



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

**Reserved on 24th of March, 2025
Pronounced on 28th of May, 2025**

CR No.6663 of 2023 (O&M)

Sumit alias Sumit Dudlani

....Petitioner

Versus

Hans Raj and another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Lajpat Rai Sharma, Advocate
for the petitioner.

Mr. Manish Joshi, Advocate
for the respondents.

PANKAJ JAIN, J.

Landlord is in revision aggrieved of order passed by Appellate Authority, dated 29th of July, 2023 whereby Appellate Authority allowed the appeal preferred by tenant setting aside judgment and order of provisional assessment of rent passed by Rent Controller and remanded the matter back to the Rent Controller directing him to re-assess the provisional rent.

2. For convenience, the parties hereinafter are referred to by their status, i.e. the petitioner as 'landlord' and respondent No.1 as 'tenant'.

3. Landlord filed eviction petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1976 (hereinafter referred to as 'the Act of 1976') seeking ejectment of tenant from demised premises in



form of shop. As per landlord, the shop was let out to the tenant by way of rent agreement dated 12th of October, 2017 at monthly rent of ₹18,000/-. As per the agreed terms, the rent was to be increased by 10% after every three years. Landlord claimed that the tenant illegally subletted the demised premises to respondent No.2 without his written consent. Landlord further claimed that the tenant was in arrears of rent for the month of September, 2020.

4. Rent Controller vide order dated 21st of December, 2022 assessed the provisional rent and directed payment thereof within a period of 15 days.

5. Respondent No.1/tenant did not tender rent as directed on 4th of January, 2023. As per the tenant, he spent an amount of ₹10,00,000/- on medical expenses of father of the landlord. The said amount is required to be adjusted in the provisional rent. The Rent Controller vide order dated 5th of January, 2023, ordered eviction of the tenant

6. Tenant preferred appeal.

7. Appellate Authority vide order dated 29th of July, 2023, observed as under:

“21. If the analogy in the reported case is applied and taken into consideration, it comes out that the ground of ejectment taken in the present petition by the landlord was 'non payment of arrears of rent for the month of September 2020' only. However, when stage of assessment of provisional rent had reached, 26 more months had elapsed. Thus, Rent Controller had assessed the provisional rent for 27 months. Although, rent for the said period was also due but as the ejectment was sought for 'non payment of one month rent',



no ejectment order could have been passed by the Rent Controller for non payment of those 26 months of rent as the said rent had accrued during pendency of petition and for which, a separate cause of action had arisen in favour of landlord. The ejectment order could have been passed by the Rent Controller, only, if the tenant had failed to make payment of arrears of rent which were outstanding on the date of filing of the rent petition. The rate of rent was admittedly Rs.18,000/- per month. Ld. Rent Controller himself had observed in the order of assessment of provisional rent that amount of Rs 20,000/- is liable to be adjusted, which was admitted by the landlord also. Thus, rent for September 2020 stood paid/adjusted and nothing was due as on the date of filing of the petition. Thus, ejectment order on the basis of non payment of arrears of rent for the period during pendency of the petition suffers from illegality. Reliance can be placed on law laid down in case of *Vishva Sharva Talwar Malik Versus Devinder Singh Aulakh 2010(3) Law Herald 2067 (P&H) and Shri Devinder Singh versus Smt Raj Rani and ors 1977(2) RCR (Rent) 584.*”

8. The Appellate Authority accordingly allowed the appeal preferred by the tenant, setting aside the order of the provisional assessment of rent passed by the Rent Controller and the final order of eviction. The matter was remanded back to the Rent Controller with a direction to re-assess the provisional rent as was due on the date of filing of the petition.

9. Ld. Counsel for the landlord has assailed the findings recorded by the Courts below. It has been contended that tenant was granted two weeks’ time to tender the rent. He neither assailed the order of provisional assessment of rent nor tendered the rent provisionally assessed by the Rent Controller as required under the law. It has been contended that in terms of ratio of law laid down by Supreme Court in the case of ‘**Rakesh Wadhawan**



v. Jagdamba Industrial Corporation’, 2002 AIR (Supreme Court) 2004, tenant was under bounden duty to tender the rent and to seek adjustment, if any, at the time of final adjudication. Mr. Sharma further submits that the Appellate Authority misdirected itself in holding that the provisional rent was to be assessed only upto the date of filing of the eviction petition and not for the period *pendente lite*. He relies upon ratio of law laid down by this Court in the case of **‘Autoneeds v. Rajeev Sood’, 2025(1) RCR (Rent) 179.** He submits that whole of the approach of the Appellate Authority, is in the teeth of settled proposition of law. Appellate Authority has no power to remand the matter back. Reliance is being placed upon the Division Bench’s judgment of this Court in the case of **‘Raghu Nath Jalota v. Romesh Duggal and another’, 1979(2) R.C.R. 501.**

10. Per contra, counsel for the tenant submits that in terms of law laid down by Supreme Court in the case of **‘Harjit Singh Uppal v. Anup Bansal, (2011) 11 SCC 672,** the tenant is well within his right to challenge the correctness of the interim order, in appeal, against final order. He thus submits that the Appellate Authority rightly found that the order of provisional assessment of rent, was not sustainable and thus rightly ordered setting aside of the same, directing the Rent Controller to assess rent afresh upto the date of filing of the eviction petition.

11. I have heard counsel for the parties and have carefully gone through records of the case.

12. In the considered opinion of this Court, the facts in the present



case are not much in dispute. The landlord invoked Section 13 the Act of 1976 seeking ejectment of the tenant on the ground of non-payment of rent and for subletting of the premises without written consent of the landlord. In the eviction petition, the landlord claimed rent for the month of September, 2020 as the eviction petition was instituted on 15th of October, 2020. However, the provisional rent was assessed vide order dated 21st of December, 2022. The Rent Controller assessed arrears of rent upto the date of order of provisional assessment and found that the tenant was in arrears of ₹5,11,493/-. Tenant was granted time to tender rent up to 4th of January, 2023. Rent was not tendered. On 5th of January, 2023, Rent Controller ordered eviction of the tenant.

12.2. There can't be any quarrel with the proposition canvassed by counsel for the tenant that in an appeal preferred against final order of eviction, the correctness of provisional rent can also be assailed *dehors* the fact that the tenant opted not to file any appeal against the interlocutory order.

12.3. However, the issue is :

“Whether the observations recorded by Appellate Authority holding that no ejectment order could have been passed by the Rent Controller for non-payment of 26 months of rent pendente lite can be sustained and further whether the order of remand passed by the Appellate Authority, can be held to be good?”



13. Section 13(2) of the Act of 1973 reads as under:

“13. Eviction of tenants.- (1) xxxxxx

(2) A landlord who seeks to evict his tenant shall apply to the Controller, for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied, -

(i) that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable :

Provided that if the tenant, within a period of fifteen days of the first hearing of the application for ejectment after due service, pays or tenders the arrears of rent and interest, to be calculated by the Controller, at eight per centum per annum on such arrears together with such costs of the application, if any, as may be allowed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid:

Provided further that the landlord shall not be entitled to claim arrears of rent for a period exceeding three years immediately preceding the date of application under the provisions of this Act;

(ii) that the tenant has after the commencement of the 1949 Act without the written consent of the landlord, -

- (a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof; or
- (b) used the building or rented land for a purpose other than that for which it was leased;



- (iii) that the tenant has committed or caused to be committed such acts as are likely to impair materially the value or utility of the building or rented land;
- (iv) that the tenant has been guilty of such act and conduct as are a nuisance to the occupants of the same building or buildings in the neighbourhood;
- (v) that where the building is situated in a place other than a hill station, the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause;

the Controller may make an order directing the tenant to put the land-lord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.”

(emphasis supplied)

14. On the basis of the afore-reproduced provision, landlord is entitled to seek eviction of tenant for non-payment of rent. Proviso appended to the provision serves as a protection for the tenant subject to tender of arrears of rent along with interest and cost on the date fixed. *Pari materia* provision contained in East Punjab Urban Rent Restriction Act, 1949, came up for consideration before Supreme Court in **Rakesh Wadhawan's** case (supra). Supreme Court found the enactment lacking the mechanism for determination of the arrears of rent and interest to be calculated by the Controller as contemplated under the proviso appended to



the main provision which provided safeguard for the tenant. Finding gap in the legislation, Supreme Court supplied *casus omissus* observing as under:

"14. The expression employed is 'the rent due'. A Full Bench of the High Court of Punjab in ***Rullia Ram Hakim Rai v. S. Fateh Singh S. Sham Sher Singh***, AIR 1962 Punjab 256, has taken the view that the expression 'rent due' in contradistinction with the words 'rent legally due' or 'rent recoverable' or the 'arrears of rent within the period of limitation' implies that the obligation of the tenant to pay or tender the rent extends to depositing all the arrears of rent without regard to the period of limitation. This view finds support from a decision of this Court in ***Khadi Gram Udyog Trust v. Shri. Ram Chandraji Mandir***, 1978 (1) SCC 44, wherein, interpreting the pari materia provision contained in the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, this Court has held that the expression "entire amount of rent due" includes the rent the recovery whereof has become barred by time, for, the statute of limitation bars the remedy but does not extinguish the right. The learned counsel for the tenants conceded during the course of hearing that on the present framing of the provision under examination, the obligation of the tenant to pay or tender even time barred rent, to take advantage of the proviso, cannot be denied."

The Supreme Court further concluded as under:-

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.
5. If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If, on the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount, failing which alone he shall be liable to be evicted. Compliance shall save him from eviction.
6. While exercising discretion affording tenant opportunity of making good the deficit, one relevant factors to be taken into consideration by the Controller would be whether the tenant has paid or



tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings.”

15. Relying upon the aforesaid ratio, this Court in the case of *Autoneeds v. Rajeev Sood* (supra), dealt with the challenge raised against order passed by the Rent Controller assessing provisional rent including *pendente lite* rent upto the date of passing of the order, and observed as under:

“27. Observation made by Supreme Court Rakesh Wadhawati's case *ibid* with respect to the conduct of the tenant in paying rent regularly following due month by month during the pendency of the proceedings being a consideration serves as a sufficient guide to this Court. Thus, while assessing provisional rent, Rent Controller is within its power not merely to go by the rent claimed in the eviction petition but also to consider that the rent is paid during the pendency of proceedings.

28. In view thereof this Court finds that the Rent Controller rightly assessed the provisional rent *pendente lite* and there is no legal infirmity in doing so.”

16. In view of above, this Court finds that the observation made by the Appellate Authority holding that the Rent Controller erred in assessing provisional rent for 27 months including 26 months spent during the pendency of *lis*, cannot be sustained and is hereby set aside.

17. So far as the power vested with the Appellate Authority exercising powers under the Haryana Rent Act to remand the matter back is concerned, the issue already stands dealt by Division Bench of this Court in



Raghu Nath Jalota's case (supra), observing as under:

“19. To conclude therefore the history of the legislation, its object and purpose, the specific language of Section 15(3) of the Act and both principle and precedent, all tend to render an answer in the negative to the mention formulated at the outset. It is, therefore, held that there is no jurisdiction in the Appellate Authority to remand the whole case to the Controller for entirely a fresh decision and the view in ***Moti Ram s/o Daulat Ram v. Ram Sahai s/o Chamba Ram, C.R. No. 641 of 1975 decided on April 29, 1958*** and ***Shri Krishan Lal Seth v. Shrimati Pritam Kumari, 1961 Punjab Law Reporter 865***, is reaffirmed.”

18. In view of above, this Court finds that the Appellate Authority erred in law in holding that the order of assessment of provisional rent passed by the Rent Controller is bad, cannot be sustained.

19. In view of above, this Court finds that the Appellate Authority erred in passing the impugned order dated 29th of July, 2023. Having said that, the next issue that arises for this Court is:

“What is the effect of tenant having failed to tender the rent in terms of assessment of the provisional rent”.

20. The issue is no more *res integra*. Division Bench of this Court in the case of **Rajan @ Raj Kumar v. Rakesh Kumar, 2010(1) RCR (Rent) 386** dealing with the reference in view of conflicting decisions given by two Single Benches of this Court set the conundrum to naught. Interpreting the ratio of law laid down in ***Rakesh Wadhawan's*** case (supra),



Division Bench observed as under:

“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.

14. We have gone through the findings given in Rajinder Lal case (supra). We respectfully are unable to agree with the proposition of law laid down therein. The rationale of the assessment as laid down in Rakesh Wadhawan's case (supra) is to be discerned from the view as expressed in para No. 29 of the said judgment because the Hon'ble Supreme Court has balanced the interests of the landlords and tenants so as to ensure that the tenants get an adequate opportunity to deposit the rent consequent upon determination of the provisional rent. Whatever may be the



extent of emphasis, which have been put on the view taken in the judgment relied upon by the petitioner, this Court is bound by the conclusions arrived at by the Supreme Court in Rakesh Wadhawan's case (supra) wherein it has been held that if a tenant does not comply with the order on the first date of hearing after determination of the provisional rent and other ancillary expenses by the Court, then eviction has to follow.

21. In view of above, this Court finds that the approach of the Appellate Court in allowing and accepting the appeal preferred by the tenant and remanding the matter back, is unsustainable and needs to be set aside. The tenant having failed to tender rent in terms of the order assessing the provisional rent, he is liable to be evicted from the demised premises.
22. Consequently, the instant revision petition is allowed.
23. Pending application(s), if any, shall also stand disposed off.

May 28, 2025

Dpr

Whether speaking/reasoned

Whether reportable

(Pankaj Jain)

Judge

:

:

Yes/No

Yes/No