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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**CR-6506-2023 (O&M)
Date of decision: 12.12.2023

Shalender

...Petitioner

Versus

Shri Vaish Aggarwal Sabha, Palwal

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGHPresent: Mr. Rakesh Kumar Sharma, Advocate for the petitioner.
******KARAMJIT SINGH, J. (ORAL)**

1. The present revision petition has been filed by petitioner/tenant against the order dated 04.05.2023 passed by Rent Controller, Palwal whereby Rent Petition No.12 of 2022 titled Shri Vaish Aggarwal Sabha Palwal Vs. Shalender was allowed on account of non deposit of provisional rent as assessed by the Rent Controller vide order dated 19.04.2023 and order dated 05.09.2023 whereby appeal filed by the petitioner against order dated 04.05.2023 has been dismissed by the Appellate Authority, Palwal.

2. The brief facts of the case are that respondent/landlord filed Eviction Petition against the petitioner/tenant, seeking his eviction from the demised premises on the ground of non-payment of rent. The Eviction Petition was contested by the petitioner. The Rent Controller assessed the provisional rent of the demised premises vide order dated 19.04.2023 and the petitioner was directed to make payment of said provisional rent by 04.05.2023. On the date fixed i.e. 04.05.2023, the petitioner failed to deposit the provisional rent as was assessed by the Rent Controller vide order dated

19.04.2023. Consequently, the Rent Controller passed eviction order against the petitioner and gave him 3 months time to vacate the demised premises vide impugned order dated 04.05.2023. The petitioner being aggrieved by the said order filed an appeal. The appellate authority dismissed the said appeal vide order dated 05.09.2023 while placing reliance upon the judgment of Hon'ble Supreme Court in ***Rakesh Wadhawan Vs. M/s Jagdamba International Corporation 2002 (5) SCC 440*** and decision of this Court in CR No.3577 of 2006 ***Rajan @ Raj Kumar Vs. Rakesh Kumar*** decided on 07.01.2010.

3. Being aggrieved, the petitioner has filed the present revision petition.

4. The counsel for the petitioner submits that the Rent Controller assessed provisional rent of the demised premises vide order dated 19.04.2023 and adjourned the eviction petition to 04.05.2023 with direction to make payment of the provisionally assessed rent by that date. It is further contended that on 04.05.2023 Keshav Dev Bhardwaj, Advocate who was member of District Bar Association, Palwal died and the District Bar Association resolved that prayer meeting will be held at 01:30 PM and thereafter, the work in the Court would remain suspended as the last rites of the deceased advocate were to be performed in the evening on the same day i.e. 04.05.2023. The counsel for the petitioner further submits that as on 04.05.2023 the judicial work was suspended by the local Bar, the petitioner failed to tender the aforesaid provisional rent on that day in the Court. That oral request was also made to the Court of Rent Controller to adjourn the case to some other date. That however, the genuine request made by the

counsel for the petitioner was declined and the said Court passed impugned eviction order dated 04.05.2023. The counsel for the petitioner further submits that the Rent Controller should have extended the time for payment of provisional rent as assessed vide order dated 19.04.2023, while taking into consideration the genuine difficulty of the petitioner because no one was allowed to appear in the Court, as lawyers resorted to strike on that day. The counsel for the petitioner further submits that the appeal filed by the petitioner against order dated 04.05.2023 was also dismissed by the appellate authority, without any application of mind. The counsel for the petitioner further submits that on 04.05.2023, the petitioner was having requisite amount to make payment of the provisional rent as assessed by the Rent Controller. That however, the petitioner/his counsel was unable to pay/tender the said amount, as no one was allowed to appear in the Courts as the lawyers were on strike on that date. That due to said practical difficulty, the petitioner failed to tender the arrears of provisional rent within stipulated period. The counsel for the petitioner further submits that the petitioner is always ready to pay/tender the arrears of provisional rent. That even during the pendency of the present revision petition, petitioner was ready with demand draft worth Rs.7,55,920/- to make the payment of aforesaid amount in compliance of order dated 19.04.2023. It is further contended that both the impugned order are illegal and deserve to be set aside.

5. I have considered the submissions made by counsel for the petitioner.

6. Admittedly, the Rent Controller assessed the provisional rent of demised premises @ rate of Rs.13,800/- per month vide order dated

19.04.2023 and gave direction to the petitioner to tender the provisionally assessed rent by 04.05.2023. The petitioner failed to make payment of the provisionally assessed rent by the date fixed i.e. 04.05.2023. The plea of the petitioner is that he was ready with the said arrears of provisional rent but failed to tender the same in the Court concerned as on 04.05.2023 the local Bar of Palwal was on strike. The counsel for the petitioner has placed on record resolution Annexure P-3 passed by District Bar Association, Palwal, in order to establish that on 04.05.2023 the local Bar of Palwal observed strike. In case, the advocates were on strike on the date fixed, the petitioner could have appeared in person to tender the said arrears of provisional rent in the Court concerned. Further, no document in the shape of cheque/demand draft dated 04.05.2023 or of some earlier date is produced by the petitioner to show that the petitioner was ready with the amount to pay arrears of provisional rent on the stipulated date i.e. 04.05.2023. The copy of the demand draft which was produced in this revision petition is dated 17.11.2023 that is subsequent to the date fixed (04.05.2023). The said demand draft dated 17.11.2023 is of no help to the petitioner, it being issued subsequent to the stipulated date i.e. 04.05.2023.

7. Now the issue arises as to whether the Rent Controller or the appellate authority was having any jurisdiction to extend the time for payment/tender of arrears of provisional rent in the light of the circumstances as are discussed above.

8. As per the ratio laid down by Hon'ble Supreme Court in **Rakesh Wadhawan's case** (supra) the Rent Controller after affording the parties an opportunity of hearing, is to pass a order regarding assessment of

provisional rent and then to afford the tenant an opportunity of making payment or tender. On failure of the tenant to comply with the aforesaid direction, an order for eviction shall follow. The division Bench of this Court in **Rajan @ Raj Kumar's case** (supra) has also held that in case of default by the tenant to pay/tender on first date of hearing after the determination of provisional rent and other ancillary expenses by the Rent Controller, the eviction order has to follow and the time given by the Rent Controller to pay/tender the arrears of provisional rent cannot be extended. Further the plea taken by the petitioner that he failed to pay/tender the provisional rent due to lawyers strike is not tenable. The Hon'ble Apex Court has time and again reiterated that lawyers have no right to go on strike or give a call for boycott. In this regard reference is made to case of *Ex. Capt. Harish Uppal Vs. Union of India (2003) 2 SCC 45*.

9. From the perusal of order dated 04.05.2023, it is apparent that the counsel for tenant appeared in the eviction petition on that date and made prayer to the Court of Rent Controller to extend the time for payment/tender of provisional rent as the tenant was not able to tender the said rent on that date. While considering the said request, the tenant was given time to make payment of provisional rent up to 04:30 PM on that very day. However, tenant failed to pay/tender the provisional rent even by 04:30 PM on 04.05.2023 and resultantly, eviction order was passed by the Rent Controller in the light of the law laid down by Hon'ble Supreme Court in **Rakesh Wadhawan's case** (supra).

10. Further in the present case, there is nothing to show that even the litigants were not allowed to enter the Court premises on 04.05.2023. So,

the petitioner could have appeared in the Court concerned personally to pay/tender the provisional rent on that date. However, there is nothing on the record to show that the petitioner made any efforts to do so to show his bonafide. Furthermore, the Rent Act is a Complete Code in itself and the Rent Controller has no jurisdiction to condone such like delay in exercise of power under the Limitation Act.

9. Considering the totality of circumstances, I am of the view that there is no illegality or perversity in the impugned order dated 04.05.2023 passed by the Rent Controller and order dated 05.09.2023 passed by the Appellate Court.

10. Consequently, the present revision petition is hereby dismissed being devoid of merits.

11. Pending applications, if any, stand disposed of accordingly.

12.12.2023

Yogesh

**(KARAMJIT SINGH)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**