

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Date of Reserve:24.01.2024

Date of Pronouncement:13.02.2024.

1. CR-327-2024 (O&M)

Lucky Malik @ Bangali

...Petitioner.

Versus

Akali Times Trust

...Respondent.

2. CR-329-2024 (O&M)

Lucky Malik @ Bangali

...Petitioner.

Versus

Akali Times Trust

...Respondent.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Argued by: Mr. Bhrigu Dutt Sharma, Advocate
for the petitioner.

Sukhvinder Kaur, J.

This order will dispose of two cases bearing CR-327-2024 and CR-329-2024 the same being the connected matters and both arising out of CIS Case No. Rent 230/2022 pending before the Rent Controller, Jalandhar.

By way of revision petition (CR-327-2024), the petitioner has challenged order dated 04.05.2023 passed by learned Rent Controller, Jalandhar, whereby the provisional rent has been assessed and order dated 02.11.2023 passed by Appellate Authority, Jalandhar, dismissing the appeal against the said order dated 04.05.2023. In revision petition (CR-329-2024), the order dated 07.07.2023, passed by learned Rent Controller, whereby

eviction of the petitioner has been ordered due to non payment of provisional rent and order dated 02.11.2023 passed by the Appellate Authority, dismissing the appeal against the said order, have been challenged.

2. The brief facts relevant for the adjudication of the present revision petitions are that the respondent Trust file a petition under Section 13 of the East Punjab Urban Restriction Act for eviction of the petitioner from a portion consisting of two rooms in House No.377, Street No.8, Central Town, Jalandhar. As per the case of the respondent Trust (petitioner in said rent petition) the revision petitioner is tenant under the respondent-trust since April, 2008, who had given two rooms as shown in red colour in the site plan at the monthly rent of Rs.1600/- per month and the rent was required to be paid in advance by 7th of every month. The revision petitioner was also liable to pay electricity charges and water charges as per the consumption. Vide the aforesaid rent petition, the respondent trust had sought ejectment of revision petitioner on the ground of non payment of rent since July, 2010 @ Rs.1600/- per month and ceased to occupy and also having caused damage to the demised premises. The rent was claimed from the revision petitioner since July, 2010 as the same had not been paid by him since then and the ejectment was sought on the aforesaid grounds.

3. Notice of said petition was issued to the revision petitioner (respondent in the original rent petition), who filed written statement denying the relationship of landlord and tenant between the parties. It was also alleged in the preliminary objections that three different persons were in possession of property and Daya Shankar Pandey is still in continuous possession in his own capacity, whereas revision petitioner is in possession

without interference of anyone in his own capacity, for the last more than 30-35 years and also have Aadhar Card, Ration Card and Voter Card. The factum of rate of rent @ Rs.1600/- per month was also denied by taking the plea that the question of tenancy does not arise at all. Rejoinder was also filed by the respondent-trust denying the pleas of the written plea filed by the revision petitioner while reasserting the stand taken in the rent petition.

4. After hearing learned counsel for the parties, learned Rent Controller assessed provisional rent amounting to Rs.1,73,360/- along with interest and cost vide order dated 04.05.2023, which was assailed by way of preferring the appeal before the Appellate Authority, Jalandhar, which was also dismissed vide order dated 02.11.2023 by the Appellate Authority.

5. When the revision petitioner failed to tender the said provisional rent then the learned Rent Controller, Jalandhar passed ejectment order dated 07.07.2023, which was again assailed by the revision petitioner by preferring an appeal before the Appellate Authority, Jalandhar which was dismissed vide order dated 02.11.2023. Hence the petitioner knocked the doors of this Court by way of filing these revision petitions.

6. Learned counsel for the petitioner has contended that despite the fact that the petitioner has denied the relationship of landlord and tenant and the respondent trust did not produce on record an iota of evidence to show its ownership or capacity as landlord, while misreading the documentary evidence, held that the version of the respondent being landlord cannot be prima facie ignored and went on to make the assessment of provisional rent. He has further contended that the petitioner is having documentary evidence in the shape of birth certificates of his children,

Aadhar Card and Voter Card etc. to prove that he is in possession over the demised premises for the last more than 30-35 years in his own capacity. He has argued that the respondent trust was required to file a suit for possession but the present rent petition was filed by lying upon false facts. He has also submitted that there was no relationship of landlord and tenant between the parties and the assessment of provisional rent where relationship of landlord and tenant is denied is illegal. In this context, he has relied upon the judgments of this Court in **Hukma Devi Vs. Bhagwan Dass, 2003(1) R.C.R (Rent) 533; Ramanand Shastri Vs. Gian Singh, 2003(1) R.C.R (Rent) 735** and **Narinder Singh Vs. Sarabjit Singh, 2006(2) R.C.R (Rent) 226.**

7. He has also urged that the Rent Controller has wrongly passed the order of ejectment due to non payment of the provisional rent. When revision petitioner is not a tenant in the property in question then he was not bound to pay and tender any provisional rent to the respondent. He has contended that the ejectment of the petitioner on mere non payment of provisionally assessed rent, by learned Rent Controller, had caused a grave prejudice to the petitioner and order passed by the Rent Controller is erroneous, arbitrary and has been passed by over looking various aspects which had resulted in the eviction of the petitioner from the demised premises.

8. The main contention that has been raised by the revision petitioner is that there was no relationship of landlord and tenant between respondent trust and the petitioner and provisional rent could not have been assessed by the learned Rent Controller. But there is no substance in the above said contention. As per the judgment and decree dated 29.09.1980

passed by the Court in case No.31/1980, respondent trust is owner of the demised premises. This fact is not disputed that the property is in possession of the revision petitioner. The rent in the aforesaid rent petition has been claimed by the respondent trust being a owner/ landlord. Though it has been alleged by the rent petitioner that he is in possession in his own capacity, but it has not been disclosed that how he came into possession and in which capacity he is in possession.

9. I have heard learned counsel for the petitioner and have gone through the relevant record.

10. When it has been specifically alleged by the respondent trust that the revision petitioner is tenant in the demised premises and when it has been denied by the revision petitioner, then it was for the revision petitioner to disclose that how he had come into possession over the demised premises. When the revision petitioner has failed to disclose the same then simple denial of relationship is not sufficient to stop the Court from assessing the provisional rent, when as per the scheme of Rent Act, Court is bound to assess the provisional rent. Under the garb of denial of tenancy the tenant cannot be allowed to enjoy the property. In this context, reliance can be placed upon the judgment of Hon'ble Supreme Court in **Asha Rani Gupta Vs. Sri Vineet Kumar, 2022(3) R.C.R. (Civil) 540.**

11. In the instant case, when the respondent trust is owner on the basis of judgment and decree of the civil Court since the year 1980 and admittedly the demised premises are in possession of the revision petitioner and though the revision petitioner is claiming his possession since 35 years but it has not been disclosed that how and from whom he had come into

possession and in which capacity he is now in possession over the demised premises, in these circumstances, the provisional rent was rightly assessed by the Rent Controller and it was rightly upheld by the Appellate Authority vide order dated 02.11.2023.

12. The case law cited by learned counsel for the revision petitioner is not applicable to the facts of the case in hand. Hukma Devi's case (supra), is a tenant petition filed under Sub-section (5) of Section 15 of the East Punjab Urban Rent Restriction Act, 1949, in which judgment dated 07.06.2001 passed by the learned Appellate Authority, Sangrur, affirming the findings of facts recorded by the Rent Controller, Sangrur that there was a relationship of landlord and tenant between the parties and the tenant petitioner did not pay arrears of rent w.e.f. 01.04.1993 and consequently the ejectment of the tenant petitioner has been challenged. Ramanand Shastri's case (supra) was also a petition filed under Sub-section (5) of Section 15 of the East Punjab Urban Rent Restriction Act, 1949, which was filed against the concurrent findings of facts recorded by both the Courts below that the relationship of landlord and tenant exists between the parties and the tenant petitioner had made additions and alterations causing material impairment to the value and utility of the premises, leading to his ejectment. Narinder Singh's case (supra) also relationship of landlord and tenant was denied. In the cases (supra) it was held that when the relationship of landlord and tenant had been denied then there was hardly any justification to the Rent Controller to frame an assessment order in pursuance to the provisions to proviso to Section 13(2)(1) of the Act. It was also held therein that it would also be unjust that tenant would first get the finding of subsisting

relationship and then deposit the rent and as such tenant would successfully delay the payment of rent.

13. Now adverting to the present case, the respondent trust has claimed rent to the tune of Rs.1600/- per month, whereas learned Rent Controller has assessed it to the extent of Rs.800/- per month. Moreover, rent has been specifically claimed by the respondent trust since July, 2010 with specific date which has been rightly calculated by the learned Rent Controller vide order dated 04.05.2023 including interest on the rent as well as cost, which comes to Rs.1,73,360/- upto 31.05.2023.

14. The perusal of order dated 07.07.2023 passed by learned Rent Controller, Jalandhar reveals that when the respondent failed to tender the aforesaid provisional rent assessed by the learned Rent Controller on the date fixed for depositing the provisional rent, then consequently the ejectment order dated 07.07.2023 was passed.

15. The Hon'ble Apex Court in **Rakesh Wadhawan VS. M/s Jagdamba Industrial Corporation, 2002(1) R.C.R(Rent) 514**, has casted an obligation upon the tenant to tender the amount assessed as provisional rent on the first date of hearing, after the passing of such order and the first date of hearing has also been clarified, as the date, following after the date of such order by the Rent Controller and if the tenant fails to comply with such order then it leads to eviction. The relevant portion of para No.30 of the **Rakesh Wadhawan case** (supra), is reproduced as under:-

“To sum up our conclusions are:

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.”

16. In the instant case also when the tenant has failed to tender the provisional rent then the eviction order of the tenant from demised premises dated 07.05.2023 has been rightly passed by the learned Rent Controller, which has rightly been upheld by the Appellate Authority vide order dated 02.11.2023.

17. Thus, there being no illegality or infirmity in the impugned orders no interference there with is called for while exercising the revisional jurisdiction. The present revision petitions being bereft of any merits stand dismissed.

18. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

13.02.2024.
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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No