

CR-9568-2018 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR-9568-2018 (O&M)
Reserved on 18.04.2023
Date of decision : 29.04.2023**

Sukhwant Kaur

... Petitioner(s)

Versus

Saroj Bhalla & Anr.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Riffi Birla, Advocate for the petitioner.

Mr. Shiv Kumar, Advocate for the respondents.

ALKA SARIN, J.

1. The present revision petition has been preferred against the orders dated 24.09.2018 and 29.10.2018 passed by the Authorities below ordering the ejectment of the tenant-petitioner from the premises in dispute.

2. The brief facts relevant to the present *lis* are that the respondents filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Rent Act') for eviction of the tenant-petitioner from the residential premises described in detail in the ejectment petition. It was averred in the ejectment petition that the landlady-respondent No.1 was the registered owner of a house vide sale deed dated 25.05.1979 and that the premises had been let out to the tenant-petitioner at a monthly rent of Rs.800/- about 25 years ago which, at a later stage, was enhanced to Rs.900/- per month. Respondent No.2 - Sudarshan

Bhalla - had been collecting rent from the tenant-petitioner against receipts. The ejectment petition was filed on the ground of arrears of rent from 01.07.2013 and on the ground of *bonafide* personal necessity. The *bonafide* personal necessity as stated in the ejectment petition was that the respondents were residing in a small residential house of approximately 3-½ marlas owned by respondent No.2 in a narrow street where there was no facility of parking any automobile. It was further averred that the respondents were both of advance age and always needed either automobile or rickshaw to move out from their house. It was further the case that the total accommodation of their house consisted of one room and a small store on the ground floor and similar accommodation on the first floor where the married son of the respondents was residing with his wife and daughter. It was further the case that the respondents have two other sons and a married daughter who were residing at different places and were frequently visiting the respondents. On notice, the tenant-petitioner appeared and contested the ejectment petition. The relationship of landlord and tenant was admitted. The rate of rent of Rs.900/- per month was also admitted. However, it was stated that the tenant-petitioner was regularly paying the rent, however, no receipts were issued. The Rent Controller provisionally assessed the rent vide order dated 24.08.2018. The said provisional assessment order was passed in the presence of both the counsel. On the same day i.e. 24.08.2018, while passing the order, 24.09.2018 was fixed as the date for payment of the provisional rent as assessed. On 24.09.2018 a short order was passed which reads as under :

“Rent not tendered by the respondent. Arguments heard: Vide my separate detailed order of even date,

ejectment order with regard to the demised premises is hereby passed against the respondent and the respondent is directed to hand over the vacant physical possession of the demised premises to the applicants within a period of three months from today failing which the applicants shall be at liberty to get the demised premises vacated through the process of the court. No order as to costs. Memo of costs be prepared and file be consigned to the Judicial Record Room, Ferozepur.”

3. Subsequently, the order of ejectment was passed on the same very day i.e. 24.09.2018. It has come on the record that a copy of the order dated 24.08.2018 was applied for by the counsel for the tenant-petitioner on 26.09.2018 which was delivered on 05.10.2018. On 10.10.2018 an appeal was filed before the Appellate Authority challenging the order of ejectment dated 24.09.2018. The appeal was dismissed vide order dated 29.10.2018. Hence, the present revision petition.

4. Learned counsel for the tenant-petitioner has contended that the counsel for the tenant-petitioner never put in appearance in the case on 24.09.2018 before the Rent Controller as he was appearing in Fazilka on the said date. It is further the contention that the date noted by the counsel on the cover of the file was 08.10.2018 and hence there was no question of the counsel for the tenant-petitioner appearing before the Rent Controller in Ferozepur on 24.09.2018. It is further the contention of learned counsel that an affidavit to this effect has also been filed that the counsel for the tenant-petitioner never appeared before the Rent Controller on 24.09.2018.

that the story put-forth by the tenant-petitioner is patently false inasmuch as the counsel was very much present on the day the order assessing the provisional rent was passed and thereafter on the day the ejectment order was passed. It is further the contention of the counsel that a copy of the order dated 24.09.2018 was applied for on 26.09.2018 which was delivered on 05.10.2018. Had the counsel for the tenant-petitioner not appeared on 24.09.2018, there was no occasion for him to apply for a copy of the order on 26.09.2018 and he would have waited till the date allegedly noted by him. Learned counsel would further contend that an appeal was preferred before the Appellate Authority on 10.10.2018, however, neither any application for review nor any other application was filed before the Rent Controller bringing to the notice of the Rent Controller that the presence had wrongly been marked and that the counsel was actually not present on the said date before the Rent Controller.

6. I have heard learned counsel for the parties and with their able assistance have gone through the record of the present case.

7. The order assessing the rent provisionally was passed on 24.08.2018 in the presence of both the counsel. The case was adjourned to 24.09.2018 for payment of the provisional rent. On 24.09.2018 the rent was not tendered and hence the ejectment of the tenant-petitioner was ordered vide order dated 24.09.2018. An appeal was preferred by the tenant-petitioner wherein it was argued that the tenant-petitioner had been paying rent but the respondents had not been issuing any receipt. It was further the contention that the date fixed for tendering the rent was 08.10.2018 and that was the date noted by the counsel and not 24.09.2018 and for that reliance was placed upon the photocopy of the cover of the file wherein the date of

08.10.2018 had been noted. The Appellate Authority dismissed the appeal. The argument raised by learned counsel for the tenant-petitioner that the counsel for the tenant-petitioner never put in appearance on 24.09.2018 and that his presence has wrongly been marked was not the ground argued before the Appellate Authority. Even the grounds of appeal appended with the present petition reveal that the ground taken is that the case was adjourned to 24.09.2018 which was a Monday and the counsel for the tenant-petitioner never took any date except Tuesday or Friday in cases pending at Ferozepur and that as per the record of the counsel the tenant-petitioner was to appear on 08.10.2018 and not 24.09.2018. An affidavit has also been filed before this Court by the counsel concerned stating that he did not appear before the Rent Controller on 24.09.2018. However, this Court is not inclined to disbelieve the Rent Controller. Accepting the affidavit of the counsel would mean that this Court is disbelieving the Rent Controller without this plea having been raised before the Appellate Authority or even the Rent Controller. Learned counsel for the tenant-petitioner has not been able to show anything on the record to even remotely point out any animosity that the Rent Controller may have had towards the tenant-petitioner or her counsel. There is no reason why the Rent Controller would have marked the presence of the counsel had he actually not appeared. Be that as it may, on 24.08.2018 while assessing the provisional rent in the presence of the counsel for the tenant-petitioner the date given for tendering the provisional rent assessed was 24.09.2018. Simply by averring that the date noted was 08.10.2018 and hence that was the date the rent was to be tendered cannot be accepted. Further, though it has been argued that the counsel for the tenant-petitioner took dates of only Tuesdays and Fridays of

his cases in Ferozepur and that 24.09.2018 was a Monday, the date allegedly noted by the counsel, as argued, was 08.10.2018 which incidently was also a Monday. How this date of 08.10.2018 (Monday) was agreed to by the counsel when he did not appear in Ferozepur Courts on any other days except Tuesdays and Fridays remains unexplained. Learned counsel for the tenant-petitioner has candidly admitted that after the passing of the ejectment order neither any application for review nor any other application was filed before the Rent Controller bringing to the notice of the Rent Controller that the presence had wrongly been marked and that the counsel was actually not present on the said date. Having failed to approach the Rent Controller as well as to argue the said point before the Appellate Authority, the argument now raised cannot be accepted.

8. Hon'ble Supreme Court in the case of **Rakesh Wadhawan vs. M/s Jagdamba Industrial Corporation & Ors. [2002(1) RCR (Rent) 514]** has held 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.”*

9. In the case of **Rajan alias Raj Kumar vs. Rakesh Kumar [2010(2) PLR 201]**, it has been held as under :

“13. 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 alongwith 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.”

10. In the case of **Mrs. Birinder Khullar vs. Maninder Singh [2011(1) RCR (Rent) 307]**, it has been held as under :

“19. Thus, after considering the facts of this case and law applicable thereto, the first question is decided in affirmative and it is held that the Rent Controller has no jurisdiction to order extension of time of payment of provisional rent by the tenant. Insofar as the second question is concerned, that too is decided in favour of the petitioner herein because even if it is assumed that the application for re-assessment was a review application, the Rent Controller had no jurisdiction to grant further time to the tenant for tendering the

provisional rent when he did not agree with him on his application for review. In that circumstance, he was left with no other alternative but to simply dismiss the application as he had actually done in the impugned order but faulted by granting time to the tenant to make the payment of arrears of rent beyond the date, which was given initially when the provisional rent was fixed.”

11. In the case of **Sat Paul Jindal vs. Smt. Sushma [2011 (45) RCR (Civil) 19]**, it has been held as under :

“13. Admittedly, the provisional rent was assessed by the Rent Controller on 28.3.2011 and the tenant was directed to make the payment by 29.3.2011. The aforesaid order of provisional assessment was never challenged by the tenant within the statutory period as provided and in this view of the matter since the tenant had committed the default by not paying the provisionally assessed rent upto the stipulated date, the Rent Controller had no jurisdiction to extend the time for tendering of provisionally assessed rent. If there is a fault on the part of the tenant, the eviction order has to follow, the order dated 22.4.2011 granting opportunity to the tenant to make the payment of provisionally assessed rent cannot be sustained and is liable to be quashed, to that extent.”

12. From a perusal of the above reproduced extracts of judicial pronouncements, there is no manner of doubt that the first date after

assessment of rent is the date when the tenant has to tender the rent. On failure to do so, the Rent Controller has no jurisdiction to extend the period and the consequences as laid down in Rakesh Wadhawan's case (*supra*) would necessarily follow.

13. The order provisionally assessing the rent was passed on 24.08.2018 and 24.09.2018 was fixed as the date for tendering the rent. On failure of the tenant-petitioner to deposit the rent on or before the said date i.e. 24.09.2018, nothing further remained and order of eviction had to follow.

14. In view of the above, I do not find any illegality or infirmity in the orders passed by both the Authorities below. The present revision petition, which is wholly devoid of any merit, is accordingly dismissed. The tenant-petitioner would be at liberty to withdraw the amount directed to be deposited by this Court and invested in an FDR vide order dated 04.02.2019.

15. Dismissed. Pending applications, if any also stand disposed off.

29.04.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO