



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

**CR-1667-2022
DECIDED ON: 16.01.2025**

PRADEEP KUMAR

....PETITIONER

VERSUS

MADAN LAL AND ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Pawan Kumar, Senior Advocate with
 Ms. Vidushi Kumar, Advocate and
 Mrs. Seema Rani, Advocate
 for the petitioner.

 Ms. Gagandeep Kaur, Advocate
 for the respondents.

VIKRAM AGGARWAL, J (ORAL)

The present revision petition is directed against the order dated 15.11.2021 (Annexure P-1) vide which the application filed by the present petitioner for passing an order of eviction on account of non-deposit of the rent assessed vide order dated 15.07.2021 was dismissed and the application filed by the respondents-tenants for depositing the rent was allowed.

2. The facts, as emanating from the revision petition and as have been stated by learned counsel for the parties are that an eviction petition was filed by the petitioner-landlord (Pradeep Kumar) against the respondents-tenants under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Rent Act'). Vide order dated 15.07.2021 (Annexure P-2), provisional assessment of rent was done. A sum of Rs.12,600/- was determined as arrears of rent, costs were assessed at Rs.1,000/- and interest @ 6% per annum was also ordered to be paid on the



outstanding amount. The matter was then fixed for 11.08.2021 for tender of rent. On 11.08.2021, a sum of Rs.10,000/- was deposited by the respondents-tenants upon which an objection was raised by the petitioner-landlord that the rent was short, though the said amount was accepted under protest. The case of the petitioner is that on account of short tender of rent, eviction should have been ordered by the Rent Controller keeping in view the ratio of law laid down by the Supreme Court of India in the case of '**Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation**', 2002 AIR (Supreme Court) 2004.

3. I have heard learned counsel for the parties.

4. Learned Senior counsel for the petitioner has submitted that once the amount of rent tendered was short, then, in accordance with the judgment of the Supreme Court of India in the case of '**Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation**' (supra) and the judgments passed by this Court in the case of '**M/s Bharti Airtel Ltd. and another Vs. M/s Shakti Floor Roller Mills**', 2022 (2) R.C.R. (Rent) 636 and '**Jasbir Singh Vs. Gurmej Singh**', 2022 (2) R.C.R. (Rent) 634, the only option with the Rent Controller was to order eviction of the respondents-tenants. Notice of the Court has been drawn to the application dated 11.08.2021 (Annexure P-3) moved by the petitioner-landlord on 11.08.2021 itself for passing of eviction orders and the application dated 11.08.2021 (Annexure P-4) moved by the respondents-tenants for deposit of rent. He submits that the application moved by the respondents-tenants would show that the amount was again not tendered and it was only stated that the applicant was ready to pay the remaining amount of Rs.4,356/- out of the



total amount of Rs.14356/- after deducting Rs.10,000/- which had already been paid. He submits that the application itself shows that in fact there was no intention to pay and, therefore, the eviction order should have been passed.

5. Learned Senior counsel has also referred to the order dated 12.01.2022 (Annexure P-9) wherein again learned counsel for the respondents-tenants had stated that he intended to pay a sum of Rs.7,002/-. Learned Senior counsel submits that mere intention to pay would not be sufficient and there should have been actual tender of the rent assessed. Apart from the judgments referred to above, reliance has also been placed upon the judgments passed by this Court in the case of '*Ajit Singh Vs. Harjit Kaur*', 2017 (3) RCR (Civil) 882 (Annexure P-10) and '*Ashok Kumar Vs. Gurdev Singh*', 2020 (1) RCR (Rent) 173 (Annexure P-11).

6. On the other hand, learned counsel representing the respondents has submitted that the error occurred on account of the exact amount not having been assessed by the Rent Controller and upon payment of Rs.10,000/- on 11.08.2021, which was the first date after the assessment of provisional rent, the respondents-tenants, upon realizing that the amount tendered was short, moved an application dated 11.08.2021 (Annexure P-4) itself to deposit the rent assessed by the Court. Notice of the Court has been drawn to the order dated 11.08.2021 (Annexure P-6) passed by the Rent Controller vide which the matter was adjourned to 13.09.2021 for filing of replies to the application filed by both sides. She submits that under the circumstances, the intention of the respondents-tenants was not to violate the order passed by the Rent Controller but on account of miscalculation, the



complete rent could not be tendered. Learned counsel has also submitted that in such a case, the tenant should not suffer. Reference has been made to the judgments passed by this Court in the case of '*Gurpreet Singh and Another Vs. Brijinder Bhardwaj and Another*', 2011 (2) RCR (Civil) 770 and '*Kailash Chandra Kaushik Vs. Kamaljeet Ranghi*', 2012 (67) RCR (Civil) 720.

7. I have considered the submissions made by learned counsel for the parties and with their assistance, have perused the paper book.

8. The provisional assessment of rent was done vide order dated 15.07.2021 (Annexure P-2). The rent was assessed at Rs.2,800/- per annum from 01.07.2017 to 30.06.2021, the total of which came to Rs.12,600/-. Apart from this, costs of Rs.1,000/- were assessed and it was ordered that the amount shall be paid alongwith interest @ 6% per annum. The case was then fixed for 11.08.2021 for tender of rent. On 11.08.2021, a sum of Rs.10,000/- was tendered by the respondents-tenants. The same was accepted by the petitioner-landlord under protest, the same being short. At that very point, the respondents-tenants offered to pay the remaining amount which was opposed by learned counsel for the petitioner. The matter was then adjourned to the post lunch session during which an application was moved by the respondent for depositing the balance amount and an application was also moved by the petitioner for passing of an order of eviction. The following order was passed:-

“File taken up again in after lunch session as application is moved by Ld counsel for the respondent for depositing the rest of the amount which was assessed vide order dated 15.07.2021. However, on the other hand Ld. counsel for the petitioner has moved an application for passing



an order of eviction on account of default committed by the respondent. The copies of the same have been supplied to the opposite counsel for parties. Now, the case stands adjourned to 13.09.2021 for filing reply to the opposing application.”

9. Eventually, vide the impugned order, the applications were disposed of. It was held that there was no intention of the respondents-tenants to not pay the amount and in fact the intention was to pay the amount immediately. Learned Rent Controller came to the conclusion that under such circumstances, the grant of permission to the respondents-tenants to pay the balance amount would not amount to extending the period and there would be no violation of law;

“From all the judgments cited by learned counsel for the applicant and learned counsel for the respondent it is clear that time for payment of provisional rent assessed cannot be extended and the payment of provisional rent assessed has to be made on the very first date of hearing after the passing of order of provisional assessment. It is also settled position that in case of failure of the tenant to pay the rent assessed by the Court eviction order should follow. However, the facts of the present case shows a bona fide intention on the part of the respondent that he was always ready and willing to pay the entire rent assessed on the very first date of hearing after passing of the order of provisional assessment of the rent. The respondent showed his intention to pay the remaining rent immediately after learned counsel for the applicant accepted the rent under protest being short and invalid. So when on the same date i.e. the first date of hearing after passing of order assessing provisional rent the respondent showed his intention and was ready with the remaining amount to make good deficiency, it would certainly not amount to extending the period of limitation and the payment if made would be considered to have been made on the very first date of hearing after passing of the order of provisional assessment of rent. Moreover, the letter and spirit of the judgment of Hon'ble Supreme Court passed in Rakesh Vadawan case is to punish



the tenant in case of his wilful default by passing an eviction order on non-payment of provisional rent on date fixed and not to punish the tenant who is ready to make payment but fails to comply with orders due to a mere mistake. So this Court is of the considered opinion that when the respondent was ready and willing to make the payment on the very first date of hearing it will not amount to extending the period and in such a situation no order of eviction can be passed. Hence, both the applications are decided accordingly. On request of learned counsel for the applicant, case stands adjourned to 12.01.2022, for filing re-joinder.”

10. In the considered opinion of this Court, no illegality was committed by the Rent Controller in deciding the applications and holding that by permitting the respondents-tenants to tender the rent, there would be no extension in the limitation for tendering the same. Eventually, the rent is stated to have been paid, though without prejudice to the rights of the present petitioner. I do not, therefore, find any illegality in the said order warranting interference in Revisional jurisdiction.

11. I have gone through the judgments relied upon by learned counsel for the parties. The dictum laid down in the case of '**Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation**' (supra) is very clear. The provisional rent has to be paid on the first date of hearing which would mean the date following after the assessment of provisional rent. It says that if the said rent is not tendered, eviction would follow. At the same time, it was also held by the Apex Court that in terms of the proviso of Section 13 (2) (i) of the Rent Act, there was an obligation upon the Rent Controller to make an assessment of:-

- i. arrears of rent.
- ii. interest on such arrears.



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iii. cost of the application.

The Rent Controller was then obligated to quantify the amount which the tenant must pay on the first date of hearing. In the present case, no such quantification of the rent due to be paid by the respondents-tenants was done as a result of which, it appears, the confusion occurred. The judgments in the case of '*Jasbir Singh Vs. Gurmej Singh*' (supra) and '*M/s Bharti Airtel Ltd. and another Vs. M/s Shakti Floor Roller Mills*' (supra) as also in the case of '*Ajit Singh Vs. Harjit Kaur*' (supra) and '*Ashok Kumar Vs. Gurdev Singh*' (supra) would also not come to the aid of the petitioner because these judgments reiterate the basic ratio of law that if the rent is not tendered on the date fixed or if the same is contested, eviction would follow whereas in the present case, there was no deliberate attempt to not pay the amount. In fact, the judgment in the case of '*Gurpreet Singh and Another Vs. Brijinder Bhardwaj and Another*' (supra) would come to the aid of the respondents-tenants as in that case also, the exact amount of arrears of rent had not been assessed. What was assessed was rent @ Rs.11,000/- per month w.e.f. 11.01.2007 till April 2010, costs of Rs.500/- and interest @ 6%. On the first date fixed, a sum of Rs.3,32,000/- was tendered by the respondents-tenants as provisional rent. The same was accepted by learned counsel representing the landlord under protest on the ground that the same was short. On the same day, a counter claim was filed by the tenants and two days thereafter, an application was filed for tendering more amount which had been inadvertently been left out. The application was contested by the landlords and the same was dismissed by the Rent Controller. An application was filed by the landlords for ejections on the ground of non tender of rent which



was allowed by the Rent Controller. The matter reached this Court. The Co-ordinate Bench, not only allowed the revision petition but also issued directions to Rent Controllers in the States of Punjab, Haryana and Union Territory Chandigarh to make the assessment of rent as per law. It was held that the act of the Court should harm none. In the considered opinion of this Court, the present matter is squarely covered by the ratio of law laid down in the said judgment;

“11. The relationship of landlord and tenant between the parties is not denied. The landlords claimed arrears of rent w.e.f. 11.1.2007 to 06.8.2007 at the rate of Rs. 9000/- per month and w.e.f 07.8.2007 at the rate of Rs. 20,000/- per month. The tenants, however, claimed to have paid the rent at the rate of Rs. 5000/- per month up to 31.3.2008. The learned Rent Controller, however, fixed the provisional rent at the rate of Rs. 11,000/- per month w.e.f. 11.1.2007 till the month of passing of the order up to April,2010, with cost of Rs. 500/- and interest at the rate of 6% per annum.

12. At this stage, it would be worthwhile to notice as to whether is it not the duty of the Rent Controller to assess the exact amount of arrears of rent and also calculate the interest accrued thereon at the rate of 6% per annum as provided under Section 13 (2) (i) (proviso) of the Act. To my mind, the Rent Controller is obliged under the Act to assess the exact amount of arrears of rent, exact amount of interest accrued thereon, cost of the petition and the exact total amount which is liable to be paid by the tenants as the provisional rent on the date fixed by the Court. Since consequence of non tendering the exact amount of provisional rent on the date fixed is very drastic, therefore, responsibility of the Rent Controller equally very high and if there is any mistake in the calculation of the amount, if it is not properly assessed by the Rent Controller, the tenant cannot be held liable on the principle that "Act of the Court should do no harm to the litigant". In this regard, decision of the Supreme Court in Jang Singh's Case (Supra) needs a reference. In the said case, a preemption decree was



drawn and the decree holder was directed to deposit Rs. 5951/- less Rs. 1000/- already deposited by him by a certain date and on failure, the suit was to stand dismissed. The decree holder approached the Court before the date for making the deposit and the Court Clerk prepared a bank challan for Rs. 4950/- instead of Rs. 4951/- and the decree holder made the deposit by Rs. one less. After the deposit, the decree holder obtained possession and the judgment debtor applied for release of the amount lying with the Court. It was found that the deposit was short by Rs. one.

13. The judgment debtor then applied for dismissal of the suit filed by the pre-emptor, which was allowed on the ground that the Court had no power to extend time fixed in the decree for payment of the price and failure of the pre-emptor of depositing of exact amount had incurred dismissal of the suit. Consequently, earlier order passed in favour of the decree holder was reversed and possession was restored back to the judgment debtor. Appeal filed by the decree holder was allowed by the learned first Appellate Court, but the same was reversed by the High Court.

14. The matter was then taken to the Supreme Court, where the appeal of the decree holder was allowed by holding that the time can be extended to make the payment of the pre-emption money, because for the error of the Court, the litigant should not suffer. Relevant observation of the Supreme Court is as under :-

"It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to Court and asks for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices, to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake, the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information, the Courts cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is



harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim: "Actus curiae neminem gravabit".

15. In the case of Umesh Chand Gandhi (Supra), there was a default in deposit of arrears of rent due to bonafide mistake of calculation. It was held that no ejectment could be ordered as there was a bonafide mistake in computation of arrears -Maxim "de minim is not curat lex" was applied. In the case of Vinod Kumar (Supra), it was held that in terms of Section 13 (2) (i) of the Act, it is the duty of the Rent Controller to assess interim rent, interest and cost to be deposited by the tenant on the first date of hearing. Almost a similar controversy came up before this Court in the case of Lambher Singh (Supra) in which the landlord had come in revision. In that case also, the tenant skipped one year rent at the time of calculation. He filed the application for making deficiency good and simultaneously the landlord also filed an application in order to seek ejectment. The said application of the tenant was allowed by the Rent Controller. In the said application also, the provisional rent was assessed by the Rent Controller for a particular period at a particular rate of rent without assessing the exact amount of rent and interest accrued thereon, as a result of which, the tenant skipped a period of 12 months in assessing the arrears of rent, but as soon as he realised his error of calculation, an application was filed for making the deficiency good and the said prayer was accepted by the Rent Controller unlike the present case in which the said prayer has been declined and the application of the landlord for passing an order of ejectment on that ground has been allowed. This Court in the case of Lambher Singh (Supra) discussed Rakesh Wadhawan (Supra) in extenso and also a Division Bench of this Court passed in 2010(1) RCR (Rent) 386: Civil Revision No. 3577 of 2006 titled as Rajan alias Raj Kumar v. Rakesh Kumar, decided on January 07, 2010 and observed that the order of the Rent Controller granting permission to make deficiency of the rent tendered short to be made good, does not suffer from any infirmity.



15A. On the other hand, the judgments relied upon by the learned counsel for the respondents/landlords in the case of Madan Lal and another (Supra) and Nasiruddin and others (Supra) are altogether on different facts because in the case of Madan Lal and another (Supra), provisional rent was assessed in accordance with law, namely exact amount of arrears, amount of interest and exact amount payable was notified by the Rent controller to the tenants to be paid on a particular date, but the tenants did not pay at all rather they challenged the order of assessment of provisional rent first. Consequently, the Rent Controller passed the order of ejectment. This is not the position in the present case because in this case, due to error of calculation, entire payment was not tendered due to the error on the part of the Court. In the case of Nasiruddin and others (Supra), the provisional rent was not deposited on the date fixed and an application under Section 5 of the Limitation Act, 1963 (for short, the Act) was filed for extension of time. It was held by the Supreme Court that application under Section 5 of the Act, was not maintainable and time cannot be extended. Thus, to my mind, both the judgments relied upon by learned counsel for the respondents/landlords are not applicable to the facts and circumstances of the present case.

16. Hence, in view of the aforesaid discussion, the present revision petition is found to be meritorious and the same is hereby allowed.

17. Before parting, it is pertinent to mention that a lot of time and energy of the Courts are being wasted in such type of litigation which is generated because of simple mistake on the part of the Rent Controllers, who fail to discharge their duties of assessing the provisional rent in accordance with law.

18. Hence, a direction is also given to all the Rent Controllers in the States of Punjab, Haryana and Union Territory, Chandigarh, to assess the provisional rent by multiplying the rate of rent with the period for which it is due, calculate the exact amount of interest @ 6% and after assessing the cost, give an accurate amount to the tenant which he is supposed to tender on the date fixed by the Court so that this kind of situation may not arise in future because this



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Court has experienced that Rent Controllers are neither calculating the amount of interest nor are giving the accurate amount.

In view of the aforementioned facts and circumstances, I do not find any merit in the present revision petition and the same is accordingly dismissed.

16.01.2025

Prince Chawla

**(VIKRAM AGGARWAL)
JUDGE**

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No