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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2948-2023 (O&M)
Date of decision : 16.02.2024

Kewal Krishan ... Petitioner(s)

Versus

Paras Mahajan ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Dhawan, Advocate for the petitioner.

Mr. Dheeraj Mahajan, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

1. The challenge in the present revision petition is to the orders of ejectment passed against the tenant-petitioner. The Rent Controller, vide order dated 19.04.2022, ordered the tenant-petitioner to be evicted on his failure to pay the assessed rent. Aggrieved by the same, an appeal was preferred which was also dismissed by the Appellate Authority vide order dated 28.04.2023.
2. The brief facts relevant to the present *lis* are that the provisional rent was assessed by the Rent Controller vide order dated 21.03.2022 in the presence of both the counsel for the parties and after hearing them. Para 3 of the said order reads as under :

“3. Thus, from the pleadings of both the parties, it is clear that relationship between both the parties of

landlord and tenant is admitted. Moreover, there is no dispute qua the rate of rent of Rs.600/- per month. Though, the respondent has alleged that he is paying rate of rent regularly, but he has failed to produce any receipt qua the payment of rent. As it is settled law that the rate of rent is to be proved by the landlord and the payment of rent is required to be proved by the tenant. Herein in this case, the respondent has failed to prove the payment of rent since April 2018 till date to petitioner, as such, period of arrears of rent is to be taken from April 2018 as alleged by the petitioner. As such, in view of these facts, provisional rent is hereby assessed as under :-

*Rent from April, 2018 till March, 2022 @ Rs.600/- PM
i.e. for 48 months = $600 \times 48 = \text{Rs.}28,800/-$*

*Interest from April, 2018 till March, 2022
i.e $28,800 \times 49/400 = \text{Rs.}3528/-$*

Total arrears of rent = Rs.28,800/-

Interest = Rs.3528/-

Costs assessed by court = Rs.1000/-

Total = Rs.33,328/-

4. The respondent is directed to pay arrears of rent along with interest and costs as provisionally assessed, which is rounded off to be Rs.33,328/- to petitioner on 19.04.2022. For evidence of petitioner, to come up on date fixed.”

3. Vide the order dated 21.03.2022 the petitioner was granted time upto 19.04.2022 to pay the arrears of rent alongwith interest and costs as provisionally assessed. Vide order dated 19.04.2022 eviction of the tenant-petitioner was ordered in view of the judgment of the Hon'ble Supreme Court in the case of **Rakesh Wadhawan & Ors. vs. Jagdamba Industrial Corporation & Ors. [(2002) 5 SCC 440]** since he failed to tender the provisional rent despite the Court having waited till 04.00 PM. Three months' time was granted to the tenant-petitioner to hand over vacant possession. Aggrieved by the said order an appeal was preferred by the tenant-petitioner which was time barred. It is apt to note that the appeal was filed by the same counsel in whose presence the provisional rent was assessed and eviction order was passed. The delay in filing the appeal was condoned. Before the Appellate Authority it was the case set up that the tenant-petitioner had fallen sick and was not in a condition to pay the rent. It was further the case set-up that there was a function in the family and the tenant-petitioner remained busy in the said function. It was further the stand taken that the tenant-petitioner was ready to tender the arrears of rent as per the assessment order and that the Rent Controller ought to have granted an opportunity to tender the rent. The appeal was dismissed vide order dated 28.04.2023 with the following observations :

“11. After giving anxious thoughts to the rival contentions and going through the record of the case, this Court is of the considered view that there is no merit in the contentions raised by learned counsel for the appellant. As per the law laid down by Hon'ble Supreme Court in Rakesh Wadhawan's case (supra),

when the tenant fails to comply with the order regarding provisional assessment of arrears of rent, interest and costs, the Rent Controller is required to straightway order eviction of the tenant from the premises in question. The impugned order is in consonance with the law laid down by Hon'ble Supreme Court in the aforesaid case. Moreover, the learned counsel for the appellant/tenant had appeared before the Court on 19.04.2022 and at that time no request was made that the appellant has been suffering from any illness which has rendered him unable to tender the arrears of rent. Even in this appeal, no such document has been placed on the file which may indicate that the appellant/tenant was suffering from any illness which prevented him from complying with the order regarding provisional assessment of arrears of rent, interest and costs. The fact that there was some marriage in the family of the appellant on 02.05.2022 could not be a ground on which he could be excused from complying with the order dated 21.03.2022. This Court is of the view that there is no scope for interference in the impugned eviction order and the learned Rent Controller has rightly passed the eviction order."

Hence, the present revision petition.

4. The learned counsel for the tenant-petitioner would contend that the tenant-petitioner had fallen sick and that it was the wedding of his son

and hence the amount could not be paid. It is further the contention of the learned counsel for the tenant-petitioner that an opportunity to pay the rent ought to have been given to the tenant-petitioner. The learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Rakesh Wadhawan** (supra) to contend that while exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration is as to whether the tenant has paid or tendered with substantial regularity the rent. It is further the contention of the learned counsel that the tenant-petitioner has been paying the rent regularly.

5. *Per contra*, the learned counsel for the landlord-respondent has also relied upon the judgment of the Hon'ble Supreme Court in the case of **Rakesh Wadhawan** (supra) and the judgment of this Court in the case of **Jaswant Singh vs. Amarjit Kaur & Ors. [2023 (1) RCR (Rent) 459]** to contend that on failure of the tenant to tender the rent, the Rent Controller has no jurisdiction to extend the period and hence eviction has rightly been ordered.

6. I have heard the learned counsel for the parties.

7. In the present case the Rent Controller had assessed the provisional rent after hearing the counsel for both the parties. A perusal of the order dated 21.03.2022 reveals that the counsel for both the parties were present when the assessment of provisional rent was made. Time was granted to the tenant-petitioner upto 19.04.2022 to deposit the rent. On 19.04.2022 the Court waited till 04.00 pm for the tenant-petitioner to tender the rent. However, since there was no compliance of the order assessing the provisional rent, in view of the law laid down in the case of **Rakesh**

Wadhawan (supra), ejectment of the tenant-petitioner was ordered and the tenant-petitioner was directed to handover vacant possession within a period of three months. It is to be noted that the said order was also passed in the presence of the counsel for the tenant-petitioner herein. A perusal of the order dated 19.04.2022 would reveal that no argument was put-forth by the counsel for the tenant-petitioner regarding any wedding in the family/son's wedding/petitioner being sick. Despite being aware of the order dated 19.04.2022, an appeal was preferred after the period of limitation. However, the delay was condoned. Before the Appellate Authority the stand taken was that the tenant-petitioner had fallen sick and was not in a condition to pay the rent and further that there was a function in the family on 02.05.2022 and the tenant-petitioner remained busy in the said function. It was the stand of the tenant-petitioner that he was ready to tender the rent as per the assessment order. The Appellate Authority dismissed the appeal vide order dated 28.04.2023 in view of the law laid down by the Hon'ble Supreme Court in the case of **Rakesh Wadhawan** (supra).

8. In **Rakesh Wadhawan's** case (supra), it was 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. This Court in the case of **Rajan alias Raj Kumar vs. Rakesh Kumar [2010 (2) PLR 201]** has 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 was held that :

“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. From a perusal of the above reproduced extracts from judicial decisions, there is no manner of doubt that once the assessment of provisional rent has been made by the Rent Controller, the tenant has to tender the arrears of rent as determined alongwith the interest and costs. On failure of the tenant 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 have to follow.

12. The undisputed fact in the present case is that the tenant-petitioner had failed to tender the rent. The argument of the learned counsel for the tenant-petitioner that in Rakesh Wadhawan’s case (supra) it has been held that there is a discretion with the Rent Controller to permit the payment of the amount after taking into consideration the relevant factors deserves to be rejected. The said observation, as is clear from a perusal of para 30 of the judgment in the case of Rakesh Wadhawan’s case where in sub-para 5 it has been stated that if the final adjudication by the Controller is at variance with his interim or provisional order passed under the proviso, one of the following two orders may be passed depending on the legal situation - if the

amount deposited by the tenant is found to be in excess, the Controller may direct a refund, or if the amount 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 reasonable time. 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. In the present case there has been no deposit at all by the tenant-petitioner so there is no question of exercise of any discretion.

13. In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

16.02.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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