

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

120

CR-3772-2023 (O&M)

Date of Decision: 01.04.2024

M/s Shankar The Chat Shop and others

...Petitioners

Versus

Krishna Goyal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Dinesh Kumar Jangra, Advocate,
for the petitioners.

VIKAS SURI, J.

1. The present revision petition has been filed impugning the order dated 18.05.2023 passed by the learned Appellate Authority, Panchkula, whereby appeal preferred against the order dated 10.04.2023 passed by the Rent Controller, Panchkula, ordering eviction of the tenants and sub-tenants and put the petitioner in vacant possession of the demised premises, has been dismissed.
2. The facts of the case are that respondent No.1-landlord filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short 'Rent Act'), for eviction of tenant and sub-tenants on the grounds of non-payment of rent, sub-letting and personal necessity from the demised premises, i.e. commercial booth No.54, Sector-7, Panchkula. It was averred that the demised premises was let out to respondent No.2 vide

rent agreement dated 30.12.2020 for a period of 11 months w.e.f. 01.01.2021 to 30.11.2021 at the rate of ₹1,00,000/- per month payable in advance. It was further agreed that the rent shall be enhanced at the rate of 10%, if tenancy continues beyond the expiry of the rent agreement. Petitioners opposed the said petition and submitted that they had purchased the business from Smt. Pooja Mittal, Proprietor of M/s Shankar Chaat, in the month of June, 2021 and they had become direct tenants in the premises on oral agreement at the rate of ₹20,000/- per month. It was denied that the petitioners came into possession of the demised premises through the tenant-respondent No.2. Vide order dated 23.03.2023, the provisional rent was assessed by the Rent Controller. Challenging the said order, an appeal was preferred by the petitioners, which was dismissed as withdrawn on 11.04.2023 as meanwhile, on account of non-payment of provisional rent, eviction order dated 10.04.2023 had been passed. Aggrieved by the eviction order dated 10.04.2023, an appeal was preferred, which was dismissed vide order dated 18.05.2023.

3. Learned counsel for the petitioners would contend that the provisional rent assessed vide order dated 23.03.2023 (Annexure P-4) was to be paid by respondent No.2-tenant and the plea set up by them is that they were direct tenants in the demised premises at the rate of ₹20,000/- per month under oral agreement with the landlord. It is further submitted that the petitioners are ready to pay the rent amount, which is due towards the landlord.

4. Heard learned counsel for the petitioners and have perused the record.

5. In the present case, though a stand was taken by the sub-tenant/petitioners that they were not mere sub-lettee in the demised premises but were direct tenants under an oral agreement at the rate of ₹20,000/- per month, however, they failed to produce any rent receipt/material showing that the rent at the rate of ₹20,000/- per month was ever paid/tendered by them to the landlord. The said aspect was taken into consideration while assessing the provisional rent vide order dated 23.03.2023. It is also admitted that the husband of tenant-respondent No.2, namely Atul Mittal, was a partner to the extent of 33% along with the petitioners, who claims to be direct tenant under the landlord. The Apex Court in the case of ***Rakesh Wadhawan and others vs. Jagdamba Industrial Corporation and others***, (2002) 5 SCC 440 has held as thus:-

“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 the East Punjab Urban Rent 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 the 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 the 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.

6. The ratio of *Rakesh Wadhawan*’s case (supra) was reiterated by a three Judge Bench of the Hon’ble Supreme Court in ***Vinod Kumar vs. Prem Lata, (2003) 11 SCC 397.***

7. The short question required to be addressed in the present revision is that whether sub-tenant would have independent right to defend

his possession when the tenants have failed to tender the provisional rent assessed by the Rent Controller. The issue regarding the consequence of non-deposit of provisional rent was considered by the Division Bench of this Court in *Rajan @ Raj Kumar vs. Rakesh Kumar*, 2010 (1) RentLR 515, wherein following the view taken in *Rakesh Wadhawan's* case (supra), 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.”

8. In the case of ***Mrs. Birinder Khullar vs. Maninder Singh, 2011***

(3) PLR 38, a coordinate Bench of this Court has held as thus:-

“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.”

9. From perusal of the above noticed judicial precedents, there remains no room for any doubt that on the next date of hearing after assessment of provisional rent, the same is required to be tendered. In case the provisional rent is not tendered on the stipulated date, in consequence thereof, eviction order would follow. 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.

10. In the present case, it is undisputed fact that the arrears of rent, as assessed by the Rent Controller, were not tendered within the period granted vide order dated 23.03.2023 and as a consequence thereof, the tenants would be liable to be evicted from the premises in question. It is the admitted case of the petitioners that they had purchased the business from the tenant and there is no other material available on record to even remotely show that the petitioners ever became tenants under the landlord as alleged. It is also the admitted case of the petitioners that an appeal had been preferred impugning the order dated 23.03.2023 whereby the provisional rent was assessed but the same stood withdrawn on 11.04.2023 stating that the same was rendered infructuous. It is also a matter of record that in the subsequent appeal preferred against the eviction order dated 10.04.2023, no challenge was raised to the order dated 23.03.2023, whereby the provisional rent was assessed as under:-

“From the perusal of rent agreement dated 30.12.2020, it has been revealed that the petitioner has let out the above stated premises to respondents No.1 and 2 @ Rs.1,00,000/- per month w.e.f. 01.01.2021 to 30.11.2021. Thus there was no occasion for the petitioner to let out the above stated premises to respondents No.4 and 5 for meager amount of Rs.20,000/- per month on rent. Further learned counsel for the respondents No.4 and 5 has failed to adduce any rent receipt/material showing that the said rent @ Rs.20,000/- per month was paid/tendered to the petitioner by way of rent. Thus the material on record shows that there is no landlord tenant relationship between the petitioner and respondents No.4 and 5 and respondents No.4 and 5 are in the possession

of the above stated premises through respondent No.1 and 2. Thus respondents No.1 and 2 are liable to pay the rent which remain due.

As a sequel to the foregoing discussion, the provisional rent of the premises in question is assessed as under:-

1. Arrears of provisional rent w.e.f. March 2021 to November 2021	Rs.9,00,000/-
December 2021 to October 2022 (1,10,000x11)	Rs.12,10,000/-
November 2022 to February 2023 (1,21,000x4)	Rs.4,84,000/-
Total Rent	Rs.25,94,000/-
2. Interest on arrears i.e. 25,94,000 x (24+1)/300	Rs.2,16,166.66/-
3. Costs	Rs.1,000/-
Total	Rs.28,11,166.66/-

To come up on 10.04.2023 for tendering of rent amount by respondent No.1 and 2. Needless to add that the future rent of the premises in question would be paid by the respondent to the petitioner by the 7th of every month during the pendency of this case. On failure to tender the aforesaid rent consequences shall follow as per the directions of the Hon’ble Supreme Court of India in the case titled as **Rakesh Wadhawan v. M/s Jagdamba Industrial Corporation, 2002(5) SCC 440.**”

11. Thus, the petitioners have accepted the order dated 23.03.2023, whereby the provisional rent was assessed and the eviction order dated 10.04.2023 was a consequence of non-tender of rent in view of **Rakesh Wadhawan’s** case (supra).

12. Learned counsel for the petitioners is at pains to offer any explanation as to why challenge to order dated 23.03.2023 had been

withdrawn or as to why the provisional rent as assessed by the Rent Controller was not tendered within the stipulated time. The plea raised before this Court that the petitioner be granted an opportunity to tender the rent is not sustainable in law in the light of ratio in ***Mrs. Birinder Khullar's*** case (supra) holding that the Rent Controller has no jurisdiction to order extension of time for payment of provisional rent.

13. As an argument in despair raised by learned counsel for the petitioners that the provisional rent as assessed was on the higher side, whereby an attempt was made to demonstrate that the rate of rent in vicinity is much lower than the agreed rate of rent depicted in the rent agreement dated 30.12.2020 between respondent No.1-landlord and respondent No.2-tenant. The aforesaid argument is misconceived in view of the law laid down in the three Judge Bench of the Apex Court in ***Dalip Kaur Brar vs. M/s Guru Granth Sahib Sewa Mission (Regd.) and another, (2017) 14 SCC 159***, wherein it has been held that the tenant upon complying with the order passed by the Rent Controller is not left without a remedy. When the Rent Controller subsequently makes a final determination of the rent payable, if it is found that the tenant has paid an amount in excess, the Rent Controller can issue directions for refund or adjustment, as the case may be. A tenant complying with the order of provisional assessment of rent passed by the Rent Controller is to be protected against the eviction. In the case in hand, the petitioners having failed to deposit the provisional rent as assessed and further, having withdrawn challenge to the said order dated 23.03.2023,

the consequences of non-deposit have to follow.

14. This Court does not find any illegality or infirmity in the impugned orders passed by the authorities below as the same are in accordance with the settled principles of law and have been passed after appreciating the material available on record. Thus, the present revision petition, which is devoid of any merit, is dismissed.

15. Pending applications, if any, also stand disposed of.

April 01, 2024
harish

(VIKAS SURI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No