

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CR-4969-2023 (O&M)
Date of Decision : 29.08.2023

Parambir Singh SodhiPetitioner

Versus

Bhupinder KaurRespondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Gurmeet Singh Saini, Advocate for the petitioner.
Mr. Parvez Chugh, Advocate for the respondent/caveator.

NAMIT KUMAR, J. (ORAL)

CM-15566-CII-2023

Prayer in the instant application filed under Section 5 of the Limitation Act is for condonation of delay of 27 days in filing the instant petition.

For the averments made in the application which has been supported by an affidavit of appellant, the same is allowed and delay of 27 days in filing the instant petition is condoned.

CM-15568-CII-2023

Prayer in the instant application filed under Section 151 of CPC is for seeking exemption from filing certified copy of impugned order dated 29.10.2022 as well as copy of grounds of appeal filed before the Appellate Authority, Ferozepur.

Allowed as prayed for subject to all just exceptions.

CR-4969-2023 (O&M)

1. The instant revision petition has been preferred by the

petitioner/tenant impugning the order dated 29.10.2022 passed in Rent Petition No.5 of 2020 tilted as 'Bhupinder Kaur Vs. Parambir Singh Sodhi' whereby learned Rent Controller, Ferozepur has passed the ejectment order and directed the petitioner to hand over the vacant possession of demised premises to the respondent and order dated 27.04.2023 passed by learned Appellate Authority, Ferozepur in Rent Appeal No.7 of 2022 whereby an appeal filed by the petitioner against order dated 29.10.2022 has been dismissed.

2. Briefly stated the facts of the case as pleaded in the petition are that the respondent is the owner of the shop measuring 20'x30' situated at Malwal Road, Ferozepur City and bounded on East by Malwal Road, West by House of Santokh Singh Sandhu, North Shiv Kumar Monga and South by Sandeep Khatter. The respondent has appointed her son Sandeep Singh as her general power of attorney and authorized him to collect the rent of the above-said shop. The shop in question was given on rent to the petitioner and a rent deed dated 14.06.2018 was got registered in the office of Sub Registrar, Ferozepur in this regard. The petitioner was agreed to pay rent of Rs.20,000/- per month. The respondent has filed the ejectment petition on the ground of non-payment of arrears of rent w.e.f. 14.06.2018 to the date of filing of the ejectment petition @ Rs.22,000/- per month. It was further alleged that the shop in dispute was required for her bona fide necessity. Upon notice the petitioner appeared and filed reply taking preliminary objections alleging that Sandeep Singh s/o of respondent is fast friend of

the petitioner and the petitioner has taken the shop in question on monthly rent of Rs.2500/- from Sandeep Singh, who is Karta of his family in the year 2002 and later on, the petitioner came to know that the shop in question is in the name of the respondent i.e. mother of Sandeep Singh. Thereafter, the petitioner started paying the rent to the respondent and her son Sandeep Singh and the rent was increased to the extent of 10% per year and now the petitioner is paying the rent of Rs.16,000/- per month to the respondent but she is not issuing any receipt of rent to him. The respondent got executed the alleged rent deed dated 14.06.2018 from the petitioner by fraud. The respondent also owns 7-8 shops outside her residential house in good locality which are lying vacant and she also owns other commercial properties at Mall Road, Ferozepur City and the same are also lying vacant. After hearing the parties, learned Rent Controller, Ferozepur vide order dated 29.09.2022, provisionally assessed the rent as follows :-

Period	Months	Amount in Rs.
14.06.2018 to 13.06.2019	16000 x 12	192000
14.06.2019 to 13.06.2020	17600 x 12	211200
14.06.2020 to 13.06.2021	19360 x 12	232320
14.06.2021 to 13.06.2022	21296 x 12	255552
14.06.2022 to 14.09.2022	28426 x 3	85278
Total Rent		976350
Interest		126926
Cost		500
	Total	1103776

The arrears of provisional rent were to be paid by the petitioner/tenant to the respondent/landlord to the tune of Rs.11,03,776/- on 28.10.2022 and on 28.10.2022 last opportunity was granted to the petitioner/tenant to pay the arrears of provisional rent on 29.10.2022, however, he did not pay the arrears of provisional rent and consequently, the Rent Controller, Ferozepur vide order dated 29.10.2022 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***, allowed the ejectment petition filed by the respondent/landlord and directed the petitioner/tenant to vacate the demised premises and handover the vacant possession of the demised premises to the respondent/landlord within a period of 02 months. The said order was challenged by the petitioner/tenant before the Appellate Authority, Ferozepur by filing an appeal which was dismissed vide judgment dated 27.04.2023 by recording the following findings :-

“16. When appellant/tenant has failed to pay provisionally assessed rent on the first date of hearing, then ejectment order was rightly passed by the Rent Controller as tenant was in arrears of rent and he failed to tender rent on first date of hearing and there is no illegality or infirmity in the findings recorded by the learned Rent Controller and there is no merit in the appeal of the appellant and the same is dismissed and ejectment order passed by the learned Rent Controller is hereby affirmed. Memo of costs be prepared. Record of learned lower court be returned. Copy of this judgment be placed on record of learned lower court. Appeal file be consigned to concerned record room, Ferozepur”

3. Aggrieved against the orders dated 27.04.2023 passed by learned Appellate Authority, Ferozepur and 29.10.2022 passed by

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

4. Learned counsel for the petitioner has contended that learned Rent Controller has passed assessment order without hearing the petitioner as counsel of the petitioner had to go abroad on 30.09.2022 and his flight was at 6:30 a.m. from Delhi and he has gone to Delhi early morning on 29.09.2022 and was not present in the Court on that day. He submits that since the status of the case on e-courts is also showing for appearance, therefore, the petitioner and his counsel were not aware about the assessment of the rent by learned Rent Controller and the petitioner could not make the payment of the rent to the respondent on 29.10.2022. He further submits that on 29.10.2022, the father of the petitioner was also in critical stage and the petitioner moved an application for adjournment which was wrongly and illegally declined by learned Rent Controller. The Appellate Authority, Ferozepur vide order dated 27.04.2023 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.

5. I have heard learned counsel for the petitioner and perused the relevant documents.

6. 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."

7. 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.

8. So far as the argument made by learned counsel for the petitioner that at the time of provisional assessment of rent counsel for the petitioner was not present is concerned, provisional assessment order dated 29.09.2022 passed by learned Rent Controller, Ferozepur clearly shows that counsel for the petitioner was present and arguments

were heard on the question of provisional assessment of rent and learned Appellate Authority, Ferozepur has recorded as under :-

“14. Learned counsel for the appellant has primarily argued that he was not present at the time of provisional assessment of rent on 29.09.2022, whereas, provisional assessment order passed by the learned Rent Controller clearly shows that counsel for the respondent was present and arguments were heard on the question of provisional assessment of rent. Further more, stand of the appellant with regard to rate of rent was accepted and provisional assessment was made after taking into account rate of rent put up by the respondent. Stand of the appellant is that his counsel had to leave for abroad on 30.09.2022 at 6.30 a.m. Check-in time, as per ticket attached with the memorandum of appeal was upto 5.15 a.m. on 30.09.2022. Appellant has not placed on record any travel document of his counsel showing that he traveled in the morning on 29.09.2022 from Ferozepur to Delhi. He could have attached the travel document if counsel traveled by the public conveyance or if counsel traveled by his own vehicle. He could have placed on record screen shots of Toll Plaza showing that vehicle of counsel for the appellant crossing that Toll Plaza at particular time on 29.09.2022. If the counsel for the appellant was to catch flight in the morning on 30.09.2022, he could have easily traveled to Delhi, if he would have started in the after-noon or in the evening on 29.09.2022. No presumption could be drawn that his counsel was not present on 29.09.2022 in the court, if he was to fly abroad on 30.09.2022 from Delhi and presumption of correctness of court order passed by Judicial Officer in discharge of his official duties stands un rebutted.

15. Further more, appellant has argued that the rent petition was shown in E-Courts to have been fixed for appearance and the same is not fixed for assessment of provisional rent and for that purpose, appellant has placed on record screen shot of E-Courts App showing that rent petition is fixed for appearance. Appellant has also attached photostat copy of brief of counsel and diary maintained by his counsel and on the brief, date 29.09.2022 is duly entered for consideration and not for appearance. Similarly, in diary on 22.09.2022 case is shown to have been adjourned to 29.09.2022 for consideration. So, appellant and his counsel was well aware that the case is fixed for consideration of

provisional assessment of rent and it seems that the appellant was getting adjournment after adjournment for that purpose, as rent petition was adjourned for consideration of assessment of provisional rent for 01.02.2022 and then to 19.04.2022, 28.04.2022, 07.05.2022, 21.05.2022, 02.07.2022, 16.07.2022, 19.07.2022, 29.07.2022, 12.08.2022, 20.08.2022, 20.09.2022 and then to 29.09.2022. All this shows that learned Rent Controller has afforded sufficient opportunities to the respondent to argue on provisional assessment of rent. Further more, appellant has not assailed the provisional rent so assessed by the learned Rent Controller. Provisional rent has been assessed as per rate of rent suggested by the appellant. Learned Rent Controller has given period of one month for making payment of provisionally assessed rent and when on the stipulated date again, rent was not tendered and appellant moved application seeking adjournment, the adjournment was granted to the appellant and when on the adjourned date again provisionally assessed rent was not tendered, Rent Controller passed ejectment order.”

9. Since the petitioner/tenant has failed to make payment of the provisionally assessed rent on 29.10.2022, therefore, the Rent Controller, Ferozepur 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. In view of above, there is no illegality or infirmity in the impugned order order dated 27.04.2023 passed by learned Appellate Authority, Ferozepur and order dated 29.10.2022 passed by learned Rent Controller, Ferozepur and needs no interference. Finding no merit in the instant revision petition, the same is consequently, dismissed.

29.08.2023

Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No