

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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Date of Decision : 22.08.2023

Surinder Paul @ Shinder Pal and another

.....Petitioners

Versus

Shubham Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Vipul Babuta, Advocate for the petitioners.

NAMIT KUMAR, J. (ORAL)

1. The instant revision petition has been preferred by the petitioners under Article 227 of the Constitution of India read with Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the 1949 Act') impugning the order dated 28.04.2023 (Annexure P-6) passed by learned Appellate Authority, Sangrur in Rent Appeal No.4 of 2023 titled as 'Surinder Paul and another Vs. Shubham Kumar' whereby the appeal filed by the petitioner has been dismissed and the order dated 03.02.2023 (Annexure P-4) passed in Rent Petition No.07 of 2020 titled as 'Shubham Kumar Vs. Surinder Paul and another' whereby learned Rent Controller, Malerkotla has passed the ejectment order and directed the petitioners to hand over the vacant possession of demised premises to the respondent.

2. Briefly stated the facts of the case as pleaded in the petition are that the petitioners/tenants took the shop situated at Raikot Bus Stand, Chappar Road, Ahmedgarh, District Sangrur on rent from earlier

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co-owner/landlord namely Nirmala Vinayak wife of Late Yashpal Vinayak on the rent of Rs.2100/- per month w.e.f. 01.06.2003 to 31.08.2003 and executed a rent note dated 06.06.2003. In addition to payment of monthly rent, the petitioners/tenants also agreed to pay all the utility bills. Roof of the shop in dispute remained in possession of the owner. In family partition, the shop in dispute along with other property came into share of father of respondent namely Sanjiv Kumar who vide transfer deed No.479 dated 12.07.2017 transferred the shop in dispute and adjoining shop in favour of the respondent. Hence, respondent-Shubham Kumar is the owner/landlord of the shop in dispute from 12.07.2017. He (Shubham Kumar) has filed the ejectment petition on the ground of non-payment of arrears of rent w.e.f. 12.09.2017 @ Rs.2100/- per month. It was further alleged that the petitioners/tenants are also in arrears of property tax, interest and costs etc. and further that the shop in dispute was required for his bona fide necessity. Vide order dated 20.12.2022, learned Rent Controller, Malerkotla provisionally assessed the rent as follows :-

“Heard on the provisional assessment of rent. In this case, the rate of rent of demised shop is admitted between the parties to be Rs.2100/- per month. In such a case, the rate of rent for the purpose of provisional assessment of rent is hereby taken to be Rs.2100/- per month. As far as the period of arrears of rent is concerned, petitioner/landlord has claimed that respondents/tenants are in arrears of rent w.e.f. 12.09.2017 whereas respondents have submitted in their reply that they have paid rent of demised shop till 31.10.2017, however, it is noteworthy that petitioner has himself made statement in the court through his learned counsel that petitioner has received rent till 31.10.2017. Keeping in view the above

said circumstances, it is clear that respondents are in arrears of rent from 01.11.2017 till date. As far as house tax/property tax is concerned, as per the rent note dated 06.06.2002, same has to be paid by landlord. Therefore, the provisionally assessed rent is as follows:

1. Arrears of rent w.e.f. 01.11.2017 to 30.11.2022: =	1,28,100/-
2100 X 61	
2. Interest on arrears @ 6% on account of	= 19,855/-
arrears : 1,28,100 X 62/400	
3. Costs	= 4,000/-
Total	= Rs.1,51,955/-

3. The arrears of provisional rent were to be paid by the petitioners/tenants to the respondent/landlord to the tune of Rs.1,51,955/- on 03.02.2023, however, they did not pay the arrears of provisional rent and consequently, the Rent Controller, Malerkotla vide order dated 03.02.2023 while relying upon the judgment passed by 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 judgment passed by 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. Accordingly, it was directed to the petitioners/tenants to handover the vacant possession of the demised premises to the respondent/landlord immediately. The said order was challenged by the petitioners/tenants before the Appellate Authority, Sangrur by filing an appeal which was dismissed vide judgment dated 28.04.2023 by recording the following findings :-

“11. In view of the law laid down in these citations 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 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 of 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. Keeping in view the law laid down in these citations, the impugned order has been passed by the learned Rent Controller. There is no illegality or irregularity in the impugned order and same is hereby affirmed.

12. In view of the aforesaid discussion, it is clear that the appellants have failed to prove their case. The appeal is without any merits and the same is hereby, dismissed with costs and the impugned order is hereby upheld. The appellants are directed to handover the vacant possession of the demised property in dispute within two months from today, failing which respondent-landlord is at liberty to get possession through process of Court. Counsel fee is assessed at Rs.1500/-. Memo of costs be prepared. Appeal file be consigned to record room.”

4. Since the petitioners/tenants did not vacate the demised premises within a period of 02 months, therefore, the landlord filed an execution application wherein vide order dated 03.07.2023 passed by learned Rent Controller, Malerkotla, warrant of possession of the demised premises were issued for 24.07.2023. Aggrieved against the said order and orders dated 28.04.2023 passed by learned Appellate Authority, Sangrur and 03.02.2023 passed by learned Rent Controller, Malerkotla, the petitioners/tenants have preferred the instant revision petition.

5. Learned counsel for the petitioners has contended that the petitioners could not deposit the arrears of provisional rent on

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03.02.2023 due to communication gap between them and their counsel as the petitioners inadvertently noted down the wrong date and were not aware of the next date of hearing before the Court and were out of station due to some personal family problem. Even the counsel for the petitioners requested for short adjournment on the same very ground for making payment of provisionally assessed rent but the same was not granted and hence the impugned order dated 03.02.2023 was passed by learned Rent Controller, Malerkotla. The Appellate Authority, Sangrur vide order dated 28.04.2023 has dismissed the appeal filed by the petitioners without appreciating the evidence on record and also without considering the facts and circumstances of the present case. He submits that the petitioners may be granted another opportunity for depositing the rent.

6. I have heard learned counsel for the petitioners 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 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.

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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

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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. Since in the present case, the petitioners/tenants have failed to make payment of the provisionally assessed rent on 03.02.2023, therefore, the Rent Controller, Malerkotla had no option but to pass an eviction order against the petitioners/tenants keeping in view the law laid down by Hon'ble Supreme Court in *Rakesh Wadhawan's case (supra)*.

10. In view of above, there is no illegality or infirmity in the impugned order dated 28.04.2023 (Annexure P-6) passed by the Appellate Authority, Sangrur and order dated 03.02.2023 (Annexure P-4) passed the Rent Controller, Malerkotla and needs no interference. Finding no merit in the instant revision petition, the same is consequently, dismissed.

22.08.2023

Kothiwal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No