

## **SATPAL JINDAL v. SUNIL GUPTA , 2022 PLRonline 0364 , (2022-2)206 PLR 492**

PUNJAB AND HARYANA HIGH COURT

Before: Mrs. Justice Alka Sarin.

SATPAL JINDAL - Petitioner,

Versus

SUNIL GUPTA - Respondent.

CR-3360-2021(O&M)

**(i) East Punjab Urban Rent Restriction Act, 1949 (III of 1949) Section 13 - Fair rent - That Rent Controller ought to have fixed fair rent as per provisions of Order 15 Rule 5 C.P.C. - Cannot be accepted. [Para 9]**

**(ii) East Punjab Urban Rent Restriction Act, 1949 Sector 13 - Fair rent - Rent Controller has assessed the rent - Rent assessed is only provisional - If the final adjudication is at variance with this provisional assessment and if the amount deposited by the petitioner-tenant is found to be in excess, the Rent Controller can direct a refund. [Para 8]**

Cases referred to :-

1. (2002-2)131 PLR 370 (SC), *Rakesh Wadhawan v. M/s Jagdamba Industrial Corporation.*

*Mr. Rajinder Goyal*, for the petitioner.

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**Alka Sarin, J.** - (10<sup>th</sup> January, 2022) - Taken up through video conferencing.

CM-34-CII-2022

This is an application for placing on record the cheques issued by the petitioner on different dates.

Allowed as prayed for subject to all just exceptions.

CM stands disposed off.

CR-3360-2021

1. The present revision petition has been filed against the order dated 01.10.2021 passed

by the Rent Controller assessing the provisional rent of the tenanted premises at Rs. 1,20,000/- per month and against the order dated 24.11.2021 passed by the Appellate Authority upholding the said provisional rent assessed by the Rent Controller.

2. The brief facts relevant to the present lis are that the respondent-landlord, who is a co-owner of the tenanted premises, filed a petition for ejectment of the petitioner-tenant on the ground of arrears of rent. It is pleaded by the respondent-landlord that earlier the petitioner tenant had been paying rent @ Rs. 1,20,000/- per month, however he stopped making the payment of rent from 01.04.2020 to 30.06.2020. Thereafter, the petitioner-tenant again defaulted in making the payment of rent from 01.12.2020 till the filing of the ejectment petition. The petitioner-tenant took a stand that the rent had been reduced by the respondent-landlord to Rs. 60,000/- per month due to the situation created by the Covid-19 Pandemic and that he was ready to pay the rent @ Rs. 60,000/- per month. Vide order dated 01.10.2021 the Rent Controller, after hearing the counsel for both the parties and after perusing the documents on the record, assessed the provisional rent of the tenanted premises at Rs. 1,20,000/- per month.

3. Accordingly, Rs. 15,60,000/- was assessed as arrears, Rs. 54,600/- as interest and Rs. 2000/- as costs. Aggrieved by the said order passed by the Rent Controller, the petitioner-tenant approached the Appellate Authority which dismissed his appeal vide order dated 24.11.2021. Hence the present revision petition.

4. Learned counsel for the petitioner-tenant would contend that till March 2020 the monthly rate of rent was Rs. 1,20,000/- and in support thereof copies of some of cheques issued by the tenant-petitioner in the years 2019 and 2020 have been appended as Annexure P-6 with CM-34-CII-2022. It is further the contention that in April 2020, due to the situation created by the Covid-19 Pandemic, it was orally agreed between the parties that the monthly rent of the tenanted premises would be reduced to Rs. 60,000/- and that an amount of Rs. 1,20,000/- would be paid by the petitioner-tenant every alternate month. In support of this contention copies of some cheques issued by the tenant-petitioner in the years 2020 and 2021 have been appended as Annexures P-1 to P-5 with the revision petition. Further, the contention of learned counsel for the petitioner-tenant is that there is no mechanism provided in either the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Punjab Rent Act') or in the judgments passed by the Supreme Court for the Rent Controller to assess the provisional rent and hence reference would have to be made to Order 15 Rule 5 of the Code of Civil Procedure, 1908 (for short 'CPC') and therefore it would only be the admitted rent as per the tenant which would be required to be deposited.

5. Heard.

6. In the present case, admittedly, the rate of rent of the tenanted premises was Rs. 1,20,000 per month. However, as per the averments made by the petitioner-tenant, this rate of rent was orally agreed and reduced to Rs. 60,000/- per month and that the said amount was being paid every alternate month by issuing a cheque for Rs. 1,20,000/- and hence it could be deduced that the rent had been decreased to Rs. 60,000/- per month.

Learned counsel has relied upon the copies of the cheques (Annexures P-1 to P-5) to contend that since the amount was reduced to Rs. 60,000/- per month, cheques were issued by the petitioner-tenant every alternate month on 07.05.2020, 07.07.2020, 07.09.2020, 07.11.2020 and 07.01.2021.

7. Besides the oral submissions made by counsel for the petitioner-tenant and the copies of the cheques (Annexures P-1 to P-5) issued on alternate months for Rs. 1,20,000/- each, there is nothing on the record to show or even to suggest that the rate of rent of the tenanted premises had been reduced to Rs. 60,000/- per month in April 2020. It is admitted that the rate of rent was Rs. 1,20,000/- per month upto March 2020.

8. However, it is argued that the same was reduced to Rs. 60,000/- per month by an oral agreement in April 2020. The argument raised by the counsel for the petitioner-tenant is not supported by any material on the record and cannot be accepted. It may be mentioned here that the rent assessed is only provisional and if the final adjudication by the Rent Controller is at variance with this provisional assessment and if the amount deposited by the petitioner-tenant is found to be in excess, the Rent Controller can direct a refund. This is in accordance with the decision by the Supreme Court in '*Rakesh Wadhawan & Ors. v. M/s Jagdamba Industrial Corporation & Ors.*'<sup>1</sup> [(2002-2)131 PLR 370 (SC), 2002(5) SCC 440].

9. The second limb of the argument of the learned counsel for the petitioner that since there is no mechanism provided either in the Punjab Rent Act or in the judgment of the Supreme Court in the case of *Rakesh Wadhawan* (supra), the Rent Controller ought to have assessed the rent as laid down in Order 15 Rule 5 [CPC](#) cannot be accepted. The Supreme Court in *Rakesh Wadhawan's* case has held that the Rent Controller has to make a provisional assessment, which shall 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 qua the rate of rent. It has been held inter-alia 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 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.”

10. In view of the above reproduced paragraph from *Rakesh Wadhawan's case*, the argument of the learned counsel for the petitionertenant cannot but be rejected.

11. The Rent Controller, based upon the material before it and on the pleadings of the parties, has assessed the provisional rent of the tenanted premises at Rs. 1,20,000/- per month, which cannot be faulted with. Further, as laid down in the judgment of *Rakesh Wadhawan* (supra) if the final adjudication by the Rent Controller is at variance with the provisional order of assessment, the amount deposited by the tenant, if found in excess, can be directed to be refunded to the tenant.

12. In view of the above, I do not find any illegality or infirmity in the orders passed by the authorities below. The present revision petition is dismissed.

R.M.S.

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*Petition dismissed.*