant revision petition.

4. Learned counsel for the petitioner has contended that the Courts below have erred in law in ordering the eviction of the petitioner on the ground of non-payment of rent. He submits that the arrears of rent as assessed by learned Rent Controller on 02.02.2022 could not be tendered on the next date i.e. 04.03.2022 as the petitioner was out of station on account of death of his close relative. The counsel for the petitioner had filed an application for adjournment and had also requested for extension of time to make the payment on the next date of hearing which was wrongly and illegally declined by learned Rent Controller. The Appellate Authority, Ferozepur has dismissed the appeal filed by the petitioner without appreciating the evidence on record and also without considering the facts and circumstances of the present case. He submits that the petitioner may be granted another opportunity for depositing the rent. In support of his contention, learned counsel for the petitioner has placed reliance upon the judgment passed by Hon'ble Supreme Court in ***Mrs. Ambika Murali Vs. Tmt. Valliammal and another : 2021(2) RCR (Rent) 310.***

5. On the other hand, learned counsel for the respondents has vehemently opposed the present revision petition on the ground that learned Rent Controller, Bathinda provisionally assessed the arrears of rent in accordance with the relevant legal provisions but the petitioner has failed to pay the same on the stipulated date. The time period for making the payment of provisional rent cannot be extended and if tenant fails to pay the provisional rent on the date fixed, eviction order has to

be passed without there being any delay. Therefore, there is no illegality in the impugned orders passed by the Courts below, hence, the present petition is liable to be dismissed. In support of his contention, learned counsel for the respondents has placed reliance upon the judgment passed by Hon'ble Supreme Court in ***Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation : 2002(1) RCR (Rent) 514*** and judgments passed by this Court in ***Rajesh Thakur and others Vs. Jangi Lal : 2011(3) RCR (Civil) 312; Rajan @ Raj Kumar Vs. Rakesh Kumar : 2010(1) RCR (Rent) 386; Raghubir Singh Oberoi Vs. Kulwant Kaur and another : 2016(3) LAR 230; Pardeep Kumar Vs. Ashok Kumar Bajaj : 2020(2) RCR (Rent) 250; Meera Devi and another Vs. Rakesh Kumar : 2021(1) RCR (Rent) 488; Anil Kumar Vs. Chandhyam Dass : 2012(1) RCR (Rent) 153 and Sanjeev Kumar and another Vs. Krishan Gopal Lamba : 2013(1) RCR (Rent) 280.***

6. I have heard learned counsel for the parties and perused the relevant documents.

7. Hon'ble Supreme Court in ***Rakesh Wadhawan's case (supra)*** has interpreted the provisions of Section 13(2)(i) of the East Punjab Urban Rent Restriction Act, 1949 to conclude that the said 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.”*

8. 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. 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.

9. Admittedly, learned Rent Controller, Bathinda vide order dated 02.02.2022 assessed the provisional rent from 01.10.2016 to 31.01.2022 and the petitioner was directed to tender the provisional assessed rent on the next date of hearing i.e. on 04.03.2022. Vide order dated 02.02.2022 it was also made clear that if the petitioner failed to tender the provisional rent on the date fixed, eviction order as per ***Rakesh Wadhawan's case (supra)*** shall be passed. However, on 04.03.2022 neither the petitioner appeared before the Rent Controller nor deposited the arrears of provisional rent and moved an application seeking adjournment pleading that he is out of station on account of death of his close relative. The petitioner was well aware of the consequences of not depositing the arrears of provisional rent and he could have deposited the same through his counsel or any other mode of payment, without appearing before the Court but he did not make such an efforts. Therefore, learned Rent Controller, Bathinda had no option but to pass an eviction order against the petitioner/tenant keeping in

view the law laid down by Hon'ble Supreme Court in ***Rakesh Wadhawan's case (supra)***.

10. The matter can be examined from another angle also. Admittedly, the petitioner has failed to deposit the provisional rent as assessed by the Rent Controller on the date fixed. The Court has no power to extend the time as there is no provision under the 1949 Act for extension of time to deposit the provisional rent as assessed by the Rent Controller. The Hon'ble Supreme Court in ***Union of India and others Vs. S.K. Saigal and others : 2007(1) SCT 286*** has held that no mandamus can be issued against the provisions of the Act/Rules. On the same analogy the time for depositing the provisional rent cannot be extended once there is no provision in the 1949 Act.

11. The facts and circumstances of the judgment relied upon by learned counsel for the petitioner are quite distinguishable from the facts of the present case as in ***Ambika Murali's case (supra)*** the Rent Controller passed an ex-parte order directing the tenants to deposit the arrears of rent whereas in the present case the order was passed in the presence of counsel for the tenant/petitioner. Therefore, no benefit of ***Ambika Murali's case (supra)***, whatsoever, can be given to the petitioner.

12. In view of above, there is no illegality or infirmity in the impugned order dated 13.05.2022 passed by learned Appellate Authority, Bathinda and 04.03.2022 passed by learned Rent Controller, Bathinda and needs no interference by this Court. Finding no merit in the instant revision petition, the same is consequently, dismissed.

13. Misc. Application(s) pending, if any, shall also stand disposed of accordingly.
14. Interim order dated 10.10.2022 passed by this Cout stands vacated.

14.12.2023

Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No