



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

CR-3644 of 2024 (O&M)

Decided on: 08.07.2024

M/s Queen Distillers and Bottlers Pvt. Ltd. Works

...Petitioner

Versus

M/s Kuldip Industrial Corporation and others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Bikramjit Singh Patwalia, Advocate
for the petitioner.

Mr. Ashish Aggarwal, Senior Advocate with
Ms. Aashna Aggarwal, Advocate
for the caveator/respondents.

RITU TAGORE, J.

1. This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order dated 22.04.2024 (Annexure P-1) passed by learned Rent Controller, Chandigarh in Rent Petition No.369 of 2022, regarding provisional assessment of rent, as well as the order dated 31.05.2024 (Annexure P-2), passed by learned Appellate Authority, Chandigarh, in Rent Appeal No.59 of 2024, dismissing the appeal, filed under Section 15 of the East Punjab Rent Restriction Act, 1949 (in short

referred to as the Act, 1949), against the order of provisional assessment of rent dated 22.04.2024 passed by learned Rent Controller.

2. At the outset, it is expedient to address the objection regarding the maintainability of revision petition filed under Article 227 of the Constitution of India, as opposed to Section 15 (5) of the Rent Act, 1949, as raised by learned counsel for the respondents/caveator. Precisely, it is urged that, given the existence of a specific provision under Section 15 (5) enacted by the Legislation, filing of a revision under Article 227 of the Constitution of India, is not maintainable. Conversely, learned counsel for the petitioner submits that nomenclature of the provision does not affect the maintainability of revision. The substance of challenge is what assumes significance. It is urged that revision- petition is maintainable under Article 227 of the Constitution of India, a constitutional remedy, provided under the Constitution, with reference to the observation made by this Court in **Boota Singh (Major) and others Vs. Roshan Lal and others, 1970 R.C.R. (Rent) 895.**

3. Section 15 of the Rent Act, 1949 deals with **vesting of appellate authority on officers by State Government**. The relevant provisions of the Section are extracted as below: -

“15. Vesting of appellate authority on officers by State Government.

(1)(a)-----

(b)-----

(2) -----

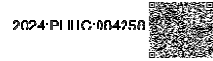
(3)-----

(4)The decision of the appellate authority and subject only to such decision, an order of the controller shall be final and shall not be liable to be called in question in any Court of Law [except as provided in sub-Section (5) of this Section.]

(5) [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 proceeding 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.] ”

4. The plain reading of sub clause (5) of Section 15 provides that any aggrieved party, on the application, or High Court on its own motion, can call for and examine the records relating to any order passed or proceedings taken under the Act for the purpose of satisfaction as to the legality and propriety of such order passed or proceedings taken and may pass such order in relation thereto as it may deem fit. In **Boota Singh (supra)**, a revision petition was filed under Section 15 (5) of the Act, against the order passed by learned Appellate Authority, allowing amendment of written statement under Order 6 Rule 17 CPC. An objection was raised that a revision against the order does not lie before the High Court, as such, an order was not an order passed under the Rent Act within the expression used in sub-Section 5 of Section 15. This Court, after deliberation, observed that revision against such an order lies in the High Court, and further observed that even otherwise, this Court is entitled, in exercise of its original jurisdiction under Article 227 of the Constitution, to set aside any order passed by subordinate Court or Tribunal within its jurisdiction, if an order is found to be wholly unsustainable.

5. Regarding the objection raised by the respondents on the maintainability of revision petition under Article 227 of the Constitution of India, in my considered opinion, the remedy under Article 227 of the Constitution of India is indeed available to the petitioner. This constitutional remedy cannot be negated on such technical objections. The nomenclature of



a petition should not be the focal point; rather, it is the essence of the petition that must be considered. In a recent judgment titled in **Raj Shri Agarwal @ Ram Shri Agarwal and another vs. Sudheer Mohan and others, Civil Appeal No.7266 of 2022 (arising out of SLP (c) 14102/2022)**, the High Court dismissed the writ petition, preferred under Article 227 of the Constitution of India, challenging the order of the learned trial Court dismissing an application under Order 6 Rule 17 CPC, by observing that writ petition was not maintainable, as remedy by way of revision under Section 115 CPC was available to the petitioner. In the appeal, Hon'ble the Supreme Court of India observed that while normal view taken in catena of decisions that a petition under Article 227 of Constitution of India would not lie where a remedy under Section 115 CPC is available, but this does not imply that a writ petition under Article 227 of Constitution of India shall not be maintainable at all. It was further observed that remedy under Article 227 of Constitution of India is a constitutional remedy which cannot be taken away. Although the High Court may choose not to exercise its discretion under Article 227 of the Constitution of India, in a given case, for the aggrieved party has efficacious alternate remedy. However, to say that the petition under Article 227 of the Constitution of India shall not be maintainable at all is not tenable. It was further observed that the High Court ought to have converted the writ petition into a revision petition under Section 115 CPC and should have decided the matter on its merits in accordance with law. In light of the above legal position clarified by Hon'ble the Supreme Court of India, the objection raised by respondents regarding maintainability of the writ petition under Article 227 of the Constitution of

India is without substance. Treating this petition as maintainable, the objection stands answered against the respondents.

6. This now brings me to the merits of the revision- petition. The counsel for the petitioner contends that petitioner is in the business of Distillation and Bottling of liquor, entered into a rent agreement with respondents vide lease-deed dated 11.05.2021 (Annexure P-3) regarding the premises situated at plot No.41, Industrial Area, Phase 1, Chandigarh, for a period of ten years.

7. Learned counsel for the petitioner after referring to the introductory part of the lease-deed (Annexure P-3), which mentions that lease- premises was under construction, directed the attention of this Court to Clause No.1 of the lease deed, specifying the commencement date of the lease, the monthly rent rate with provision for rent increase as stipulated therein. Further, reference was made to Clause No.2, granting a four-month rent-free-fitment-period to the lessee by the lessor, and to Clause No.5 regarding the deposit of Rs. 48 Lacs by the petitioner with the respondents as refundable security. Attention was also drawn to Clause 12, wherein the lessor agreed to construct an additional area to meet the requirements of the lessee. Learned counsel submits that terms of lease, clearly indicate that at the time of entering into the agreement, the leased premises was under construction and major formalities of sanctioning of building plan, various other approvals including grant of occupation certificate etc. were required to be obtained by the respondents/lessor but were not completed by the respondents within the agreed 3/ 4 months period between the parties.

8. It is stated by the learned counsel for the petitioner that respondents completed the formalities of occupying the building at the end of November 2022. The revised plans were submitted by respondents belatedly, and the sanction-letter from Chief Administrator was received in October vide letter 31.10.2022. The learned counsel contended that petitioner was unable to commence distillation plant on the leased property promptly after the execution of lease deed due to delays attributable to the respondents. The petitioner could not take possession of the lease property till December 2022 and for all intents and purposes, the petitioner could start his business of distillation and bottling only in June 2023.

9. The petitioner's counsel argued that it is the respondents who failed to adhere to the terms of the lease-agreement, both in letter and spirit. Consequently, the petitioner for no fault on his part, was unable to take possession of the leased property until December 2022. As a result, the petitioner was deprived of the opportunity to start his business for which the premises were leased. Learned counsel contended that, under these circumstances, the petitioner (tenant) is not obligated to pay rent for the period during which he could not take possession of the leased property and utilize it. The learned counsel submits that doctrine of 'suspension of rent' is applicable to the facts of the present case. To support his arguments referred to **Hakim Sardar Bahadur Vs. Tej Parkash Singh, 1962 PLR 538**. In this case, it was held that where landlord tortiously deprives a tenant to use part of the demised premises, so long as deprivation continues, landlord cannot claim the rent for the remaining period. The tenant, in such a case, is entitled to withhold the whole of the rent for the leased premises so long as

he is deprived of a part of the leased premises and cannot be compelled to pay the rent for the portion of the leased premises in his occupation. Reference was also made to decision *Nilkantha Pati Vs. Kshitish Chandra Satpati and others*, *AIR 1951 (Calcutta) 338 and Budge Budge Company Limited, 2001 (2) RCR (Rent) 485* wherein doctrine of suspension of rent was recognized, observing that in cases where landlord's acts were found tortuous, this rule of equity, either for total or partial suspension of rent may be applied on case to case basis.

10. Learned counsel submits that, given the facts where petitioner-tenant, was not given possession of the leased property till December 2022, due to respondents' fault, the petitioner is not liable to pay rent from 1st of May 2021 to December 2022 as well as for additional four- month period until April 2023, pursuant to Clause 2 of the lease-deed.

11. The learned counsel for the petitioner submits that both Courts of learned Rent Controller and learned Appellate Authority, failed to properly appreciate the facts and principle of suspension of rent, which was fully applicable to the facts and circumstances of the case, while assessing the provisional rent. It is stated that the order dated 22.04.2024 passed by the learned Rent Controller is unsustainable in the eyes of law and dismissal of the appeal by the learned Appellate Authority vide order 31.05.2024 is also against the settled canons of law and be set aside.

12. Learned counsel representing the petitioner further argues that Section 13 of the Rent Act 1949 stipulates that, only rent arrears due on the date of filing of the eviction petition can be claimed by the landlord against the tenant. He submits that the present petition (Annexure P-4) was filed by

the respondents on 09.12.2022, seeking rent from 01.09.2021 onwards. However, the petitioner was not liable to pay rent till April 2023. Therefore, the petition filed against the petitioner is not maintainable. In support of the arguments, referred to decisions titled **Dr. N. K. Sood Vs. Smt. Tara Wati and another, 1992 (1) PLR 27** and **Sunder Krishan Vs. Murari Lal, 2003 (1) PLR 419** and **Sat Pal Vs. Kesar Singh 1968 PLR 834, Neera Chadha Vs. Smt. Pardeep Kaur @ Pooja, 2021(1) RCR (Rent) 366**. Learned counsel submits that provisional assessment of rent made by the learned Rent Controller, and affirmed by the learned Appellate Authority, was wholly contrary to the provisions of law and judicial decisions interpreting the definition of 'rent due'. It is stated that the orders dated 22.04.2024 and 31.05.2024 do not stand judicial scrutiny and are liable to be set aside.

13. Contrarily, learned counsel for the respondents/landlord contends that impugned orders are valid in the eyes of law. The provisional assessment of the rent has been made strictly as per the terms of the lease agreement, applicable provisions of law and the pleadings of the parties.

14. Learned counsel submits that respondents filed petition on 09.12.2022, and in para No.2 of the rent petition, categorically pleaded that petitioner is in arrears of rent from 01.09.2021 onwards. The learned counsel states that term 'due arrears of rent' may also include the period after the filing of the petition, when the landlord has kept the period of 'rent due' open and extensive in his petition. In present case, landlord demanded rent from 01.09.2021 onwards. To support his contentions, learned counsel referred to **Vinod Kumar Vs. Prem Lata, 2003(2) Rent LR 449**, Hon'ble the Supreme Court in para No.6, observed that provision itself casts an

obligation on the Rent Controller to calculate and determine by its order (i) the arrears of rent (ii) interest and (iii) the cost qualifying the amount which should be paid or tendered by the tenant (at that stage) to comply with the proviso. It is stated that in **Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation, 2002 (1) R.C.R.(Rent) 514**, Hon'ble the Supreme Court held that the 'first date of hearing', would mean the date falling after the provisional rent has been assessed. By referring to **Gurpreet Singh and another vs. Brijender Bhardwaj and another, 2011 (2) CivCC290**, and **Rajan alias Raj Kumar Vs. Rakesh Kumar, 2010(1) R.C.R.(Rent) 386** learned counsel submits that it is duty of the learned Rent Controller to assess the exact amount of provisional rent and not the tenant. On failure to pay the provisional rent, eviction must follow.

15. Learned counsel further states that the terms and conditions of the lease agreement dated 11.05.2021 (Annexure P-3) are not in dispute. The assertion of payment of rent in cash has been rightly discarded by the learned Rent Authorities in the absence of any evidence to *prima facie* support such a payment. Learned counsel contends that on the contrary, cheques given by the petitioner towards the rent have been dishonored, and proceeding under Section 138 of Negotiable instruments Act, 1881 have been initiated against him. It is submitted that the petitioner has not paid any rent to the respondents and is unlawfully holding the possession of the leased property. It is further stated that the petitioner filed several applications intentionally to delay the assessment of provisional rent, and same was assessed almost 16 months after the petition was filed. It is stated that in these circumstances, the arrears of 'rent due' were rightly considered

for assessment of provisional rent from 01.09.2021 until the date of assessment on 01.04 2024.

16. Learned counsel submits that the doctrine of ‘suspension of rent’ is not applicable to the facts of the case. Firstly, the terms of the lease agreement do not incorporate the same except to the extent of Clause 2. Secondly, the lease deed is a registered document and any terms not explicitly written cannot be considered. In support referred to **M/s Mohan Singh Ishwar Dayal Jewellers Main Bazaar, Ballabgarh Vs. Chuni Lal and others, 2017 (1) PLR 217**, wherein it was observed that once the terms of contract or grant are reduced in written document, no evidence shall be given in proof of the terms of such contract or grant, except the document itself or secondary evidence thereof. No oral evidence shall be admitted proving the same. Thirdly, there is no material on record suggesting respondents-landlord deprived the petitioner-tenant through any *mala fide* means to use the property or deceived or misled him about the condition of the demised premises.

17. Referring to various clauses of the lease- deed, learned counsel argued that petitioner was aware that leased property was under construction and parties had agreed for a four- month rent free fitment period. The petitioner was put in possession of the leased property on 11.05.2021 and the lease was to commence from the date of its execution. The reference was also made to the photocopy of letter dated 01.09.2021 given by petitioner to the Bank of the respondents, requesting for the inspection of the property taken on lease by him, unerringly suggests that petitioner had possession on the property. This falsifies his claim that he was not put in possession of the

leased property by the respondents. Therefore, it is stated that the doctrine of suspension of rent as pleaded by the petitioner is not applicable to the facts of this case. Based on these submissions, a prayer for dismissal of the revision is made, being meritless.

18. I have heard learned counsel for the parties and have gone through the paper book, appended and referred to documents, and the judicial precedents.

19. From the material on record, relationship of landlord and tenant is not in dispute. The terms of the registered lease deed dated 11.05.2021 (Annexure P-3) which govern their commercial relationship, are also not in dispute. The rate of lease rent and its scheduled payments have been outlined in clause No.3, these too are not in dispute. Clause No.2 speaks of a four-month rent free fitment period being given by lessor to lessee (petitioner).

20. The introductory part of lease agreement in no uncertain terms dictate that building was under construction. The parties executed the agreement, and there is no claim from the petitioner about misunderstanding of the terms and conditions of the lease agreement. The lease- agreement clearly indicates that the lease was to commence from 11.05.2021. Except clause No.2, no other condition is mentioned in the lease agreement grants petitioner the right to seek exemption from paying rent. Clause No.3 is regarding payment of advance cheques in lieu of the rental schedule. Furthermore, Clause No.5 specifies that the refundable security shall be handed over by the lessor to the lessee only when the lessee hands peaceful possession of the leased property to the lessor. The letter dated 01.09.2021 given to the bank of the respondent, in which he requested the respondents'

bank to inspect the property, taken by him on lease from the respondents. Additionally, the recitals of clauses No.14, 18 and 25, prima facie suggest that petitioner took possession of the leased property at the commencement of the lease on 11.05.2021. The above evidence, prima facie contradicts the petitioner's claim that he obtained possession in December 2022. Moreover, the facts controverted by the petitioner are required to be tested on the merits of the case. It is for the petitioner to establish that landlord prevented him from using and utilizing the property immediately. The plea of applicability of doctrine of suspension of rent, at this stage, cannot be considered, as it requires an assessment of evidence on merits of the case. Therefore, the petitioner is not permitted to state that eviction petition (Annexure P-4) on alleged arrears of rent due towards him is not maintainable.

21. It would be apt to go through Section 13 of the Rent Act, 1949, which deals with eviction of tenants. The relevant portion extracted reads as follows:-

“(1)A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this Section, [or in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended]

(2)A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied
-(i)that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the

time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable:

Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid;

(ii)that the tenant has after the commencement of this Act without the written consent of the landlord –

(a)transferred his right under the lease or sublet the entire building or rented land or any portion thereof; or

(b)used the building or rented land for a purpose other than that for which it was leased, or

(iii)that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land, or

(iv)that the tenant has been guilty of such acts and conduct as are a nuisance to the occupiers of buildings in the neighbourhood, or

(v)that where the building is situated in a place other than a hill-station, the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause, the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.....”

22. The plain reading of the section provides for a cause of action for the landlord to seek eviction of a tenant by applying before the learned

Rent Controller, stating that tenant has not paid or tendered the 'rent due' against him. The proviso to the Section provides that Rent Controller should assess the arrears of rent including cost and interest as per the procedure laid in the section, and tenant is statutory obligated to pay the arrears of rent, as assessed by the Rent Controller. The legislature has not defined 'arrears of rent' or 'rent due'. In this context, the Section provides that landlord is to file the petition, stating the 'rent due'. It may be for a specified period, up to the filing of petition or may be non-specific, starting from default date only with unspecified future defaults that may be reckoned by the learned Rent Controller at the time of assessment of the rent, as it has happened in the present petition

23. The respondents-landlord has demanded the rent due from 01.09.2021 onwards and petitioner has denied the same and is seeking abatement of rent taking plea of doctrine of suspension of rent on the grounds discussed above. So, in these circumstances, when learned Rent Controller assessed the provisional rent on 22.04.2024, he assessed from 01.09.2021 to 01.04.2024, as per the scheduled rates of rent as mentioned in lease deed. This Court is of the firm opinion that this provisional assessment of rent is as per the provisions of law, which of-course shall be subject to the final determination on the merits of the case. In the referred judgment **Neera Chadha (supra)**, landlord had demanded rent for 2 months only. Therefore, this authority is inapplicable to the facts of this case. In **Dr. N. K. Sood (supra)**, rent was claimed upto a particular period in the petition. In **Sunder Krishan (supra)** specific period of unpaid rent was demanded. The facts of **Sat Pal (supra)** are distinguishable, as in said case tenant was in



arrears of rent. In present case, the petitioner has pleaded that no rent was due from him from the date of filing of the petition and claimed exemption from payment of rent on plea of doctrine of ‘suspension of rent’.

24. For the reasons recorded above, it is held that the learned Rent Controller Chandigarh and the Learned Appellate Authority, Chandigarh has rightly exercised the jurisdiction while passing the impugned orders. This Court finds no illegality or perversity in the impugned orders, warranting any intervention from this Court.

25. Accordingly, this revision petition is **dismissed**.

26. It is noted that the observations made above should not be construed as an expression of opinion on the merits of the case pending before learned Rent Controller, Chandigarh. Same are purely confined to the present controversy and deliberations.

27. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

08.07.2024
Rimpal

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