

125.

2024:PHHC:002939

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

Civil Revision No.7445 of 2023 (O&M)

Date of decision: 10.01.2024

M/s J J Textiles, Faridabad

... Petitioner

Versus

Shobha Wig

... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. S.K. Tripathi, Advocate, for the petitioner.

GURBIR SINGH, J.

1. Through the present revision petition, petitioner has challenged the order dated 18.10.2023, passed by learned Appellate Authority, Faridabad, wherein judgment dated 14.09.2022, passed by learned Rent Controller, Faridabad has been upheld.

2. The brief facts of the case, as culled out from the paper-book, are that respondent Shobha Wig filed petition for ejectment of the petitioner under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973, on the ground of non-payment of rent. The relationship of landlord and tenant is not in dispute. An industrial plot was let out to the petitioner by the respondent vide rent agreement dated 14.02.2020 for a period of 60 months and rent was fixed @ Rs.2,16,000/- per month exclusive of GST. It was further submitted in the petition that monthly rent for the period from 15.02.2020 till 14.03.2021 was payable @ Rs.2,38,680/- per month inclusive of GST @ 18% and TDS 7%. Since

the petitioner failed to make proper payments of rent, as agreed, vide order dated 04.08.2022 passed by the Court concerned, provisional rent along with costs and interest was also assessed but petitioner neither made payment of arrears of rent nor vacated the premises. So, the respondent was left with no option but to file the petition under Section 13 of the Act. After appreciating the evidence on record, learned Rent Controller, Faridabad, vide impugned order dated 14.09.2022, directed the petitioner to hand over the possession of demised premises to the respondent within a period of 30 days from the date of passing of order, failing which the respondent would be at liberty to take possession of the demised premises with the assistance of the Court.

3. Feeling aggrieved against the aforesaid order dated 14.09.2022 of the learned Rent Controller, the petitioner preferred appeal. The Appellate Authority, vide impugned order dated 18.10.2023, observed that since the tenant failed to show any cogent reason for not tendering the provisionally assessed rent, ejectment order had to follow and upheld the order passed by learned Rent Controller by dismissing the appeal.

4. Learned counsel for the petitioner has submitted that the approach of the Courts below in accepting the ejectment petition and ordering the eviction of the petitioner from demised premises is illegal and cannot be sustained. The provisional rent assessed by the learned Rent Controller was not assessed as per law. The ground of personal

necessity taken by the respondent was not proved, rather the landlord simply wanted the petitioner to vacate the demised premises because the petitioner did not agree to enhance the rent. It has been further submitted that huge amount spent by the petitioner for installing tin shed and electricity connection was not adjusted by the respondent, as agreed and this material fact was concealed by the respondent from the Court. This is the further contention of the petitioner that a rent agreement dated 19.04.2019 was executed between the petitioner and the respondent and initial agreed rent was Rs.2,00,000/- per month, but this fact was not brought to the notice of the Court and it was pleaded that rent agreement dated 14.02.2020 was executed between the parties. Learned counsel further contended that due to pandemic of COVID-19, the demised premises remained locked for a long time and there was no business work for the petitioner during that period. However, entire rent upto April 2022 has been already paid.

5. Learned counsel for the petitioner has further apprised this Court that from a bare perusal of the order dated 08.04.2022 (Annexure P-4), passed by the Haryana State Pollution Control Board, it is clear that the unit of the petitioner was closed on 17.12.2021, but on request of the petitioner dated 01.02.2022 for suspension of closure order, the closure order dated 17.12.2021 was suspended subject to the condition that the unit would submit analysis report within 30 days, would keep all the parameters within prescribed limits and would install online monitoring

device and request for connectivity HSPCB/CPCB server. The petitioner complied with the aforesaid order of the Board and due to all these activities, the demised premises remained closed for more than two months and petitioner suffered huge loss in the business. The petitioner also produced the ledger account as well as balance sheet (Annexure P-7) before the learned Rent Controller but the same was not taken into consideration. At the time of filing eviction petition, the respondent has also concealed the money given by the petitioner so that benefit of non-payment of arrears can be taken. The plea of the petitioner, for production of original documents to determine fair rent, was also not considered by learned Rent Controller.

6. Since the petitioner was also aggrieved by the order dated 04.08.2022 whereby the petitioner was directed to deposit provisional rent of Rs.24,96,176/-, so petitioner challenged the said order before this Court by way of Civil Revision No.3270 of 2022, which was decided on 18.08.2022. This Court observed that the said provisional rent was based on admission made by the petitioner in the written statement, to which the petitioner replied that it was the wrong admission and needed to be rectified. So, the revision petition was "dismissed as withdrawn" with liberty to the petitioner to move application before the learned Rent Controller seeking amendment of written statement. The petitioner filed application under Order 6 Rule 17 CPC before the learned Rent Controller, which was dismissed.

7. I have heard learned counsel for the petitioner and perused the case file.

8. Vide order dated 04.08.2022, the learned Rent Controller assessed the provisional rent w.e.f. 15.02.2020 to 14.02.2022 including interest and cost to the tune of Rs.24,96,176/-. The petitioner-tenant filed revision petition challenging the said order and took the plea that provisional assessment of rent was based on the admission made by the petitioner, but said admission was wrongly made, so, the petitioner-tenant wanted to amend the written statement. The revision petition was dismissed with liberty to move before the learned Rent Controller, application for amendment and application for recalling the impugned order. The petitioner moved an application for amendment in the written statement and also for recalling the order dated 04.08.2022 on the ground that unpaid admitted rent has also been mentioned in the written statement as Rs.21,16,800/-, whereas the same was Rs.8,64,000/-. The petitioner had incurred huge amount to the tune of Rs.22 lakhs on the demised premises for construction of shed, installation of transformer etc. but said amount was not adjusted. There was clear admission on the part of the petitioner about the arrears of rent due. The extract of the same is as under:-

“As per ledger account Rs.1,86,440/- remained unpaid in the financial year 2020-21 and Rs.21,16,800/- remained unpaid in the financial year 2021-22.”

The copy of ledger was not placed on the record that said admission was against record. A party cannot be allowed to withdraw admission just to defeat the right of other party. Had there been some document establishing that admission was wrongly made, the petitioner could be allowed to withdraw the admission. Thus, the learned Rent Controller has rightly declined the application for amendment. In the instant case, relationship of landlord and tenant is not denied. There is a written document regarding terms and conditions of tenancy. Duty is cast upon the tenant to pay the provisional rent as assessed by the court. If lateron, it is found that the same was more than the due, same could be refunded to the tenant, but the tenant cannot refuse to pay the provisional rent as assessed by the court. In case ***Rakesh Wadhawan and others Versus Jagdamba Industrial Corporation and others, 2002(5) SCC 440***, it is clearly held so. The extract of said judgment reads as under:-

“29. The result of the discussion may be summarized. Under proviso to Section 13(2)(i), the Controller having 'discharged his obligation of passing an order under the proviso, either suo moto or on his attention in this regard being invited by either of the parties, it will be for the tenant to pay or tender the amount provisionally assessed by the Controller on the first date of hearing of the application for ejectment. On compliance, the Controller would proceed to adjudicate upon the controversy arising for decision by reference to pleadings of the parties and by holding a summary enquiry for the purpose. Such adjudication shall be provisional and subject to the later final adjudication. The finding that may ultimately be arrived at by the Controller may be one of the following three. The Controller may hold that the quantum of arrears as determined finally is (i) the same as was found to be due and payable under the provisional order, (ii) is less than what was determined by the provisional order, or (iii) is

more than the one what was held to be due and payable by the provisional order. In the first case the Rent Controller has simply to pass an order terminating the proceedings. In the second case the Controller may direct the amount deposited in excess by the tenant to be refunded to him. In the third case it would not serve the purpose of the Act if the tenant was held liable to be evicted forthwith as is the view taken by the Punjab High Court in the case of Dial Chand (supra). The Controller directing the eviction of the tenant may pass a conditional order affording the tenant one opportunity of and a reasonable time for depositing the amount of deficit failing which he shall be liable to be evicted. This power in the Rent Controller can be spelled out from the use of the word "may" in the expression "The Controller may make an order directing the tenant to put the landlord in possession", as also from the principle of equity and fair play that the tenant having complied with provisional order passed by the Controller should not be made to suffer if the finding arrived at by the Controller at the termination of the proceedings be different from the one recorded in the provisional order. While exercising the discretion to make a conditional order of eviction affording the tenant an opportunity of purging himself of the default the Controller may also take into consideration the conduct of the tenant whether he has even after the passing of the provisional order continued to pay or tender the rent to the landlord during the pendency of the proceedings as a relevant factor governing the exercise of his discretion. Such a course would be beneficial to the landlord too as he would be saved from the trouble of filing a civil suit for recovery of rent which fell due during the pendency of proceedings for eviction before the Controller."

Since there was no reason for the petitioner-tenant not to pay the provisional rent as assessed on the date fixed for this purpose, so the learned Rent Controller was left with no option but to pass the order of eviction and accordingly, order of eviction was passed on account of non-payment of provisional rent as assessed. The learned Rent Controller and the learned Appellate Authority have passed the well reasoned order

based on case *Rakesh Wadhawan and others (supra)* and this Court does not find any illegality in the said orders.

9. Since the petitioner is litigating and as per the version of the petitioner, machinery is installed in the premises, so some time can be given to the petitioner to vacate the premises.

10. Petitioner-tenant is given 10 months time to vacate the demised premises.

11. Revision petition stands disposed of accordingly.

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

(GURBIR SINGH)
JUDGE

January 10, 2024

monika/sanjeev

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No