



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

125-1

CR-1478-2022 (O&M)
Date of decision : 12.11.2024

Anjali Foundation

..... Petitioner

versus

Anil Mehra

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sanjay Ghose, Senior Advocate with
Ms. Simram Sharma, Advocate
Mr. Gaurav Gupta, Advocate and
Mr. Kishore Kunal, Advocate
for the petitioner.

Mr. Sumit Jain, Advocate and
Mr. Rose Gupta, Advocate and
Ms. Ananya Aluwalia, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Present revision petition is directed against order dated 16.03.2022 passed by Appellate Authority, Gurugram whereby the appeal preferred by the tenant-petitioner stands dismissed affirming the order passed by the Rent Controller assessing provisional rent alongwith interest and the cost.
2. Respondent-landlord filed eviction petition invoking Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 1973 Act) on the ground of non-payment of rent. The eviction petition was resisted by the respondent. Rent Controller assessed provisional rent vide order dated 25.02.2022 holding the tenant-petitioner to be in arrears of rent to the tune of Rs.9826819/-



till 15.01.2020 and also assessed further rent from the month of February 2020 till February 2022 i.e. the date of first hearing.

3. The aforesaid order passed by the Rent Controller was challenged by the tenant before the Appellate Authority. Appellate Authority vide order dated 16.03.2022 upheld the order passed by the Rent Controller.

4. Learned senior counsel appearing for the petitioner-tenant submits that the order passed by the Rent Controller was affirmed by the Appellate Authority as per se perverse. He submits that the Rent Controller passed order relying upon the statement of accounts, alleged to have been submitted by the tenant to the landlord alongwith e-mail communications wherein total outstanding dues till 15.01.2020 were mentioned as Rs.9826819/-. He submits that once in the eviction petition, the landlord has specifically stated that the tenant has paid the rent upto December 2018 and is in arrears thereafter, the Rent Controller could not have assessed amount which is in excess of arrears of rent payable for period commencing from January 2019. He further refers to the account statement of the landlord to submit that if the said account statement is gone into, it would show that the even in April 2019, the rent was credited to the account of the tenant.

5. *Per contra*, Mr. Jain appearing for the landlord-respondent would submit that it is a case of a provisional assessment even if an excess amount is paid, tenant is bound to get set off qua that and this Court need not entertain the present revision petition.

6. I have heard counsel for the parties and have carefully gone through the records of the case.



7. So far as the revisional jurisdiction of this Court is concerned, the scope has been spelled out by Supreme Court in the case of ***Hindustan Petroleum Corpn. Ltd. vs. Dilbahar Singh 2014(9) SCC 102*** holding as under:-

“9. The scope of revisional jurisdiction under various Rent Control Acts has fallen for consideration in many cases before this Court. One of the earlier decisions in the long line of such cases is *Moti Ram*³. The 3-Judge Bench of this Court in *Moti Ram*³ had an occasion to consider the extent of revisional power of the High Court under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (3 of 1949) which reads: ... The High Court may, at any time, on the application of any aggrieved party or on its own motion, call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such order in relation thereto as it may deem fit.” Having regard to this provision, the Court noted the revisional power of the High Court in the following words:

“...the revisional power conferred upon the High Court under Section 15(5) is wider than that conferred by Section 115 of the Code of Civil Procedure. Under Section 15(5) the High Court has jurisdiction to examine the legality or propriety of the order under revision and that would clearly justify the examination of the propriety or the legality of the finding made by the authorities...”

8. The question that arises before this Court is:-

(i) *Whether there is a perversity on the face of the*



order that can persuade this Court to exercise the revisional jurisdiction or not?

9. The assessment of provisional rent was introduced by Supreme Court in ***Rakesh Wadhawan vs. Jagdamba Industries Corporation, 2002 AIR (Supreme Court) 2004*** by supplying casus omisus to the provisions of Section 13(2)(i) of East Punjab Urban Rent Restriction Act, 1949, a provision ‘para materia’ to Section 13(2)(a) of 1973 Act:

“25 What follows from the abovesaid discussion is that the proviso to clause (1) of sub-section (2) of Section 13 must be read as obliging the Controller to assess, by means of passing an order, the arrears of rent, the interest and the cost of litigation all the three, which the tenant shall pay or tender on the first date of first hearing of the main petition following the date of such assessment by Controller Such order based on in opinion formed *prima facie* by perusal of the pleadings and such other material as may be available before the Controller on that day would be an interim or provisional order which shall have to give way to a final order to be made on further enquiry to be held later in the event of there being a dispute between the parties calling for such determination. The Controller would, however, at the outset assess the rent, the interest and the cost of application in the light of and to the extent of dispute, if any, raised by the tenant. Such amount, as determined by Controller shall be liable to be paid or tendered by the Controller on the first date of hearing falling after the date of the preliminary or provisional order of Controller. The expression "the date of first hearing" came up recently for the consideration of this Court in ***Mam Chand Pal v. Smt. Shanti Agarwal. 2002(1) RCR (Rent) 326: (C.A. No. 1187 of 2002 decided on 14.2.2002)***. It was held that ‘the date of first hearing’ is the date on which the Court applies its mind to the facts and controversy involved in the case. Any date prior to such date would not be date of first hearing. For instance, date for framing of issues would be the date of first hearing when the Court has to apply its mind to the facts of the case. Where



the procedure applicable is the one as applicable to Small Cause Courts, there being no provision for framing of the issues, any date fixed for hearing of the case would be the first date for the purpose. The date fixed for filing of the written statement is not the date of hearing. Keeping in view the interpretation so placed on the date of first hearing obligation cast by the proviso under consideration can be discharged by the Controller on any date fixed for framing of the issues or for hearing. It would be the obligation of the parties to place the relevant material on record, in the shape of affidavits or documents, which would enable the Controller to make a provisional judicial assessment and place it on record to satisfy the spirit of the proviso. It would be desirable if the Rent Controller specifically appoints a date for the purpose of such assessment and order so that the parties are put on adequate notice and bring the relevant material on record to assist the Controller. A litigant cannot be expected to be ready to comply with the order of the Controller on the very day on which the order is made. How could he anticipate what order the Controller would be making? xxx

26. Having held that the Controller, has to provisionally assess (1) the arrears of rent, (ii) the interest on arrears of rent assessed by him, and (iii) cost of application, question arises as to how the provision shall work thereafter or, in other words, what shall be the procedure to be followed thereafter by the Controller. xxx

29. The result of the discussion may be summarized. Under proviso to Section 13(2)(i), the Controller having 'discharged his obligation of passing an order under the proviso, either *suo moto* or on his attention in this regard being invited by either of the parties, it will be for the tenant to pay or tender the amount provisionally assessed by the Controller on the first date of hearing of the application for ejectment. On compliance, the Controller would proceed to adjudicate upon the controversy arising for decision by reference to pleadings of the parties and by holding a summary enquiry for the purpose. Such adjudication shall be provisional and subject to the later final adjudication. The finding that may ultimately be arrived at by the Controller may be one of the following three. The Controller may hold that the quantum of arrears as



determined finally is (i) the same as was found to be due and payable under the provisional order, (ii) is less than what was determined by the provisional order, or (iii) is more than the one what was held to be due and payable by the provisional order. In the first case the Rent Controller has simply to pass an order terminating the proceedings. In the second case the Controller may direct the amount deposited in excess by the tenant to be refunded to him. In the third case it would not serve the purpose of the Act if the tenant was held liable to be evicted forthwith as is the view taken by the Punjab High Court in the case of Dial Chand (supra). The Controller directing the eviction of the tenant may pass a conditional order affording the tenant one opportunity of and a reasonable time for depositing the amount of deficit failing which he shall be liable to be evicted. This power in the Rent Controller can be spelled out from the use of the word "may" in the expression "The Controller may make an order directing the tenant to put the landlord in possession", as also from the principle of equity and fair play that the tenant having complied with provisional order passed by the Controller should not be made to suffer if the finding arrived at by the Controller at the termination of the proceedings be different from the one recorded in the provisional order. While exercising the discretion to make a conditional order of eviction affording the tenant an opportunity of purging himself of the default the Controller may also take into consideration the conduct of the tenant whether he has even after the passing of the provisional order continued to pay or tender the rent to the landlord during the pendency of the proceedings as a relevant factor governing the exercise of his discretion. Such a course would be beneficial to the landlord too as he would be saved from the trouble of filing a civil suit for recovery of rent which fell due during the pendency of proceedings for eviction before the Controller."

10. In view of the aforesaid dictum at the time of assessing provisional, Rent Controller has to primarily consider the pleadings of the parties and the other material available, Authority has to formulate prima-facie opinion. In case the provisional rent assessed is found to be



in excess or in deficient, the set off has to be granted at the time of final adjudication. In the present case, there are account statements on record relied upon by both the parties and the same are yet to be proved. In given circumstances, controller ought not have gone beyond pleadings while assessing provisional rent. Once landlord in the eviction petition, pleaded that the rent stands paid upto December 2018, the Rent Controller ought not have assessed the provisional rent for the period prior to December 2018.

11. In view of above, the impugned order is set aside with a direction to the Rent Controller to re-assess the rent taking into consideration the pleadings of the parties within period of 04 weeks from the date of receipt of this order.

12. Disposed off, accordingly.

(PANKAJ JAIN)
JUDGE

12.11.2024

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No