

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

CR-6037-2022 (O&M)
Reserved on : 19.12.2022
Date of Decision : 04.01.2023

Raj Kumar

....Petitioner

VERSUS

Balbir Kaur & Ors.

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Shivya Sehgal, Advocate for the petitioner.

ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India has been filed challenging the order dated 06.09.2022 passed by the Rent Controller, Ludhiana and order dated 21.11.2022 passed by the Appellate Authority, Ludhiana affirming the order passed by the Rent Controller with a slight modification.

The brief facts relevant to the present *lis* are that the landlord-respondents filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 for ejectment of the tenant-petitioner from the property in dispute i.e. one shop bearing No.1 built on the ground floor as described in the petition in detail on the ground of arrears of rent. The relationship of landlord and tenant was not denied and vide the impugned order dated 06.09.2022 the provisional rent was assessed. Aggrieved by the said order, an appeal was preferred by the tenant-petitioner which was disposed off vide

order dated 21.11.2022 wherein the provisional assessment of rent was upheld with a modification regarding the rate. Aggrieved by the said orders, the present revision petition has been filed by the tenant-petitioner.

Learned counsel for the tenant-petitioner would contend that the rent stood paid upto February 2021 @ Rs.300/- per month and that the same has not been taken into account while assessing the provisional rent.

Heard.

In the present case, though a stand was taken by the tenant-petitioner that the rent stood paid upto February 2021 @ Rs.300/- per month, however, it was also admitted that there were no receipts qua the said rent.

Hon'ble the Supreme Court in the case of **Rakesh Wadhawan & Ors. vs. Jagdamba Industrial Corporation & Ors. [(2002) 5 SCC 440]** 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.”

In the absence of any document to show that the rent stood paid by the tenant-petitioner as alleged, the orders passed by the authorities below cannot be faulted with. As held in the case of **Rakesh Wadhawan** (supra), once the relationship of the landlord and tenant is admitted, an obligation is cast upon the Rent Controller to make an assessment of the provisional rent and further that if the final adjudication by the Rent Controller is at variance with his provisional order of assessment, the Rent Controller can order the refund of the said amount found to have been paid in excess.

In view of the above, I do not find any illegality or infirmity in the orders passed by the authorities below. The amount, if at all found to have been paid in excess, would always be directed to be refunded by the Rent Controller.

The present revision petition, which is devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

04.01.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

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