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

CR-6367-2024

Date of decision: 21.01.2025

Vivek Goel and another

...Petitioners

Versus

Devender Singh Parmar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vinod Gupta, Advocate and
Mr. Mayank Gupta, Advocate and
Mr. Didar Singh, Advocate for the petitioners.

Mr. Ashutosh Kaushik, Advocate
for the caveator/respondent No.1.

VIKAS BAHL, J. (ORAL)

1. Challenge in the present revision petition is to the orders dated 09.08.2024 and 27.08.2024 vide which the order with respect to provisional assessment of rent had been passed and on non-payment of the same, the eviction order from the premises in question had been passed. Challenge is also to the judgment dated 08.10.2024 vide which an appeal filed against both the orders dated 09.08.2024 as well as 27.08.2024 had been dismissed.

2. Learned counsel for the petitioners has submitted that in the present case, the eviction order had been passed without framing of any issues and without conducting a regular trial. It is submitted that the petitioners had a good case on merits and thus, in case the trial is conducted,



they would be able to show that the pleas raised by respondent No.1-landlord with respect to arrears of rent were incorrect and no amount was due from the present petitioners. Second ground of challenge raised by learned counsel for the petitioners is that the provisional assessment of rent was required to be done at the initial stage and once the ex-parte evidence had been led by respondent No.1-landlord then in that situation, at a subsequent stage, provisional assessment of rent could not have been done and thus, the impugned order dated 09.08.2024 deserves to be set aside on the said ground alone and that the subsequent orders which have been passed and which are consequential to the order dated 09.08.2024 also deserve to be set aside. Learned counsel for the petitioners, in support of his arguments, has relied upon the zimni orders from 07.01.2021 to 09.08.2024 which are taken on record and marked as Mark "A".

3. Learned counsel for respondent No.1, on the other hand, has opposed the present revision petition and has submitted that once the petitioners had not paid the rent as provisionally assessed vide order dated 09.08.2024 then they were not entitled to a regular trial and the only consequence of the same was an eviction order that was required to be passed in a summary manner. Learned counsel for respondent No.1 has relied upon the judgment of the Division Bench of this Court passed in **CR-3577-2006 decided on 07.01.2010 titled as Rajan @ Raj Kumar Vs. Rakesh Kumar**, in the said regard. It is submitted that in the present case, the petitioners have made every effort to delay the proceedings and on two occasions, the petitioners were proceeded against ex-parte and they have not paid the rent to the landlord since 2014. It is further submitted that on



09.08.2024, the case was adjourned to 27.08.2024 for making the payment of provisional rent. Neither the said payment was made nor there was any stay order operating against the said order dated 09.08.2024 and thus, the eviction order dated 27.08.2024 had been rightly passed.

4. This Court has heard learned counsel for the parties and has perused the paper book and finds that the impugned orders have been rightly passed and the present revision petition is meritless and deserves to be dismissed for the reasons stated hereinafter.

5. The present case is a classic case wherein the tenant has made every endeavour to delay the eviction proceedings and to avoid making the payment of rent to respondent No.1-landlord and the said fact is apparent from the zimni orders which have been produced on record as Mark "A" by the learned counsel for the petitioners. Some of the relevant dates which would demonstrate the said fact are detailed hereinbelow:-

i) 07.01.2021:- The petition was filed by respondent No.1-landlord for eviction from the premises in question on the ground of non-payment of rent and personal necessity. With respect to arrears of rent, it was averred that the rent had not been paid since 25.10.2014 and total arrears which was due on the date of filing of the petition was Rs.38,73,457/-.

ii) 08.02.2021:- Written statement was filed by the present petitioners and the case was adjourned for filing replication and assessment of rent.

iii) 03.03.2021:- Fresh power of attorney was filed on behalf of petitioner No.1 and the case was adjourned for assessment of rent. Thereafter, the case was repeatedly adjourned for arguments on assessment of rent, which fact is apparent from several zimni



orders including zimni orders dated 16.09.2021 and 18.10.2021.

iv) 28.10.2021:- The case was fixed for arguments on assessment of rent. However, the present petitioners had not come present and the court had issued notice to them and their counsel for 23.11.2021.

v) 02.05.2022:- The Court had passed the following order:-

*“Present:- Sh R.N. Yadav Advocate for petitioner
None for respondents*

Court notice sent to respondents received back with the report of their refusal. Case called several times since morning but none has come present on behalf of respondents nor any intimation received. Further wait is not justified. Now respondents are proceeded against exparte. Adjournment sought. Heard. Now to come upon 20.05.2022 for assessment of provisional rent.

*Sd/-Manoj Kumar Rana
CJ(SD), Gurugram
UID No. HR 0264*

Date of Order : 02.05.2022”

Thus, the petitioners who were aware of the proceedings had not joined the proceedings and had refused to accept court notice and accordingly, they were proceeded against ex-parte.

vi) 20.01.2023:- An application was filed by the petitioners for setting aside the ex-parte order, after a delay of more than eight months.

vii) 25.01.2023:- The Rent Controller was pleased to pass the following order:-

*“Present Sh. Parmanand Yadav, Advocate for petitioner.
Sh. Balram Singh. Advocate proxy counsel for Sh.
Jatin Arora, Counsel for respondents No.1 & 2.*



Respondent No. 3 given up v.o.d 20.05.2020.

In pursuance of notice, learned proxy counsel for the respondents No.1 & 2 appeared before the Court. Arguments heard on the application for early hearing. Keeping in view the contents of the application, same is hereby allowed and the present case is preponed for today i.e. 25.01.2023.

At this stage, learned counsel for petitioner endorsed no objection to the application for setting aside ex parte order dated qua respondents No.1 & 2. Heard. In view of the contents of the application and fact that learned counsel for the petitioner has endorsed no objection to the instant application, same is hereby allowed. Adjournment sought for assessment of rent. Heard. Now to come up on 09.02.2023 for consideration on assessment of rent.

Sd/-Manoj Kumar Rana

CJ(SD), Gurugram

UID No. HR 0264

Date of Order: 25.01.2023”

A perusal of the above order would show that on account of no objection given by the counsel for respondent No.1-landlord, the ex-parte order was set aside and the case was adjourned for assessment of rent. Thus, it was clear to the parties that the case was adjourned for assessment of rent. The said order dated 25.01.2023 has not been challenged by the petitioners at any stage and thus, the petitioners are estopped from raising the plea that the provisional assessment of rent was not done at an earlier stage.

viii) 16.02.2023: The Rent Controller was pleased to pass the following order:-

“Present: Sh. Ramanand Yadav, Advocate for petitioner.

None for respondents no. 1 and 2



Respondents No.1 & 2 ex parte v.o.d. 02.05.2022.

Respondent No.3 given up v.o.d 20.05.2022.

Today the case was fixed for consideration on assessment of rent. Case called out several times since morning, none has appeared on behalf of respondents no. 1 and 2. It is 3.30 PM. Further wait is not justified. Now respondents no. 1 and 2 is proceeded against exparte. Adjournment sought. Heard. Now to come up on 28.02.2023 for ex parte evidence of petitioner.

Date of Order: 16.02.2023

Sd/- Manoj Kumar Rana

CJ(SD), Gurugram

UID No. HR 0264”

A perusal of the above would show that the case was fixed for assessment of rent, however, the petitioners yet again chose not to appear and thus, they were proceeded against ex-parte.

ix) 15.04.2023: An application was filed by the petitioners for setting aside the ex-parte order dated 16.02.2023, after a delay of almost two months from the date of passing of the ex-parte order.

x) 21.04.2023:- The said ex-parte order dated 16.02.2023 was set aside subject to the petitioners paying the cost of Rs.3,000/- in the DLSA, Gurugram. The zimni order dated 21.04.2023 is reproduced hereinbelow:-

“Present: Shri Parmanand Yadav, Advocate for the respondent/Landlord.

Sh. Rakesh Martha, Counsel for the applicants/tenants No.1 & 2.

Respondent No.3 given up v.o.d 20.05.2022.

Arguments heard on the application moved by the applicants/tenants No.1 & 2 for setting aside ex parte order dated 16.02.2023. Order pronounced. Vide my separate



*detailed order of even date, instant application has been allowed subject to the cost of Rs.3000/- to be paid in DLSA, Gurugram by the applicant/defendant. **Now to come up on 05.05.2023 for payment of cost as well as for consideration on assessment of rent.***

Pronounced in open Court :

April 21st, 2023.

Sd/- (Manoj Kumar Rana),

CJ (SD), Gurugram,

UID No.HR-0264”

A perusal of the above zimni order would show that when the ex-parte proceedings were set aside, the case was adjourned to 05.05.2023 for payment of cost as well as for consideration on assessment of rent. Even the abovesaid order dated 21.04.2023 whereby the case was adjourned for consideration on assessment of rent, which was passed in the presence of the counsel for the petitioners, has admittedly never been challenged before any Court and thus, for the said added reason also, the petitioners are estopped from raising the plea that the assessment order should have been passed at an earlier stage. Even zimni orders subsequent to the same, including zimni orders dated 05.05.2023, 12.05.2023, 19.05.2023, 07.07.2023, 28.07.2023, 27.10.2023, 31.10.2023, 24.11.2023, 12.12.2023, 19.12.2023 and 21.12.2023 would show that the case was adjourned for consideration on assessment of rent.

xi) 09.08.2024:- Arguments on the prayer of assessment of provisional rent were heard and provisional rent was assessed and the matter was adjourned to 27.08.2024 for making the payment of provisional rent. Zimni order dated 09.08.2024 is reproduced hereinbelow:-

“Present:- Shri Parmanand Yadav, Counsel for the petitioner



*Shri Neeraj Gupta, Counsel for the respondents
No.1 & 2.*

Respondent No.3 given up v.o.d 20.05.2022.

*Arguments heard on the prayer of assessment of
provisional rent. **Vide my separate order of even date,
provisional assessment of rent has been assessed.
Adjournment sought. Heard. Now to come up on 27.08.2024
for making payment of provisional rent.***

Pronounced in open court.

Sd/- (Amit Gautam)

August 9th 2024.

Rent Controller, Gurugram

UID No.HR-0289”

A perusal of the abovesaid zimni orders would show that apart from the fact that the petitioners have made every endeavour to delay the proceedings, no plea had been raised by the petitioners that the said assessment order should have been passed at an earlier stage. No such argument had even been raised at the time of passing of the order dated 09.08.2024. Thus, the petitioners are estopped from raising the said plea. Moreover, the Rent Controller had rightly assessed the provisional rent vide order dated 09.08.2024 in accordance with the mandate of law laid down by the Hon'ble Supreme Court in the case of **Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation** reported as **2002 AIR Supreme Court 2004**. Thus, the first argument raised by learned counsel for the petitioners to the effect that the provisional assessment of rent could not have been done at the stage when the same was done, is meritless and deserves to be rejected.

6. A perusal of the order dated 09.08.2024 would show that after considering the pleas raised by both the parties, the Rent Controller had



came to the conclusion that an amount of Rs.35,96,545/- was due from the petitioners to respondent No.1-landlord. The case was thereafter fixed for 27.08.2024 for making the said payment. On 27.08.2024, the ejectment order was passed in view of the fact that the said payment was not made by the petitioners and also in view of the fact that there was no stay order operating against the order dated 09.08.2024, although, it was the case of the petitioners that they had filed an appeal against the order dated 09.08.2024. The petitioners had consequently preferred an appeal against the judgment dated 27.08.2024 also and the said appeal along with the appeal against the order dated 09.08.2024 were dismissed by the Appellate Authority, Gurugram vide common order dated 08.10.2024. In the said order, the fact that relationship of landlord and tenant between the petitioners and respondent No.1 was not in dispute and that the lease deed dated 01.12.2014 of the demised premises was also not in dispute was taken into consideration and as per the said order, an amount of Rs.63,600/- per month was the rent, which was further subject to an increase of 10% after every 11 months. After taking into consideration all the aspects, the Appellate Authority had observed that the total rent which was due from the petitioners was Rs.53,99,000/- and thus, although the order of the Rent Controller as far as the amount due was concerned was modified but the ejectment order was upheld by observing that the petitioners had not deposited the provisional rent as assessed, which admittedly has not been deposited till date.

7. The Hon'ble Division Bench of this Court in the case of ***Rajan @ Raj Kumar*** (Supra) had opined that as per the law laid down by the



Hon'ble Supreme Court in the case of ***Rakesh Wadhawan*** (Supra), the provisional rent and other ancilliary charges assessed by the Rent Controller had to be deposited by the tenant, on the next date of hearing after the passing of the assessment order along with arrears, interest and costs as determined by the authority. It was specifically observed that the phrase "first date of hearing" had been interpreted to mean the first date of hearing after determination of provisional rent and other expenses by the Rent Controller and that in case the tenant fails to deposit the same on the first date then nothing remains to be done, and an order of ejectment of the tenant has to be passed and that the benefit of the trial would only be available to the tenant on making deposit of provisional rent and other ancilliary charges as determined by the Rent Controller and not otherwise. It was affirmatively held that it was implicitly made clear that it is the bounden duty of the tenant to deposit the provisional rent failing which the tenant is required to be ejected from the premises in question. Relevant portion of the said judgment is reproduced hereinbelow:-

"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.”

8. In the abovesaid case, a reference was made to the Division Bench by a learned Single Judge on account of there being a difference of opinion between two Single Benches of this Court, inasmuch as, in one of the cases i.e. **Rajinder Lal Vs. Gopal Krishan** reported as **2006(1) RCR (Rent) 438**, learned Single Judge had opined that an opportunity of regular trial should be given to the tenant in case he fails to pay the provisional rent and in case the final order was in terms of the provisional rent assessed, then, the tenant was not entitled to any opportunity to tender the rent. The other opinion rendered by the other learned Single Judge in the case titled as **Madan Lal and another Vs. Baldev Raj** reported as **2004(2) PLR 834** was to the effect that as per the law laid down by the Hon'ble Supreme Court in the case of **Rakesh Wadhawan** (Supra), it was clearly laid down that in case



the tenant fails to make the payment of rent as assessed by the Rent Controller, the order of ejectment has to follow and nothing more is required to be done. It was the view in the case of *Madan Lal* (Supra) which was held to be the correct view and was accordingly, upheld. Thus, the second argument raised by learned counsel for the petitioners to the effect that the issues were required to be framed and the trial was required to be undertaken is also meritless and deserves to be rejected.

9. Keeping in view the abovesaid facts and circumstances, the impugned orders passed by the Rent Controller, Gurugram and the Appellate Authority, Gurugram are in accordance with law and deserve to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

21.01.2025

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No