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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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Date of decision : 20.08.2024

Prem Chand (since deceased) now represented through his LRs.

... Petitioner

Versus

Paramjeet Singh Saini

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Puneet Verma, Advocate for the petitioner.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Section 15(6) of the Haryana Urban (Control of Rent and Eviction) Act 1973 read with Article 227 of the Constitution of India for setting aside the impugned orders dated 26.04.2023 and 30.05.2023 passed by the Rent Controller, Kalka and impugned judgment dated 11.07.2024 passed by the Appellate Authority, Panchkula.

2. Brief facts of the present case are that the respondent-landlord had filed a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 for ejectment of Prem Chand from two shops on the first floor of property bearing Municipal House Tax no.191/B-3, Nalagarh Road, Pinjore, Tehsil Kalka, District Panchkula. The said rent petition was filed on 29.11.2022 with the averments that the rent had been settled at the rate of Rs.12,650/- per month and that the said Prem Chand had not paid the



rent at the rate of Rs.12,650/- per month in respect of the premises in question to the landlord w.e.f. 01.02.2022 till the filing of the rent petition. It was further averred that the said Prem Chand was not a good tenant and had remained a regular defaulter in making the payment of monthly rent. A reply was filed to the said petition in which it was stated that the landlord had never issued any rent receipt with respect to the rent paid by the tenant. On 26.04.2023, the Rent Controller after taking into consideration the averments made in the petition as well as in the reply, assessed the provisional rent along with interest and costs as Rs.1,86,955/- and adjourned the matter to 30.05.2023 for making payment of assessed rent by the tenant to the landlord. The relevant portion of the said order is reproduced hereinbelow:-

“5. So far as payment of arrears of rent is concerned, the onus was upon the respondent to prove the same. In the instant petition, the petitioner has claimed the arrears of rent w.e.f. 01.02.2022 till date,whereas, the respondent has claimed that rent has been paid upto 01.11.2022, but no proof regarding the payment of rent has been placed on record. Thus, the period of rent is held to be from 01.02.2022. The other facts as alleged by both the parties are matter of evidence and can be decided at final stage after leading evidence by both the parties. At this stage, without prejudice to respective stand of both parties at the stage of final decision of the present petition. The calculations of provisional rent is made as under:-

Arrears of rent @ Rs.12650/- p.m. w.e.f. 01.02.2022 till 31.03.2023 (12650x14)	Rs.1,77,100/-
Interest @ 6%	Rs.8855/-
Costs	Rs.1000/-
Total	Rs.1,86,955/-



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To come up on 30.05.2023 for making payment of assessed rent by respondent to petitioner.”

A perusal of the order dated 26.04.2023 would show that the fact that the rent was Rs.12,650/- per month was admitted by the tenant and since no proof had been annexed with respect to the payment of rent from 01.02.2022, thus, the above said order was rightly passed.

3. The tenant had failed to comply with the assessment order of provisional rent dated 26.04.2023 and thus, on 30.05.2023 the order of eviction was passed in pursuance of the law laid down by the Hon'ble Supreme Court in the case of ***Rakesh Wadhawan vs. M/s Jagdamba Industrial Corporation*** reported as ***2002(1) Rent Control Reporter 514*** in which it was held that on the failure of the tenant to comply with the provisional assessment order, nothing remains to be done and an order of eviction shall follow and in case the tenant makes compliance, the inquiry shall continue for final adjudication upon the dispute as to the arrears /rate of rent etc. The relevant portion of the order dated 30.05.2023 is reproduced hereinbelow:-

“4. Hence, in view of the aforesaid observations as well as facts and circumstances of the instant case, I am of the considered opinion that on account of the failure of the tenant / respondent to comply with the order of the assessment of the provisional rent dated 26.04.2023, now nothing remains to be done and accordingly, the respondent is hereby ordered to be evicted from the demised premises i.e. 2 shops on the First Floor of property bearing Municipal House Tax No.191/B-3, Nalagarh Road, Pinjore, Tehsil Kalka, District Panchkula. However, in the interest of justice, the respondent is granted

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two months time to hand over the vacant possession of the demised premises to the petitioner. Memo of costs be prepared. File be consigned to record room, after due compliance. Pronounced in Open Court: May 30, 2023.”

It would be relevant to note that no prayer either oral or much less in writing, for extension of time was made on behalf of the tenant nor it was stated that rent could not be paid on account of any illness or any difficulty to the tenant.

4. That an appeal dated 03.08.2023 was filed by the tenant Prem Chand against the order dated 30.05.2023. The said appeal was filed after a period of more than 3 months from the passing of the order dated 26.04.2023 and after a delay of more than 2 months from the passing of the order dated 30.05.2023 and yet, no demand draft of the amount found due as per the assessment order of provisional rent was annexed along with the appeal. Contradictory pleas were taken in the said appeal, which is apparent from the said appeal / application for condonation of delay. In paragraph 9 of the grounds of appeal (at page 35 of the paper book), the plea taken by the tenant was to the effect that a request was made by the tenant to be granted reasonable opportunity to tender the provisional assessed rent, which was not considered by the Rent Controller, whereas in the same paragraph i.e., paragraph 9, it was stated that the order dated 26.04.2023 as well as the order dated 30.05.2023 were not within the knowledge of the tenant and thus, he was not in a position to tender the provisional assessed rent. Paragraph no.9 of the grounds of appeal which is self contradictory is



reproduced hereinbelow:-

*“9. That the order dated 26.04.2023 as well as order dated 30.05.2023 was never communicated to the appellant-tenant by his previous counsel. **Since the order dated 26.04.2023 as well as order dated 30.05.2023 was not within the knowledge of the appellant-tenant and as such the appellant-tenant was not in a position to tender the provisionally assessed rent on 26.04.2023. The request of the appellant-tenant to grant reasonable opportunity to him to tender the provisions assessed rent was not considered by the learned Rent Controller, Kalka, and instead thereof, the impugned judgment dated 30.05.2023 has been passed by the learned Rent Controller, Kalka, which is incorrect, illegal, perverse and is liable to be set aside.**”*

It is also relevant to note that a perusal of the order dated 30.05.2023 would show that no request was made to the Rent Controller for grant of any time to tender the provisional assessed rent. Moreover, In paragraph 3 of the application, it was stated that the previous counsel had informed the tenant of the passing of the order dated 30.05.2023 and that against the order dated 30.05.2023, a revision petition would lie before the High Court.

5. That the Appellate Authority vide order dated 11.07.2024 in view of the law laid down by the Hon'ble Supreme Court in the case of ***Rakesh Wadhawan (supra)*** had dismissed the said appeal. It was observed that the tenant had himself admitted the rate of rent to be Rs.12,650/- per month and had not been able to produce any rent receipt testifying the fact that he had paid the rent after 01.02.2022 and thus, it was observed that the

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Rent Controller had rightly assessed the arrears of rent w.e.f. 01.02.2022 to 31.03.2023 at the rate of Rs.12,650/- per month and the said provisional assessed rent was required to be paid upto 30.05.2023. It was further observed that admittedly, the tenant had failed to pay / tender the said rent till the said date. The plea raised by the tenant to the effect that he was suffering from cancer and was under treatment from Paras Hospital, Panchkula and that the Rent Controller should have extended the period to tender the provisional assessed rent was rejected by the Appellate Authority by observing that a perusal of the record showed that neither any oral prayer was made on behalf of the tenant or his counsel seeking extension of period to tender provisional rent nor any application in writing was ever filed seeking such extension and thus, the Rent Controller had no occasion to extend the period to tender the provisional assessed rent. Accordingly, the tenant was directed to vacate the premises within a period of one month from the date of the judgment dated 11.07.2024. Against the said order, the petitioner has filed the present revision petition.

6. Learned counsel for the petitioner has submitted that since the tenant was suffering from lung cancer, thus, he was not in touch with his lawyer and did not know about the passing of the orders dated 26.04.2023 and 30.05.2023 and therefore, could not pay the provisional assessed rent. It is submitted that in the said circumstances, an extension of time should be provided to the tenant to make the payment. It is further submitted that the tenant has died on 06.10.2023 and now the LRs of the tenant are pursuing the present proceedings. Learned counsel for the petitioner has stated that



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he has prepared a demand draft dated 11.07.2024 for an amount of Rs.1,86,955/- in order to show his bonafide. Reliance has been placed by the counsel for the petitioner upon the judgment dated 08.02.2024 of the Coordinate Bench of this Court passed in ***Civil Revision no.177 of 2023*** titled as ***“Kamal Dhari vs. Nikhil Virmani and another”*** in support of his arguments.

7. This Court has heard the learned counsel for the petitioner and has perused the paper book.

8. The Hon'ble Supreme Court in the case of ***Rakesh Wadhawan (supra)*** while crystallizing the law with respect to eviction on the ground of non-payment of rent, had in paragraph no.30 of the judgment culled out six conclusions. Conclusions no.1 to 4 which are necessary for consideration in the present case are reproduced hereinbelow:-

“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.”

A perusal of the above judgment would show that the Hon'ble Supreme Court had observed that an obligation has been cast upon the Rent Controller to assess the rent / arrears of rent etc. 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. It was further specifically observed / held that on the failure of the tenant to comply with the said order, nothing remains to be done and an order of eviction is required to necessarily follow and in case 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.

9. In the present case, it is not in dispute that the order dated 26.04.2023 was passed by the Rent Controller after taking into consideration the pleas raised by both the landlord and the tenant. The provisional assessment made by the Rent Controller was to the tune of Rs.1,86,955/- which was required to be paid by the tenant to the landlord upto 30.05.2023. The said payment was not made and accordingly, in view of the law laid down by the Hon'ble Supreme Court in the case of **Rakesh**



Wadhawan (supra), the eviction order dated 30.05.2023 was passed and the tenant was granted two months time to hand over the vacant possession. A perusal of the above order dated 30.05.2023 would show that no plea for extension of time either in writing or oral was sought nor any plea was raised to the effect that the tenant was not keeping good health. Even with the appeal which was filed on 03.08.2023 i.e., after a delay of more than 3 months from the passing of the order dated 26.04.2023 and more than 2 months from the passing of the order dated 30.05.2023, no demand draft of the amount of rent etc. due was annexed, rather contradictory pleas were taken in paragraph no.9 as have been highlighted in the earlier part of this order. In paragraph no.9 of the appeal, particularly in the initial part of the same, it was stated that the tenant was not aware of the said orders and as such was not in a position to tender the rent, whereas in the subsequent part of the said paragraph, it was stated that the tenant had requested for a reasonable opportunity to tender the provisional assessed rent, which was not considered by the Rent Controller. The said pleading apart from being self contradictory is also not even remotely substantiated from the order dated 30.05.2023 as a perusal of the order dated 30.05.2023 would show that no such request was made. Even the learned counsel for the petitioner has not been able to explain as to on what basis the said averments have been made. Moreover, the matter was pending before the Appellate Authority for a period of almost one year and was decided on 11.07.2024. Nothing has been shown / placed by the petitioner before this Court to even remotely show that during the said period, prior to the passing of the order

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dated 11.07.2024, any offer was made on behalf of the petitioner to deposit the said entire amount of arrears. Reliance on the demand draft dated 11.07.2024 of an amount of Rs.1,86,955/- also does not further the case of the petitioner in any manner. The amount of Rs.1,86,955/- was payable as on 26.04.2023 and as has been stated hereinabove, neither the said amount was offered / given upto 30.05.2023, nor any demand draft was annexed along with the appeal dated 03.08.2023. The said demand draft dated 11.07.2024 has apparently been prepared when the matter had finally culminated before the Ist Appellate Court. There is nothing on record, even to show, whether for the interregnum period upto 11.07.2024, the monthly rent has been paid by the tenant to the landlord. In the said circumstances, the judgment of the Coordinate Bench of this Court in the case of ***Kamal Dhari (supra)*** relied upon by the learned counsel for the petitioner, would not further the case of the petitioner inasmuch as in the said judgment, the facts and circumstances were completely different. In the case of ***Kamal Dhari (supra)***, after provisional assessment of rent had been made, the case was adjourned to 04.11.2022 and it was the case of the petitioner therein that the tenant could not appear before the Rent Controller on 04.11.2022 as his wife had died on 04/05.11.2022 and thus, the unforeseen circumstance of his wife falling seriously ill and having died on the same day/night had occurred on the crucial date, which was the date fixed before the Rent Controller. The aspect of the wife having died on the said date was not disputed on behalf of the landlord therein. Moreover, in the said case, the amount of arrears of rent had already been paid by virtue of the demand



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draft, in pursuance of the order dated 22.01.2023 (passed within a period of 2 months and 19 days from 04.11.2022) whereas in the present case, no such fact has come on record and it is only after a period of more than 1 year and 2 months of the passing of the impugned orders, that the demand draft dated 11.07.2024 has been annexed along with the present petition and that too only with respect to the amount which as per the tenant was due upto 26.04.2023. Moreover, in the case of *Kamal Dhari (supra)*, it was the tenant who was alive whereas in the present case, it is the LRs of the tenant, who are now pursuing the litigation.

10. This Court is bound by the law laid down by the Hon'ble Supreme Court in the case of *Rakesh Wadhawan (supra)* and since, as has been detailed hereinabove, in spite of the provisional order having been passed on 26.04.2023 requiring the tenant to pay Rs.1,86,955/- upto 30.05.2023, the same having not been complied with, the order dated 30.05.2023 has been rightly passed by the Rent Controller, which is in complete conformity with the law laid down by the Hon'ble Supreme Court in the case of *Rakesh Wadhawan (supra)*. The appeal has also been rightly dismissed by the Appellate Court and the said orders do not call for any interference in the present revision petition and thus, finding no merit in the present petition, the same deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

August 20, 2024
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No