



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

106

RSA-1249-2020 (O&M)

Date of decision : 06.02.2026

Canara Bank**..... Appellant****versus****Barinder Kaur (Deceased) through her LRs and ors.Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Rakesh Gupta, Advocate
for the appellant.

Mr. Sachin Sharma, Advocate
Ms. Rakhi Sharma, Advocate and
Mr. Surendra Pant, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

1. Defendant is in second appeal.
2. Plaintiff filed suit seeking recovery of Rs.56,56,840/- including Rs. 48,55,680/- as the principal amount against the defendant.
3. The admitted facts leading to the present *lis* are that the plaintiff inducted defendant as a tenant in a building bearing no.38-A situated at The Mall, Lawrence Road, Amritsar. The total area leased out was approximately 4917 sq. ft. The lease was to remain in operation for 15 years, i.e. till 07.07.2006. Clause 2 of the lease deed further provided as under:-

“This lease shall be in force for a period of 10 years certain from 08.07.1991. The lease shall, however, have the option to continue the lease thereafter for a further period upto five years on the same terms and conditions except rent which is to be increased by 15% as agreed hereto. The lessee shall be at liberty to vacate the said premises at any time during the



period of occupation/option on giving 3 months notice. The rent shall be increased by 15% after the block of five years.

The lessee shall pay to the lessor/s in respect of the said premises a monthly rental of Rs.17,209/-, calculated @ Rs.3.50 paise per sq.ft. of the carpet area only; payable within the fifth working day of each succeeding calendar month.”

4. Plaintiff filed eviction petition under Section 13 of the Rent Act, 1949 seeking ejectment of the defendant. One of the grounds pleaded was non-payment of arrears of rent. The provisional rent assessed by the Rent controller was @ Rs.1,51,740/- per month and the defendant was held liable to pay arrears of rent for the period commencing from 07.07.2007 till 07.03.2010. The defendant approached this Court impugning the order of provisional assessment. The defendant under the orders of this Court paid certain amounts on different occasions out of the total rent assessed by the Rent Controller. Defendant however, finally vacated the premises on 28.12.2009. In the eviction proceedings, tenant was ordered to be evicted for having not cleared the provisional rent assessed by the Rent Controller. Thus, the arrears of rent though provisionally assessed by the Rent Controller were never finally adjudicated. Plaintiff thereafter filed the present suit. The Trial Court decreed the suit holding plaintiff entitled to recovery of Rs.56,56,840/- relying upon the order of provisional assessment of rent passed by the Rent Controller.

5. Defendant preferred appeal. The same was dismissed by the Lower Appellate Court initially on the ground of delay. The defendants preferred Civil Revision No.8064 of 2015, which was decided on 26.08.2019. As per the interim order passed by this Court dated 18.01.2016, the defendant further paid an amount of



Rs.14,14,210/- i.e. 25% of the decretal amount vide demand draft bearing No. 583097 dated 04.03.2016. The revision petition was allowed. The matter was remanded back. Lower Appellate Court modified the decree passed by the Trial Court restricting the liability of the appellant-defendant to pay arrears up to the date of his possession, i.e. 28.12.2009.

6. Learned counsel for the defendant-appellant has assailed the findings recorded by the Courts below. He submits that apart from relying upon the order of provisional assessment of rent made by the Rent Controller, Amritsar, there is no adjudication by the Courts below. He submits that in terms of ratio of laid down by Supreme Court in the case of ***Rakesh Wadhawan vs. Jagdamba Industrial Corporation, 2002 AIR (Supreme Court) 2004***, the concept of provisional assessment was read into Section 13 of 1949 Act with an objective to provide fair opportunity to both the parties and thereafter to adjust the provisional rent at the time of final adjudication. He submits that the order of provisional assessment has been misconstrued as the final adjudication with respect to arrears of rent by the Courts below. The parties were governed by registered lease deed. The property being urban, the tenant should not have been evicted, but for the grounds as enumerated under Section 13 of 1949 Act. The tenancy being statutory after expiry of contract, the Courts below erred in allowing the claim of the plaintiff merely relying on his pleadings.

7. *Per contra*, Mr. Sharma would submit that tenant having accepted the order of provisional rent and vacated the premises on his own and paid part thereof, cannot be allowed to turn back and cry foul



against the order of provisional assessment. He further submits that agent of the plaintiff entered into witness box in support of the case. He was never cross-examined. Thus, the claim of the plaintiff having been accepted by the defendant and the evidence led by plaintiff having not been rebutted, the Courts below have rightly decreed the suit filed by the plaintiff.

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

9. In the considered opinion of this Court, the Courts below erred in relying upon the order of provisional assessment passed by the Rent Controller without applying their mind in ascertaining the rate of rent that the plaintiff was entitled to claim from the defendant. While explaining the objective of Section 13 of 1949 Act and supplying casus-omissus, Supreme Court in the case of ***Rakesh wadhawan (supra)*** observed as under:-

“xx xx xx

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.

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 for affording the tenant an opportunity of making good the deficit, one of the 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.



31. The view of the law so taken by us advances the object sought to be achieved by the legislation, serves best the interests of landlord and tenant both, removes uncertainty in litigation and obscurity in drafting of the provision and also accords with the principles of justice and equity. Even if, it is an innovation, it is in the field of procedural law, without affecting the substantive rights and obligations of the landlord and the tenant and such innovation is permissible on the basis of authority and supported by principles of justice, good sense and reason. We have not touched the substantive rights of landlord and tenant, and are feeling satisfied with a do little in the field of procedure so as to effectuate the purpose of enactment.”

10. From the aforesaid observations made by Supreme Court, it is evident that the provisional assessment by its very nature is not final adjudication of the rights of the parties. Rather, the same is subject to the final adjudication to be made by the Rent Controller while deciding the rights of the parties at the end of trial. In this *lis*, though the provisional rent was assessed, but there is no final adjudication.

11. Admittedly, there was registered lease deed between the parties whereby the plaintiff agreed to let out the premises @ Rs.3.50 per sq. ft. per month with the escalation clause of 15% once after 10 years. Thus, the Courts below ought to have adjudicated upon the rate of rent payable by the defendant to the plaintiff in terms of agreed rate instead of relying upon the order of provisional assessment. Though, the contention raised by Mr. Sharma looks attractive at the first blush, but the lease deed being admitted by the plaintiff, the Courts below erred in ignoring the covenants thereof and decreeing the suit filed by the plaintiff taking the plaint on its face value.



12. Under the different orders passed by this Court, defendant has already paid Rs.36,93,086/- to the plaintiff which is much less to an amount of Rs. 6,40,133/- which the defendant was liable to pay as per the contract of lease for the period commencing from 08.07.2006 till 28.12.2009.

13. In view thereof, this Court finds that the present appeal deserves to be allowed. Judgment and decree passed by both the Courts below are hereby set aside.

14. However, there being no claim filed by the defendant seeking recovery of payment made over and above the rent due, no further order is required to be passed with respect to rent already made.

15. Consequently, the present appeal is allowed, accordingly.

16. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

06.02.2026

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No