

[109] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6107-2022 (O&M)
Date of Decision : 03.02.2023

Amrit Lal ...Petitioner
versus

Surinder Pal JainRespondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Arun Singla, Advocate for the petitioner.

B.S. Walia, J. (Oral)

[1] Challenge in the instant petition is to judgment dated 25.11.2022 passed in Rent Appeal No.112 of 2022 by the learned Appellate Authority, Chandigarh against the order dated 23.09.2022, upholding the order of the learned Rent Controller, Chandigarh, ordering the eviction of the petitioner from the demised premises on account of failure to deposit the provisional rent assessed.

[2] Learned counsel contends that the appellant is a small tea vendor and was not able to pay the provisional rent assessed by the learned Rent Controller within the time granted and was ready to pay the same in installments but the learned Appellant Authority rejected the aforementioned offer of the petitioner.

[3] Learned counsel contends that the petitioner is still ready and willing to make payment of the provisional rent as assessed by the learned Rent Controller provided the amount assessed is allowed to be paid in installments.

[4] I have considered the submission of learned counsel for the petitioner.

[5] The petitioner had the remedy of challenging the order of assessment of provisional rent as made by the learned Rent Controller but as has been admitted by learned counsel for the petitioner, no challenge was maintained by the petitioner to the assessment of provisional rent made by the Rent Controller. The point is no longer *res integra* and stands settled by the decision of Hon'ble the Supreme Court in case reported as 'Rakesh Wadhawan versus M/s Jagdamba Industrial Corporation', 2002 AIR (SC) 2004 as per which, once order of provisional assessment has been passed and there is no stay against the said order, the tenant is bound to tender the rent assessed on the first day of hearing after passing such order of assessment and on failure to do so, nothing remains to be done, except to pass order of eviction. Relevant extract of the aforementioned decision is reproduced as under:-

"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. ”*

Once the position is as above, the impugned order of eviction cannot be said to be suffering from any infirmity.

[6] In view of the position noted above, as well as the decision of Hon’ble the Supreme Court in ‘Rakesh Wadhawan’s case (supra)’ no grounds whatsoever exists for interfering with the impugned orders. Accordingly, finding no merit in the instant petition, the same is dismissed *in limini*.

(B.S. Walia)
Judge

03.02.2023
‘Rajneesh’

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