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2024:PHHC:057582

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

Civil Revision No.5407 of 2023 (O&M)

Date of decision: 25.04.2024

Harinder Pal Singh

.... Petitioner

Versus

Palwinder Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Sudeep Mahajan, Advocate and
Ms. Saachi Mahajan, Advocate, for the petitioner.

Mr. Aditya Dassaur, Advocate, for the respondent.

GURBIR SINGH, J.

1. Challenge in this revision petition is to the order dated 06.09.2023 passed by learned Appellate Authority, Jalandhar whereby the appeal filed by the petitioner-tenant against the order dated 09.11.2022 passed by learned Rent Controller, Jalandhar, in an ejectment petition filed by the respondent-landlord on the ground of non-payment of rent, has been dismissed.

2. Brief facts necessary for the disposal of present revision petition are that the respondent-landlord purchased the demised shop i.e. SCF No.101, Guru Ravi Dass Market, Nakodar Road, Jalandhar, from the earlier owner Sarabjit Kaur. The petitioner was already tenant there, but since he failed to pay rent w.e.f. 01.08.2017, the respondent filed ejectment petition. The tenant contested the petition on the ground that rent was paid

upto February, 2018 @ Rs.10,500/- per month and thereafter, the landlord refused to receive the rent. Petitioner was ready to pay the arrears of rent. During the pendency of petition, vide order dated 05.05.2022, the provisional assessment of rent was made, which is as under:-

Rent: Rs.10,500/- x 57 (months)	Rs.05,98,500/-
Interest @ 6%	Rs.86,782/-
Cost:-	Rs.3,000/-
Total:	Rs.06,88,282

The petitioner filed appeal against said order of assessment of rent, which was dismissed vide order dated 28.10.2022. The rent petition was allowed and order of ejectment was passed on the ground of non-payment of provisionally assessed rent.

3. Learned counsel for the petitioner-tenant has argued that provisional rent was assessed on 05.05.2022 and the next date fixed in the case to pay the rent as per said order, was 28.07.2022. In the meantime, an appeal was filed against the assessment of provisional rent which was dismissed on 28.10.2022 with a direction to the parties to appear before the Rent Controller for further proceedings on 09.11.2022 through their respective counsels. Parties were not even present in appeal, whereas learned Rent Controller had adjourned the case for 18.11.2022 for awaiting the orders from the Appellate Authority. The case was neither fixed nor shown in the cause list on 09.11.2022. Since the Appellate Authority did not direct the tenant to pay the arrears of rent but had sent the file only for the purpose of further proceedings, the Rent Controller was required to fix a

date for the purpose of payment of provisionally assessed rent. The petitioner-tenant was under the bona fide impression that he was required to tender the provisional rent before the learned Rent Controller on 18.11.2022 as the date fixed before the learned Rent Controller was 18.11.2022 for awaiting the orders from the Appellate Authority. The petitioner arranged money and got prepared draft for the amount of rent assessed by the Rent Controller and came to the court on 18.11.2022 in order to tender the same. But the order of ejectment was already passed in his absence on 09.11.2022. It is submitted that the learned Rent Controller could not pass ejectment order on 09.11.2022 but was required to wait till 18.11.2022 for payment of provisionally assessed rent. Against the order dated 28.10.2022 passed by learned Appellate Authority, the petitioner also filed Civil Revision No.477 of 2023 before this Court, however, vide order dated 23.01.2023, it was withdrawn with liberty to raise all the pleas before the Appellate Authority. In support of his arguments, he has relied on case ***Rakesh Wadhawan Versus Jagdamba Industrial Corporation, 2002(1) RCR (Rent) 514.***

4. Learned counsel for the respondent-landlord has argued that provisional rent was already assessed but before next date fixed for payment of said amount, the tenant filed appeal which was dismissed and the parties were directed to appear before the Rent Controller on 09.11.2022 itself. No further opportunity was required to be given to the

tenant. While relying on the judgment in *Rakesh Wadhawan's case (supra)*, he submits that first date of hearing is the date on which the Court applies its mind to the facts and controversy involved in the case. He further submits that the Rent Controller has no jurisdiction to order extension of time for payment of provisional rent.

5. I have heard the submissions of learned counsel for the parties and have gone through the file.

6. The relationship of landlord and tenant between the parties and the rate of rent as Rs.10,500/- per month, are not disputed. The learned Rent Controller assessed provisional rent w.e.f. 01.08.2017 to 01.05.2022 and the tenant was directed to pay the said amount on 28.07.2022. Before that date, tenant being dissatisfied with the order of assessment, filed appeal before the Appellate Authority. Said appeal was dismissed vide order dated 28.10.2022. Para No.16 of said judgment reads as under:-

“16. As a sequel to my findings above, present appeal fails and the same is hereby dismissed with no orders as to costs. Keeping in view the peculiar circumstances of the case, the parties are left to bear their own costs. Impugned order passed by learned Rent Controller is hereby affirmed. Memo of costs be prepared. Parties through their respective counsel, are directed to appear before learned Rent Controller on 09.11.2022 for further proceedings. Trial Court record be returned with a copy of this judgment well before the date fixed. Appeal file be consigned to the Record Room.”

On 09.11.2022, the case was not shown in the cause list. Neither tenant nor his counsel was present and order of ejectment was passed on the ground of

non-payment of provisionally assessed rent. Para No.6 of said judgment reads as under:-

“In view of the settled case law discussed above, this Court finds merits in the contentions of the learned counsel for the petitioner as it is clearly mentioned in the order dated 09.11.2022 of Ld. Court of Sh. Rajnish Garg, Appellate that the parties are directed to appear on 09.11.2022 for further proceedings. The further proceedings were in the present file were to depositing of provisional rent as assessed the learned Predecessor of the Court and accordingly, nothing remains to be done in the present case and, therefore, the instant petition succeeds and the same is hereby allowed and the respondent is directed to vacate the premises in dispute as fully-detailed in the head note of the petition, within a period of one month, from the date of this order. Memo of costs be prepared. File be consigned to Judicial Record Room after due compilation.”

There is also no dispute that the Rent Controller had already fixed the date as 18.11.2022 for awaiting the order from the higher court.

6.1 Para 25 of ***Rakesh Wadhawan’s case (supra)*** reads as under:-

25. What follows from the abovesaid discussion is that the proviso to clause (i) of sub-section (2) of Section 13 must be read as obliging the Controller to assess, by means of passing an order, the arrears of rent, the interest and the cost of litigation-all the three, which the tenant shall pay or tender on the first date of first hearing of the main petition following the date of such assessment by Controller. Such order based on in opinion formed prima facie by perusal of the pleadings and such other material as may be available before the Controller

on that day would be an interim or provisional order which shall have to give way to a final order to be made on further enquiry to be held later in the event of there being a dispute between the parties calling for such determination. The Controller would, however, at the outset assess the rent, the interest and the cost of application in the light of and to the extent of dispute, if any, raised by the tenant. Such amount, as determined by Controller shall be liable to be paid or tendered by the Controller on the 'first date of hearing' falling after the date of the preliminary or provisional order of Controller. The expression "the date of first hearing" came up recently for the consideration of this Court in Mam Chand Pal Vs Smt. Shanti Agarwal, 2002 (1) RCR (Rent) 326: (C.A. No.1187 of 2002 decided on 14.2.2002). It was held that 'the date of first hearing' is the date on which the Court applies its mind to the facts and controversy involved in the case. Any date prior to such date would not be date of first hearing. For instance, date for framing of issues would be the date of first hearing when the Court has to apply its mind to the facts of the case. Where the procedure applicable is the one as applicable to Small Cause Courts, there being no provision for framing of the issues, any date fixed for hearing of the case would be the first date for the purpose. The date fixed for filing of the written statement is not the date of hearing. Keeping in view the interpretation so placed on 'the date of first hearing' obligation cast by the proviso under consideration can be discharged by the Controller on any date fixed for framing of the issues or for hearing. It would be the obligation of the parties to place the relevant material on record, in the shape of affidavits or documents, which would enable the Controller to make a provisional judicial assessment and place it on record to satisfy

the spirit of the proviso. It would be desirable if the Rent Controller specifically appoints a date for the purpose of such assessment and order so that the parties are put on adequate notice and bring the relevant material on record to assist the Controller. A litigant cannot be expected to be ready to comply with the order of the Controller on the very day on which the order is made. How could he anticipate what order the Controller would be making?

6.2 Keeping in view that due to filing of appeal, the date of payment of provisional rent was postponed and no particular date was fixed for payment of said amount and the learned Appellate Authority only asked the parties to appear before the learned Rent Controller for further proceedings, so under such circumstances, the learned Rent Controller was required to fix a date for payment of provisional assessed rent as per order dated 05.05.2022. Had the learned Appellate Authority asked the tenant to pay the rent as assessed, position would have been otherwise. So, under such circumstances, this Court finds that the tenant was caught unaware that further proceedings would mean to tender the amount which was already assessed. He also prepared the draft dated 17.11.2022 for the amount of provisionally assessed rent for payment of said amount on 18.11.2022, the date already fixed before the Rent Controller for awaiting the orders from the Appellate Authority.

6.3 I am of the view that in the case in hand, the Rent Controller was required to fix a date for payment of amount of provisional rent assessed as per order dated 05.05.2022. The learned Rent Controller failed

to fix the date for said purpose and tenant was caught unaware. No person should suffer due to act of any authority, so the orders passed by the courts below deserve to be set aside.

7. The orders passed by the courts below are set aside and the present revision petition stands allowed accordingly.

8. The parties are directed to appear before the Rent Controller concerned on 15.05.2024. On said date, the tenant shall pay the arrears of provisional rent assessed as per order dated 05.05.2022 and in case of default, the order of ejectment would follow and if tenant makes compliance, the enquiry shall continue in view of the spirit of case in ***Rakesh Wadhawan's case (supra)***.

9. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

April 25, 2024
sanjeev

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No