

2024:PHHC:013178

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4385-2023 (O&M)

Date of Decision: January 31, 2024

Sharina Khara

...Petitioner

Versus

Manjushree

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Jasdeep Singh Gill, Advocate
for the petitioner.

Mr.M.L.Sarin, Senior Advocate with
Ms.Hemani Sarin, Advocate
for the respondent.

ARCHANA PURI, J.

The petitioner-tenant has filed this revision petition, thereby, assailing the order dated 30.01.2023 passed by learned Rent Controller, whereby, the provisional rent for the premises in question w.e.f. 01.01.2020 to 31.01.2023 @ Rs.25,000/- per month was assessed, together with the interest component and costs, total amounting to Rs.9,05,083/-. Further, challenge is to the order dated 14.07.2023 passed by learned Appellate Authority, Panchkula, thereby, dismissing the appeal preferred by the petitioner-tenant, against the assessment of the provisional rent.

The facts, germane to be noted, are as follows:-

That, respondent-landlady Manjushree had filed a petition under

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Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973, thereby, seeking eviction of the petitioner-tenant from the tenanted premises i.e. House No.818, Sector 12, Panchkula. As per claim of the landlady, the ground floor of the house in question was rented out to the petitioner-tenant vide lease deed dated 01.02.2019 for a period of 11 months, w.e.f. 01.02.2019 to 31.12.2019. The agreed monthly rent of the demised premises was Rs.25,000/- per month, payable in advance by 1st day of each English Calendar, through an account payee cheque, drawn on any bank at Panchkula or Chandigarh, in favour of respondent-landlady. Also, the lease deed contained the recital with regard to no other mode of payment shall be valid. Besides the same, there were other terms and conditions relating to the tenancy, which were reproduced in the lease deed in question.

In the eviction petition, besides dilating upon the conduct of the petitioner-tenant, thereby, proving to be not a good tenant, the respondent-landlady also set up a ground of personal necessity for the settlement of her son in India. Further, it is also stated that petitioner-tenant did not pay the rent w.e.f. 01.01.2020 to 31.05.2022.

In reply, the petitioner-tenant, though did not dispute about the inception of the tenancy and the execution of the lease deed dated 01.02.2019 as well as the extent of rent, but however, denied about the bad conduct vis-a-vis, usage of the tenanted premises, as alleged by the respondent-landlady. Also, the petitioner-tenant denied the ground of personal necessity. She has also denied having not paid the rent w.e.f. 01.01.2020 to 31.05.2022. In fact, the petitioner-tenant took the plea of rent

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having been paid by her upto January 2022. However, the rent for the period from February 2022 to September 2022, was tendered to landlady but, she intentionally and willfully refused to accept the same, with the intention to create ground of ejectment. Further, the petitioner-tenant asserted that the landlady and her husband used to collect rent of the premises in question, through messenger/driver namely, Gurmeet. After paying the rent to said Gurmeet, the petitioner-tenant used to send whatsapp messages to the landlady and her husband. The receipt of rent was never disputed. In this manner, the rent was already received till January 2022. However, the petitioner is in arrears of rent from February 2022 to September 2022. All other assertions were denied.

In the replication, the averments made in the written statement were denied and it was re-asserted about the petitioner-tenant to be in arrears of rent w.e.f. 01.01.2020, till date. Furthermore, it was also asserted that whatsapp messages, if any, were sent by the tenant to create false evidence regarding payment of rent. Had any rent been paid by the tenant and accepted by the landlady, the message regarding receipt of the same, would have been sent by the landlady or her husband to the tenant.

On perusal of the material on record, learned Rent Controller assessed the provisional rent, including costs and interest component for the period w.e.f. 01.01.2020 upto 31.01.2023 as Rs.9,05,083/- and further, the case was adjourned to 02.03.2023 for payment/tender of the provisionally assessed rent.

The aforesaid order of assessment of provisional rent was

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further challenged before learned Appellate Authority and the same stood affirmed vide order dated 14.07.2023.

Feeling aggrieved, the petitioner-tenant has filed the present revision petition.

Learned counsel for the parties heard.

As culled from the record, the relationship of landlady and tenant, between the parties, is not disputed. The inception of tenancy for the period of 11 months, w.e.f. 01.02.2019 to 31.12.2019, as such, is not disputed. The rate of rent is also not disputed. The execution of the lease deed dated 01.02.2019, the terms of tenancy settled, as such, are also not disputed.

In the backdrop of the undisputed facts, with regard to the relationship of the landlady and tenant between the parties to the lis, execution of the lease deed dated 01.02.2019 and the terms settled as well as rate of rent, not being disputed, as observed aforesaid, the controversy, in hand now, squares down to the payment of rent w.e.f. 01.01.2020 to 31.05.2022, as asserted by the respondent-landlady in the eviction petition and with regard to the further period till January 2023, as assessed by learned Rent Controller.

The petitioner-tenant asserted about the rent @ Rs.25,000/- per month, having already paid upto January 2022. However, she had admitted about the rent due for the period from February 2022 to September 2022, having not been paid. However, the respondent-landlady did not accept the rent. It is further the categoric claim of the petitioner-tenant that rent was

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collected by the respondent-landlady and her husband through messenger/driver Gurmeet and she used to send whatsapp messages, about the payment of the rent, thereby, specifying the period of rent also.

To prove the rate of rent is always upon the landlord and the onus to prove the payment of rent, is on the tenant.

In the case in hand, as already observed aforesaid, the rate of rent is not disputed. However, the dispute is regarding non-payment of the rent for the period as asserted by the respondent-landlady w.e.f. 01.01.2020 to 31.05.2022 and further about the period, till January 2023, for which the provisional rent has been assessed. However, while making reference to the assessment of the provisional rent, the period of non-payment, till that time was taken to be 01.01.2020 to 31.01.2023.

In *Rakesh Wadhawan and others vs. Jagdamba Industrial Corporation and others, 2002(1) RCR (Rent) 514*, the Hon'ble Supreme Court had examined the provisions of Section 13(2)(i) and had held that proviso to Section 13(2)(i) of the Act casts an obligation on the Rent 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. On the failure of the tenant to comply, the consequential order for eviction would follow. However, the inquiry shall continue by the Controller for finally adjudicating upon the dispute, as to the arrears of rent

in the light of the contesting pleas raised by the landlord and the tenant.

Now, advertng to the case in hand, it is pertinent to mention that relationship of landlady and tenant is admitted. Perusal of the pleadings on record would clearly indicate that in the reply fled by the petitioner-tenant to the eviction petition, the petitioner had raised the contention to deny that she is in arrears of rent for half of the period, to which the respondent-landlady had asserted to be in arrears of rent. It was averred that the rent has been paid upto January 2022 through messenger/driver Gurmeet, relating to which, even whatsapp messages were repeatedly sent by the petitioner-tenant to the respondent-landlady, thereby, specifying the period, for which, the rent due was handed over to Gurmeet. Screenshots of whatsapp messages relating to the period July 2021 upto January 2022, are coming on record. It bears the double tick in blue colour, which is enough of indication to be considered about having read the messages. Qua the said messages, there was no response at the behest of the respondent-landlady or her husband. Total silence was there, on the part of the respondent-landlady. Eviction petition was thereafter filed on 30.05.2022.

In these circumstances, it could not be believed that had the rent not been paid since 01.01.2020 for the period, as asserted, the landlady would remain silent for such a long period, more particularly, when they belong to the educated class of the society, who are familiar to the whatsapp usage.

From the pleadings, it is evident that respondent-landlady had written a letter to the high-ups of the tenant, who is ETO, thereby, complaining

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about her illegal occupation, non-payment of the rent and for harassment of the senior citizens as well as seeking permission for initiation of criminal action. This letter was written on 10.01.2022, copy whereof is Annexure P-5. The writing of said letter to tenant's bosses, as such, is not disputed by the landlady. If this letter could be so written, then also, it is not believable that respondent-landlady would not issue any legal demand notice for the payment of rent, for the period, as so mentioned in the whatsapp messages or for the period, as asserted by her.

It has been argued on behalf of the petitioner-tenant that under such circumstances, the adverse inference ought to have been drawn against the landlady, as no cogent explanation was coming forth to explain there being silence, for not making demand of rent w.e.f. 01.01.2020, till the date of filing of the eviction petition on 30.05.2022. As such, there is a triable contest between the parties.

Very rightly, as so pointed by learned counsel for the respondent-landlady about the recitals in the lease deed dated 01.02.2019, with regard to mode of payment to be made by payee's cheque and that no other mode shall be valid. However, at the same time, it should also be noted that the lease period, as stated in the lease deed aforesaid, had already come to an end, when this controversy arose. The period of the rent having not been paid is w.e.f. 01.01.2020, i.e. after the expiry of the lease period on the basis of the said lease deed. In the given circumstances, it should also be noted that there is no fresh lease deed executed between the parties. If it be so, then question arises that if the rent was paid in cash through

messenger/driver Gurmeet, then the conduct of both the parties is to be seen. For the multiple times, the messages, as evident from the screenshots, were sent by the petitioner-tenant to the respondent-landlady on her mobile number, which was also so mentioned underneath the signatures of the landlady in the lease deed in question. Thus, it stood connected to the landlady. Not only this, the long silence on the part of the respondent-landlady, in not making any response to the whatsapp messages, the further conduct of the petitioner-tenant about again and again sending said messages about payment of the rent due, also raises question mark, regarding continuation of payment of rent, in this manner, despite there being long silence, on the part of respondent-landlady. In the given circumstances, who is at fault, whether the petitioner-tenant or respondent-landlady, raises a triable issue, as regards petitioner-tenant being in arrears of rent since 01.01.2020 till the period, as asserted by the respondent-landlady.

For findings to be recorded on the said issues thereupon, evidence would have to be led. Further, in terms of the impugned order dated 30.01.2023 passed by learned Rent Controller, provisional rent has been assessed, but however, for the period w.e.f. 01.01.2020 till date i.e. 31.01.2023, @ Rs.25,000/- per month, total amount whereof is about Rs.9,00,000/-. Besides the same, interest component was to the extent of Rs.3083/- and the costs of the proceedings was Rs.2,000/- and in total, the provisional rent assessed was to the extent of Rs.9,05,083/-. It is not a small amount. The petitioner-tenant, as such, has been put to onerous terms,

which fact also requires to be taken into consideration.

In view of the aforesaid discussion, the instant revision petition is allowed. The provisional rent assessed @ Rs.25,000/- per month is upheld. However, the direction for deposit of arrears of rent for the period w.e.f. 01.01.2020 to 31.01.2023, as such, is hereby set aside.

At the same time, it should be noted that the determination of the provisional rent ensures on the one hand that while the tenant is protected against the unjust demand by the landlord, but however, it has to be seen that the landlord, in turn, is not deprived of the just dues, on account of the use and occupation of the property by the tenant. In the given circumstances, to vouchsafe the interest of the respondent-landlady, during the pendency of the revision petition, the petitioner-tenant was required to make the payment of the admitted period, for which the arrears were due, out of the period, taken into consideration by learned Rent Controller, for assessment of the provisional rent.

Vide order dated 20.11.2023, it was directed by this Court to the petitioner-tenant to clear the entire arrears of the admitted period of rent i.e. since February 2022, upto date @ Rs.25,000/- per month, within a period of three weeks. In compliance of the aforesaid order, payment of Rs.5 lakh, by way of cheque was paid before learned Rent Controller on 12.12.2023. In the light of the same, out of approximate amount of Rs.9 lakh, a sum of Rs.5 lakh stood paid. The aforesaid order was passed to strike a balance between the rights of the petitioner-tenant as well as respondent-landlady. In the given circumstances, the further period of rent,

having been paid or not, shall be worked upon by learned Rent Controller, after the opportunity is given to the parties to adduce the evidence, during the course of the proceedings.

In the given circumstances, while setting aside the order, with regard to deposit of arrears of rent as assessed by learned Rent Controller and also the order dated 14.07.2023, a direction is also issued to learned Rent Controller, Panchkula, to decide the eviction petition filed by the respondent-landlady expeditiously, preferably within a period of six months, from the date of receipt of copy of this order, from any source.

However, further it is clarified that the observations made aforesaid are circumscribed only for the purposes of disposal of the present revision petition and shall have no bearing on the merits of the case, to be adjudicated on the basis of the evidence before learned Rent Controller.

Hence, the revision petition stands allowed, in the aforesaid terms.

January 31, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No