

2024:PHHC:172901



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

124

CR-5865-2024 (O&M)
Date of decision: 16.10.2024

Vinod Kumar Sharma

...Petitioner

Versus

Garima and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Tarun Sharma, Advocate for the petitioner.

VIKAS SURI, J.

1. This revision petition under Section 15(5) of the East Punjab Urban Restriction Act, 1949, has been filed by the petitioner-tenant (Vinod Kumar Sharma) assailing the eviction order dated 30.05.2024, passed by the Rent Controller and the order dated 27.09.2024, passed by the Appellate Authority, dismissing the appeal filed thereagainst.

2. Briefly stated, respondent-landlord filed rent petition seeking ejectment of the petitioner and respondent No.2 from the demised premises. It was averred that the shop in question was let out by Anil Kumar, father of the respondent-landlord, to the petitioner at monthly rent of Rs.250/- besides house tax and electricity charges, 30-35 years ago. Ejectment was sought on the grounds of non-payment of rent



since 01.01.1990; subletting by the petitioner to respondent No.2; the demised premises being in a dilapidated condition is unfit for human habitation; and is required by the landlord for her *bona fide* necessity.

2.1 Upon notice, the rent petition was opposed by filing reply. The relationship of the parties was denied as was the ownership of the respondent-landlord. In view of the law settled by the Apex Court in ***Rakesh Wadhawan vs. Jagdamba Industrial Corporation and others***, (2002) 5 SCC 440, provisional rent was assessed vide order dated 08.05.2024. The petitioner was directed to pay arrears of provisionally assessed rent along with cost by 30.05.2024.

2.2 Petitioner having failed to make the payment of the provisional rent along with cost, as assessed vide order dated 08.05.2024, the rent petition was allowed and the petitioner was directed to vacate the shop in question within one month vide order dated 30.05.2024.

3. Aggrieved by the ejectment order, the petitioner preferred an appeal thereagainst, which was dismissed by the Appellate Authority, vide judgment dated 27.09.2024.

4. Aggrieved by the aforesaid, the petitioner-tenant has assailed the judgments passed by the Rent Controller as well as the Appellate Authority, by way of the present petition.

5. Learned counsel for the petitioner has argued that assessment of provisional rent, vide order dated 08.05.2024, is fallacious inasmuch as the arrears of rent has been calculated w.e.f. 01.01.1990 and



as such, the eviction order ought not to have been passed against the petitioner. It is further submitted that the petitioner is ready and willing to deposit the entire arrears of rent and seeks one mercy opportunity for doing so. It is contended that petitioner has been in possession of the demised premises for over three decades and as such, should be afforded one more opportunity to deposit the provisional rent.

6. I have heard learned counsel for the petitioner and with his able assistance, perused the case file.

7. Before this Court, the relationship of landlord and tenant is not seriously disputed. The petitioner has rather sought an opportunity for depositing the upto date arrears of rent along with costs as assessed vide order dated 08.05.2024. It is trite law that once Rent Controller has provisionally assessed the rent along with interest and cost, the tenant must deposit the same on next date of hearing. A tenant failing to comply with the terms of an order of provisional assessment, cannot thereafter avail of the concession extended to a tenant by virtue of the proviso under Section 13(2)(i) of the Rent Act and will be liable to suffer an order of eviction. A Division Bench of this Court in ***Rajan @ Raj Kumar vs. Rakesh Kumar***, 2010(1) RCR (Rent) 386, has explained the principles of law as laid down in ***Rakesh Wadhawan's case*** (supra). The relevant para of the said judgment, reads thus:-

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.

The determination of provisional assessment when it becomes the foundation of an eviction order, which necessarily flows from non-compliance with the supra order, is amenable to challenge by the tenant in an appeal against the order of eviction, thereby questioning the correctness of the order of provisional assessment. In ***Harjit Singh Uppal vs. Anup Bansal***, (2011) 11 SCC 672, it has been held that the right to question the correctness of the order of provisional assessment is



not lost upon an order of eviction having been passed.

8. In the present case, the petitioner did not call in question the provisional assessment order, in the appeal preferred by him before the Appellate Authority against the ejectment order dated 30.05.2024 passed by the Rent Controller. It is settled law that a plea on factual aspect, which is not raised before the first Appellate Court, would not be available to him before the revisional Court.

8.1 Learned counsel for the petitioner, in all fairness, while referring to the memorandum of appeal filed under Section 15 of the Rent Act, appended with the revision petition, concedes that no challenge has been raised to the order dated 08.05.2024. On the contrary, the petitioner in para 4 of the memorandum of appeal has stated that the petitioner was not able to deposit the assessed rent on 30.05.2024 due to misunderstanding and miscommunication with his counsel and for medical exigencies.

9. The submission of learned counsel for the petitioner seeking an opportunity to deposit the rent, as provisionally assessed vide order dated 08.05.2024 cannot be acceded to. It is settled proposition of law that if a tenant fails to deposit the provisional rent, interest and cost assessed by the Rent Controller, an order of ejectment will follow and the Rent Controller has no jurisdiction to even extend the time for making the said deposit. Reference may be made to the decision in ***Mrs. Birinder Khullar vs. Maninder Singh***, 2011(3) PLR 38, which was applied and followed in ***Vijay Singla vs. Lajwanti (since deceased***



through her Lrs) and others, 2022 (2) RCR (Rent) 247 and Sukhwant Kaur vs. Saroj Bhalla and another, 2024 (1) RCR (Rent) 25.

10. Having given my profound consideration to the submissions advanced on behalf of the petitioner and the legal position settled in the decisions noticed hereinabove, I find no ground to interfere in the impugned orders, which do not suffer from any illegality or perversity and are in accordance with law, as such.

11. In view of the aforesaid, the revision petition being bereft of merit, is dismissed.

October 16, 2024
sumit.k

(VIKAS SURJ)
JUDGE

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No