

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CR-3991-2022****Reserved on: December 19, 2022****Pronounced on: March 28, 2023**

Pramender Singh Sehrawat

...Petitioner.

vs.

Kamal Kanta Verma and another

....Respondents.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rajinder Goel, Advocate, for the petitioner.

Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Aditya Jain, Advocate and
Mr. Karan Singla, Advocate, for the respondents.

HARKESH MANUJA J.

By way of present revision petition, challenge has been laid at the instance of petitioner-tenant to the eviction orders dated 21.04.2022 and 08.09.2022 passed by the courts below, arising out of the proceedings initiated at the instance of respondents-landlord, seeking eviction on the grounds of arrears of rent.

The facts of the present case are that the respondents-landlord filed an eviction petition invoking Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short, "1973 Act") against petitioner-tenant for eviction from the tenanted premises bearing No.206, 2nd floor, Time Square Building, Sushant Lok, Phase-1, Gurugram, measuring 3129 Square feet, on the ground of non-payment of arrears of rent. It was pleaded in the eviction petition that the tenanted premises was rented out in favour of petitioner-tenant vide lease deed dated 03.02.2020, for a period of 12 years with rent

@ Rs.2,12,772/- per month, besides the payment of GST. A period of four months was given as a free period (i.e. 03.02.2020 to 05.06.2020) to the petitioner-tenant for the purpose of setting up of his machinery etc. Since, the arrears of rent were not being paid, respondents-landlord filed an eviction petition on 07.07.2021 against petitioner-tenant on account of non-payment of rent w.e.f. 16.06.2020 to July, 2021, besides non-payment of GST & maintenance charges.

The petitioner filed his written statement before the learned Rent Controller on 25.10.2021, admitting the tenancy as well as the execution of lease deed, including the rate of rent, though submitted that the non-payment of rent was on account of Covid-19 pandemic. Learned Rent Controller vide its order dated 06.04.2022 made provisional assessment of rent by directing the petitioner-tenant to tender rent amounting to Rs.34,44,138/- on or before 21.04.2022. Admittedly, order dated 06.04.2022 was never challenged by the petitioner who even failed to deposit the arrears of rent thereby resulting into an ejectment order dated 21.04.2022, passed by the learned Rent Controller. Aggrieved thereof, the petitioner-tenant filed first appeal before the appellate authority on 01.06.2022, however, the same was also dismissed vide order dated 08.09.2022. It is the aforesaid two orders, which have been impugned by way of present revision petition.

Notice of motion was issued by this Court vide order dated 19.09.2022, which reads as under:-

*“Learned counsel for the petitioner submits that
his client shall clear all the arrears of rent from*

16.06.2020 to 31.08.2022 minus the amount already paid as rent by second week of October, 2022. He further submits that a deposit of Rs.30 lakhs shall be made by his client on or before 23.09.2022.

Notice of motion, so as to explore the possibility of settlement between the parties.

At this stage, Mr. Aditya Jain, Advocate accepts notice on behalf of the respondents. He prays for two days' time to seek instructions in this regard from his clients and make submissions.

List on 26.09.2022.

Mr. Jain submits that he has already filed his caveat application in the present revision petition along with his power of attorney on behalf of the respondents and submits that as per the instructions from his clients, they will not execute the decree till the next date of hearing.

To be shown in the Urgent List.

A copy of this order be given to learned counsel for the parties under the signatures of Bench Secretary of this Court.”

In pursuance thereof, Mr. Aditya Jain, Advocate appeared on behalf of respondents-landlord and submitted that there was no scope of settlement between the parties and sought time to make his submissions on merit. Accordingly, the matter was heard.

Learned counsel for the petitioner contended that the petitioner was not able to deposit the arrears of rent because of Covid-19 situation wherein, on account of total lockdown of the commercial establishments, especially, pertaining to the nature of business activity being run by the petitioner-tenant in the shape of Gym, he suffered huge financial loss. Learned counsel also submitted that the petitioner was ready to clear all the arrears of rent at the

earliest and this Court even in its revisional jurisdiction could extend the period of payment of arrears of rent provisionally assessed by the learned Rent Controller. He placed reliance upon an order dated 21.01.2014 passed by this Court in CR-53-2014 as well as decision rendered by Hon'ble the Supreme Court in case titled as **"Mandeep Singh and another vs. M/s Imperial Gardens Pvt. Ltd. and another"** reported as 2016(1) RCR (Civil) 265, to contend that this Court was not powerless to grant extension of time regarding payment of rent as determined provisionally by the learned Rent Controller. He further submitted that even the order of provisional assessment was patently wrong as the period of 25.03.2020 to 03.06.2020 was to be pushed back being the rent free period. In addition, learned counsel also submitted that the petitioner had already spend approximately a sum of Rs.5 crores for the purpose of setting up of huge Gym on the entire floor and, as such, was going to suffer irreparable loss, in case, eviction was maintained against him.

On the other hand, learned Senior counsel representing the respondents-landlords submitted that in view of judgment passed by Hon'ble Supreme Court in **Rakesh Wadhawan vs. M/s Jagdamba Industrial Corporation**, 2002(1) RCR (Rent) 514, **Rajan @ Rajkumar Vs. Rakesh Kumar** 2010 (2) PLR 2001; **Daya Ram and another Vs. Shabbir Ahmed**, 2019 (2) RCR (Rent) 356, neither the rent controller/appellate authority nor even this Court in its revisional jurisdiction could grant extension of time as regards the payment of rent provisionally assessed by the rent controller. He further submitted that the offer regarding payment of arrears of rent

provisionally assessed by the rent controller was made for the first time in the present revision petition only and, as such, the petitioner did not deserve the discretion, if any, vested in this regard under Section 15 (6) of the 1973 Act in the limited revisional jurisdiction. Learned counsel even referred to the conduct of petitioner-tenant while submitted that all the cheques issued by him got bounced right from the day of inception of tenancy except for one month.

I have heard learned counsel for the parties and gone through the paper-book as well as the law cited at the bar. In the facts and circumstances of the present case, I am unable to accept the submissions made on behalf of the petitioner.

The property in question was leased out in favour of petitioner vide lease deed dated 03.02.2020 and the rent @ Rs.2,12,772/- was payable w.e.f. 16.06.2022. The petitioner having failed to pay the arrears, respondent/ landlord filed eviction petition wherein provisional assessment of rent was made vide order dated 06.04.2022 granting 15 days time to the petitioner to make payment upto 21.04.2022; neither the arrears of rent as provisionally assessed by the Rent Controller were paid by the petitioner before 21.04.2022; nor any challenge to the order dated 06.04.2022 was laid. Relying upon the case of **Rakesh Wadhwan's** case (supra) and finding no alternate, the ejectment order dated 21.04.2022 was passed by the Rent Controller against the petitioner on account of non-payment of arrears of rent which was affirmed by the Appellate Authority vide order dated 08.09.2022.

In view of the settled proposition of law laid down by the

Hon'ble Supreme Court in the case of **Rakesh Wadhwan's** case (supra), non-payment of provisionally assessed rent within the prescribed period has to follow an ejectment order as per para No.30 of the judgment and for reference, the same is reproduced hereunder:-

"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.”*

Having failed to deposit the arrears of rent provisionally assessed by the Rent Controller, followed by passing of the ejectment orders, an effort has been made, calling for interference to those orders while raising an argument that on account of loss of business in the wake of Covid-19 pandemic, extension of time regarding payment of rent was required to be granted by the Courts below in favour of petitioner.

Although, the consistent view of this Court in various judgments passed in the cases of ***Maninder Singh Vs. Mrs. Birinder Khuller***, 2011 (2) CCC 438; ***Vijay Singla Vs. Lajwanti (since deceased through her LRs) and others***, 2022 (2) RCR (Rent) 247; ***Santokh Singh Vs. Raj Kumar Batra***, 2019 (3) PLR 592; ***Surinder***

Kumar Vs. Rupinder Singh, 2017 (1) Rent Law Reporter 515; **Madan Lal and another Vs. Baldev Raj**, 2004 (2) RCR (Rent) 93 and **Dharam Vir Vs. Raj Kumar Book Binder**, 2012 (4) CCC 561 has been that the Rent Controller has no jurisdiction to order extension of time as regards payment of provisional rent by the tenant, however, to my mind in none of the aforementioned cases, exceptional and extraordinary impact of Covid-19 pandemic situation followed by the lock-down of commercial establishments was under consideration. Even Delhi High Court in **Ramanand & ors. vs. Dr Girish Soni & Anr.** (RC. REV. No. 447 of 2017), while holding that tenant cannot claim suspension of rent during lockdown period, still observed that some postponement or relaxation in the schedule of payment can be granted owing to the lockdown. For reference, relevant para 32 of the same is reproduced hereunder:

“32. The tenants' application for suspension of rent is thus liable to be rejected inasmuch as while invoking the doctrine of suspension of rent on the basis of a force majeure event, it is clear from the submissions made that the Tenants do not intend to surrender the tenanted premises. While holding that suspension of rent is not permissible in these facts, some postponement or relaxation in the schedule of payment can be granted owing to the lockdown.”

Under ordinary circumstances, in view of **Rakesh Wadhawan's case** (supra), the petitioner was liable to be non-suited at first instance in the present revision petition, but doing so, would tantamount to ignoring the ground realities and hardships faced by

the citizens of the country at the time of lockdown during Covid-19 pandemic. Though, it is rightly argued by learned counsel for the respondents that this Court under revisional jurisdiction cannot alter the concurrent finding of facts, however, not to take into account the unusual and exceptional circumstances which prevailed from March 2020 till March 2022 (approximately), would be against the equity and beyond reality. Doing so would rather be in conflict with the spirit of **Rakesh Wadhawan's case** (supra), as the essence behind these directions was to bring both the parties i.e. the tenant and landlord on equal terms. For the purpose of determining how the equity should be applicable in the present case, we need not to travel far as ample guidance has been provided in the judgment of **Rakesh Wadhawan's case** (supra) itself. From the relevant content reproduced hereunder, it can be easily deduced that the Apex Court was conscious that having appointed a time for payment, the court still retains jurisdiction to extend the time. Relevant para is being reproduced herein:

"The rule of equity enshrined in Section 114 of Transfer of Property Act is : Where a lease of immoveable property has determined by forfeiture for non-payment of rent and the lessor files a suit for ejectment of the lessee, the Court exercises a discretionary jurisdiction of passing an order relieving the lessee against the consequences of forfeiture if at the hearing of the suit the lessee pays or tenders to the lessor the rent in arrears with interest and costs or furnishes such security as the Court thinks sufficient. Having appointed a time for payment, the Court still retains jurisdiction to extend the time (Chandless-Chandless v. Nicholson, 1942(2) All England Reporter

315). Even the time appointed by a consent decree can be extended (Smt. Amiya De v. Dharendra Nath Mandal, AIR 1971 Calcutta 263). The discretion conferred by section 114 of Transfer of Property Act is of wide amplitude guided by the principles of justice, equity and good conscience and the Court would examine the conduct of the parties, the comparative hardship and lean in favour of one whose hands are clean (Namdeo Lokman Lodhi v. Narmadabai and others, AIR 1953 Supreme Court 228). The discretion to grant relief is available not only to the trial court but also to appellate court (R.S. Lala Praduman Kumar v. Virendra Goyal (dead) by his Lrs. and others, 1970 RCR (Rent) 304 (SC) : 1969(1) SCC 714)."

In addition, the Hon'ble Supreme Court in the case of **Dalip Kaur Brar Vs. M/s Guru Granth Sahib Sewa Mission and another**, AIR 2017 SC 1914 has also gone on to hold that the order of provisional assessment of rent can even be challenged along with eviction order while filing first appeal, which practically means that the first Appellate Court has been vested with power to interfere with the order of provisional assessment of rent passed by the Rent Controller even post its culmination into an eviction order. Meaning thereby, that even the order of provisional assessment of rent, despite the passing of consequential eviction order on account of its non-deposit is not final and is in any case open to appeal and subject to interference. Para 24 of **Dalip Kaur's** case (supra) being relevant, is reproduced hereunder:-

"24. The position that emerges in law is that once the Rent Controller has made a provisional assessment of the arrears of rent, interest and costs, the tenant must deposit the amount so

determined on the first hearing of the application for ejectment. A tenant who does so would be deemed to have duly paid or tendered the rent within the time prescribed by the substantive provision of Section 13(2)(i). A tenant failing to comply with the terms of an order of provisional assessment, cannot thereafter avail of the concession extended to a tenant, through the proviso under Section 13(2)(i), and will be liable to suffer an order of eviction. However, having suffered the order of eviction, the tenant is entitled to the statutory remedy of an appeal under Section 15(1)(b). The determination of a provisional assessment being the foundation of the order of eviction (which flows from the non-compliance of the terms of the provisional assessment), the tenant in an appeal against the order of eviction is entitled to question the correctness of the order of provisional assessment. This is available even after an order of eviction has been passed. Harjit Singh Uppal (supra) holds that the right is not lost upon an order of eviction being passed.”

Further, it may also be pointed out here that while dealing with **Rakesh Wadhawan’s** case (supra), the circumstances which prevailed during the Covid-19 pandemic were even beyond comprehension and thus, could not be accounted for. In fact, the extraordinary situation which prevailed at the time of Covid-19 pandemic can only be dealt with through exceptional solutions and remedies based on the spirit of law laid down in **Rakesh Wadhawan’s** case (supra), as well as depending upon the conduct of the parties during these testing times, by granting extension of time for payment of arrears of rent or the rent provisionally assessed.

Having said that, the unfair and dishonest conduct of the petitioner in the present facts and circumstances disentitles him of the discretion vested with the court on the following grounds:-

- i) Act & conduct of petitioner has not been above board. No doubt during Covid-19, the functioning of gyms and clubs was restricted/ regulated by the District and State authorities to a large extent, however, towards the end of 2020, the same was permitted in a regulated manner. To show his bonafides, the petitioner never offered even a single penny during all this while for approximately more than two years, had it been a case of partial deposit, the position would have been different and the petitioner would have made himself entitled for extension.
- ii) In case the petitioner was not able to manage the tenanted premise financially, he should have surrendered possession instead of taking benefit of exceptional distressed circumstances, but contrary to that he continued to retain possession and run the business.
- iii) No such specific prayer was made either before the Rent Controller or even before the first Appellate Court for seeking extension of time which thus, apparently appears to be an afterthought and rather it should have been made promptly while challenging the order dated 06.04.2022 before first Appellate Court.

- iv) There has been no specific averment that the gym remained completely closed throughout for two years.
- v) Arrears of rent were never offered even at the time of filing of first appeal, neither any such explanation was offered at all.

In view of the discussion made hereinabove, the orders dated 21.04.2022 and 08.09.2022 passed by the Rent Controller as well as the Appellate Authority, do not call for any interference thereby resulting into dismissal of the present petition while upholding the eviction orders passed against the petitioner.

Ordered accordingly.

March 28, 2023
sonika/sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No