

CR-3584-2023

-1- 2023:PHHC:081615

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3584-2023

Date of Decision:06.06.2023

KAMALJIT THAKUR

..... Petitioner

Versus

MANOHAR SINGH GUJRAL

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Shalendra Sharma, Advocate
for the petitioner.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition is seeking setting aside of order dated 21.04.2023 whereby Appellate Court has vacated order dated 28.02.2023 and order dated 28.02.2023 whereby petitioner was granted conditional stay.

2. The case of the petitioner is that petitioner is tenant of Sachin Ghai son of Mangat Rai Ghai. The rent deed was executed through General Power of Attorney (for short 'GPA') Smt. Gurbachan Kaur vide lease deed dated 09.11.2017. Smt. Gurbachan Kaur passed away and thereafter her husband started collecting rent from the petitioner. The husband of Smt. Gurbachan Kaur filed eviction petition against the petitioner on account of non-payment of rent. The Rent Controller vide order dated 22.11.2021 refused to assess provisional rent after noticing the fact that there is no relationship of landlord and tenant between the parties.

3. The respondent herein preferred an appeal before the

Appellate Authority which came to be allowed vide order dated 27.05.2022. The Rent Controller was directed to assess the provisional rent. In compliance of order dated 27.05.2022, the Rent Controller passed afresh order dated 29.10.2022 whereby provisional rent was determined and petitioner was directed to deposit rent. The petitioner failed to deposit provisional rent and accordingly vide order dated 20.12.2022, the Rent Controller passed order of eviction.

4. The petitioner feeling aggrieved from order dated 20.12.2022 preferred an appeal before the Appellate Court which vide order dated 28.02.2023 stayed the operation of order dated 20.12.2022, subject to payment of arrears of rent @ Rs.26,804/- per month w.e.f September, 2019. The petitioner did not deposit arrears of rent and Appellate Court vide impugned order dated 21.04.2023 vacated the order dated 28.02.2023.

5. Learned counsel for the petitioner *inter alia* contends that till the determination of relationship of petitioner with respondent i.e. tenant and landlord relationship, the Rent Controller was not authorized to assess provisional rent and thereafter pass impugned orders. In support of his contention, the petitioner relies upon judgment of a Coordinate Bench of this Court in ***M/s Chopra Jewellers Vs. Rajender Pal Gupta, Civil Revision No.2255 of 2009*** decided on 16.09.2009.

6. I have heard the argument and perused the record.

7. The conceded position emerging from the record is that the petitioner is not owner of the premises in question which is evident from lease deed dated 09.11.2017 executed between the petitioner and owner of premises through G.P.A Smt. Gurbachan Kaur. The Appellate

Authority vide order dated 27.05.2022 allowed appeal against order dated 22.11.2021 whereby Rent Controller had refused to assess provisional rent. The petitioner did not challenge the said order and accordingly Rent Controller determined provisional rent. The Rent Controller vide order dated 29.10.2022 determined provisional rent and that order has not been set aside by any Authority/Court. The Rent Controller passed eviction order on account of non-payment of provisional rent and petitioner preferred an appeal before Appellate Authority which stayed operation of order dated 20.12.2022, subject to deposit of arrears of rent. The petitioner did not challenge the said order i.e. order dated 28.02.2023 whereby operation of order dated 20.12.2022 passed by Rent Controller was stayed. The petitioner at present is assailing order 28.02.2023 as well as order dated 21.04.2023.

8. The judgment cited by learned counsel in support of his contention is based upon judgment of Hon'ble Supreme Court in ***Rakesh Wadhawan Vs. Jagdamba Industrial Corporation [2002(1) Rent Control Reporter 624]***. The Hon'ble Supreme Court has held that Rent Controller had no occasion to pass order of provisional assessment of rent since tenant has denied the relationship of the landlord. This Court has further noticed the fact that unscrupulous tenants would invariably deny the relationship of landlord and tenant to avoid the payment of rent.

9. In the present case, Rent Controller had assessed provisional rent and order of assessment of provisional rent was passed on the basis of order passed by Appellate Court and petitioner never challenged order passed by Appellate Court. Thus, petitioner at this stage cannot find any fault in the order determining provisional rent, therefore, neither

judgment of Hon’ble Supreme Court in *Rakesh Wadhawan* (supra) nor of this Court in *M/s Chopra Jewellers* (supra) may come to rescue of the petitioner. The petitioner is admittedly tenant of the premises and he is not owner of the premises. He is not paying rent since September, 2019. He wants to drag the matter from one Court to another Court and take advantage of technicalities. The petitioner by acquiescing to order dated 27.05.2022 passed by the Appellate Court and thereafter order dated 29.10.2022 passed by Rent Controller is precluded from impugning the order dated 21.04.2023 whereby interim order passed by Appellate Court has been vacated. It is apt to notice here that petitioner at the first instance did not challenge order dated 28.02.2023 whereby stay was granted and at this stage when stay has been vacated, he has opted to file present petition assailing order dated 28.02.2023 as well as 21.04.2023.

10. In view of the above facts and circumstances, there is no ground to interfere and present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

06.06.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>