[319] IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1462-2025 (O&M)
Date of Decision : 08.09.2025

Anjali Foundation …Petitioner

versus

Anil Mehra ….Respondent

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Sumeet Mahajan, Senior Advocate with Mr. Saksham Mahajan, Advocate and Ms. Shruti Singla, Advocate for the petitioner.

Mr. Parmanand Yadav, Advocate and Mr. Ambanshu Sahni, Advocate for the respondent.

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PANKAJ JAIN, J. (ORAL)

[1] This is third revision petition filed by the tenant on the issue of assessment of provisional rent. Earlier tenant came before this Court, challenging order dated 16.03.2022 passed by the Appellate Authority, Gurugram, affirming order dated 25.02.2022. The revision petition was allowed on the limited issue regarding inclusion of rent for the period prior to December, 2018 being beyond pleadings.

[2] The operative part of the order passed by this Court reads as under:-

> *"10. In view of the aforesaid dictum at the time of assessing in excess or in deficient, the set off has to be granted at the time of final adjudication. In the present case, there are account statements on record relied upon by both the parties and the same are yet to be proved. In given circumstances, controller ought not have gone beyond pleadings while assessing provisional rent. Once landlord in the eviction petition, pleaded that the rent stands paid upto December, 2018, the Rent Controller ought not have assessed the provisional rent for the period prior to December, 2018.*

11. In view of above, the impugned order is set aside with a direction to the Rent Controller to re-assess the rent taking into consideration the pleadings of the parties within period of 04 weeks from the date of receipt of this order."

[3] Rent stands reassessed by the Rent Controller vide order dated 04.01.2025. Tenant again approached this Court by way of CR-374-2025. The counsel representing the tenant sought permission to withdraw the revision petition. The same was dismissed as withdrawn vide order dated 21.01.2025. The tenant thereafter approached the Appellate Authority. The Appellate Authority passed the consent order dated 23.01.2025, which reads as under:-

"6. Be that as it may, during the course of hearing, learned counsel for appellant/tenant has submitted that he is not challenging the provisional order so far as quantum of amount is concerned, however impugned order does not reflect the factum of payment of provisional rent of Rs.2,85,25,140/-, which has already been paid by the tenant in March, 2022, meaning thereby that tenant has already paid the amount of money in excess of the amount so assessed vide impugned order dated 04.01.2025 and in such situation, the observation of learned Rent Controller, in para(s) no.8 & 9 thereof, to the effect that assessed provisional rent be paid not later than the next date i.e. 24.01.2025 and failure to comply with the same would result in the immediate eviction of the respondent (therein)/tenant, is apparently lacking in actual state of affairs obtaining in the matter and to that extent, impugned order reflects non-application of mind, with reference to the undisputed fact(s) on record.

7. On specific query to the learned counsel for land-lord/respondent herein, learned counsel has fairly conceded that amount of provisional rent to the extent of Rs.2,85,25,140/- stood tendered in the month of March, 2022 and there is no dispute about the said fact. Even though, learned counsel for landlord/respondent herein has submitted that order pertaining to the provisional rent ought to have included the period upto the passing of said order, but at the same time, learned counsel for landlord has fairly conceded

that he is not impugning the order dated 04.01.2025 passed by learned Rent Controller by way of filing of appeal/cross-objection and instead, he intends to move an application before learned Rent Controller in this regard.

8. Since both sides are ad-idem to the effect that tenant has already tendered the amount of Rs.2,85,25,140/- towards provisional rent amount, which is in excess of the re-assessed amount of the provisional rent done vide order dated 04.01.2025 and said fact has not been reflected in the impugned order by the learned Rent Controller, may be due to inadvertence or oversight, so in view of the undisputed facts and fair concession(s) made by both the sides, instant rent appeal stands disposed of with a direction to learned Rent Controller to take into consideration the undisputed factum of tendering of provisional rent already done on behalf of the tenant and then proceed ahead as per law, in the light of said undisputed fact.

9. Parties are directed to appear before the learned Rent Controller on the date already fixed i.e on 24.01.2025. "

[4] The tenant is in revision aggrieved of order dated 23.01.2025 passed by the Appellate Authority.

[5] Mr. Mahajan, learned Senior Counsel for the petitioner, submits that though the Court had recorded the consent of the tenant but in fact, no consent was given. He submits that even though order provides for set off of the amount of Rs.2,85,25,140/- but still the excess amount has not been taken care of while assessing the rent provisionally. He tends to rely upon account statements.

[6] *Per contra*, learned counsel for the landlord submits that, in view of the ratio laid down in '**Auto Needs versus Rajeev Sood'**, **CR-3550-2024,** decided on 26.11.2024 by this Court, the Rent Controller was required to assess the rent up to the date of passing of the order determining the provisional rent, the same has, however, been restricted only up to February 2022 and liberty has been granted to move fresh ejectment petition *qua* rent

for the period post February, 2022.

[7] In the considered opinion of this Court, so far as the issue of excess payment made by the tenant prior to filing of the petition is concerned, the same is yet to be proved and so was held by this Court in order dated 12.11.2024. Para No.10 of the order needs to be referred which reads as under:-

> "*10. In view of the aforesaid dictum at the time of assessing provisional, Rent Controller has to primarily consider the pleadings of the parties and the other material available, Authority has to formulate prima-facie opinion. In case the provisional rent assessed is found to be in excess or in deficient, the set off has to be granted at the time of final adjudication. In the present case, there are account statements on record relied upon by both the parties and the same are yet to be proved. In given circumstances, controller ought not have gone beyond pleadings while assessing provisional rent. Once landlord in the eviction petition, pleaded that the rent stands paid upto December 2018, the Rent Controller ought not have assessed the provisional rent for the period prior to December 2018.*"

[8] The amount as reflected in account statements have been rightly discarded by the Rent Controller as the same are yet to be proved. In terms of the ratio of law laid down by Supreme Court in '**Rakesh Wadhawan and others versus Jagdamba Industrial Corporation and others', 2002 (5) SCC 440**, the provisional rent has to be assessed on the basis of pleadings or the documents admitted in the pleadings.

[9] In view thereof, this Court finds that the Rent Controller shall reassess the rent strictly in accordance with the following directions issued in '**Auto Needs'** case *(supra)*:-

> *"15. Section 13 of the 1973 Act deals with eviction of tenants. Section 13 (1) of the 1973 Act provides that a tenant in possession of a building or a rented land shall not be evicted except in accordance with the provisions of Section 13 of the*

1973 Act. As per Section 13(2) of the 1973 Act the first and foremost ground on which the landlord is entitled to seek eviction of the tenant is 'non-payment of rent'. The principal provision provides for non-payment of rent as the ground for eviction. Proviso appended thereto grants protection to the tenant subject to payment of arrears of rent along with interest and cost. The prime objective of the proviso was spelled out by Supreme Court in the case of ***Pushpa Devi Vs. Milkhi Ram (1990) 2 SCC 134*** *with the following observations :-*

> ***"21.*** *The apparent purpose of the proviso was to relieve the defaulting tenant from extreme penalty of eviction. There cannot be any doubt on this purpose. The provision seems to be analogous to Section 114 of the Transfer of Property Act, 1892 which confers discretion to the Court to grant relief against forfeiture for non-payment of rent. But the proviso goes a step further and leaves no such discretion to the controller or court even if the tenant is a constant defaulter. If the arrears and other amounts specified are paid or tendered on the first date of hearing, the default as a ground for eviction disappears and the Controller is precluded from passing a decree for eviction. The governing principle of the proviso is that the tenant could pay and stay in an action for eviction on default. At the same time, the landlord is ensured payment of arrears, interest and the costs that he has incurred without the necessity of going to civil court to recover it. This seems to be the will and intention of the legislature in the shape and scope or' the proviso."*

16. Different expressions have been used in Principal provision of Section 13(2) (i) of the 1973 Act and the proviso appended thereto. The provision provides for expression 'the rent due' whereas the proviso contemplates 'arrears of rent'. The object of the provision is not only to protect tenant from being exploited at the hands of a trumped-up landlord but also

to put a check on an unscrupulous tenant who intends to protect his possession without paying rent. The aforesaid provision was interpreted by Division Bench of this Court in ***Isher Dass Tara Chand Vs. Harcharan Dass, passed in Civil Revision No.318 of 1954 decided on 30.08.1960****. The Division Bench held as under :-*

> *"xxx xxx, under the East Punjab Urban Rent-Restriction Act, the arrears of rent are required to be paid by the first hearing of the application and no Court has any power to extend that period. The object of the proviso, under consideration seems to be to save a tenant, from the consequences of non-payment, which may sometimes be due to the misconduct of the landlord himself in avoiding the acceptance of payment so as to create a ground for forfeiture and not on account of any deliberate default on the part of the tenant. In these circumstances, it will be unreasonable to insist upon the tenant pay- ing the rent calculated right up to the date of the first hearing notwithstanding that the rent for the month, in which the first hearing occurs may not have yet fallen due.*
>
> *In view of all that has been said above, I have no hesitation in respectfully agreeing with the view taken in Basant Ram v. Gurcharan Singh and an- other, (1). In my opinion the rent which a tenant is required to pay under the proviso to clause (i) to sub-section 2 to section 13 of the East Punjab Urban Rent-Restriction Act, to save himself from forfeiture of the tenancy, is the rent due from him and remaining unpaid on the date of the application and not on the date of first hearing."*

The Division Bench was interpreting the provisions as contained under Section 13 of the 1949 Act which are pari materia to the provision under consideration in instant revision.

17 The aforesaid interpretation continued to hold good till Section 13(2) of the 1949 Act was expanded by supplying ***casus-omissus by the Supreme Court in the case of Rakesh Wadhawan (supra). Finding that provision suffered from gaps that need to be filled, the Supreme Court observed 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 Vs. 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."*

18 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. <u>While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the</u>

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.

'emphasis supplied'

19 Judgments relied upon by Mr. Chadha, Sr. Advocate in the case of ***Dr. N.K.Sood (supra), Sat Pal (supra)*** *and in the case of* ***Shrimati Manjit Kaur (supra)*** *relate to pre* ***Rakesh Wadhawan (supra)*** *era and are thus not applicable to the present case. Faced with the situation, Mr. Chadha, Sr. Advocate by relying upon* ***Neera Chadha (supra)*** *submits that each default by a tenant in payment of rent gives the landlord a fresh cause of action to seek his eviction. He thus submits that for default by a tenant qua rent pendent lite beyond the rent claimed in the eviction petition, the landlord has to file fresh eviction petition. The argument raised by Mr. Chadha, Sr. Advocate to be understood by illustration is that where a landlord is before Rent Controller seeking eviction of the tenant on the ground of non-payment of rent say upto 31.03.2024 and the provisional rent is assessed by the Rent Controller in the month of July, 2024 the tenant can be held to be in arrears of rent only upto 31.03.2024 and not beyond that. The contention if accepted shall lead to absurd results. Trite it is that the law cannot be read to render it absurd.*

20 Supreme Court in ***Pushpa Devi (supra)*** *observed as under :-*

"20. Great artistry on the Bench as elsewhere is, therefore, needed before we accept, reject or modify any theory or principle. Law as creative response should be so interpreted to meet the different fact situations corning before the court. For, Acts of Parliament were not drafted with divine prescience and perfect clarity. It is not possible for the legislators to foresee the manifold sets of facts and controversies which may arise while giving

effect to a particular provision. Indeed, the legislators do not deal with the specific controversies. When conflicting interests arise or defect appears from the language of the statute, the Court by consideration of the legislative intent must supplement the written word with 'force and life'. See, the observation of Lord Denning in Seaford Estate Ltd. v. Asher, [1949] 2 KB 481 at 498."

21 ***Lord Green M.R. in Grundt Vs. Great Boulder Proprietary Gold Mines Ltd. (1948) 1 All ER 21*** *observed as under* ***:-***

"Absurdity, like public policy, is a very unruly horse.....that although the absurdity or the non-absurdity of one conclusion as compared with another may be, and very often is, of assistance to the Court in choosing between two possible meanings of ambiguous words, it is a doctrine which has to be applied with very great care, remembering that Judges may be fallible in this question of an absurdity, and in any event it must not be applied so as to result in twisting language into a meaning which it cannot bear. It is a doctrine which must not be used to rewrite the language in a way different from that in which it was originally framed."

48. Similarly Crawford on Statutory Construction. Article 177, pp. 286-289 has observed: "A thing which is within the letter of statute is not within the statute unless it be within the intent of the legislature. It is a rule of statutory construction that if a too liberal adherence to the words of an enactment appears to produce an absurdity or an injustice, it will be the duty of a Court of construction to adopt a construction not quite, strictly grammatical."

49. So also has Lord Lindley in The Duke of Buccleuch, (1889) 15 PD 86; in Appeal Eastern S.S. Co. Ltd. v. Smith, 'The Duke of Buccleuch', 1891 AC 310 observed:

"You are not so to construe the Act of Parliament as to reduce it to rank absurdity. You are not to attribute to general language used by the legislature in this case, any more than in any other case, a meaning which would not can out its

object, but produce consequences which, to the ordinary intelligence, are absurd. You must give it such a meaning as will carry out its object."

"If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result." (Vide 1940 AC 1014, 1022).

"A construction from which one's judgment recoils cannot be a true construction of a statute." (Per Lord Coleridge, C.J., R. v. Clarence, (1888) 22 QBD 23).

50. The same is the principle laid down in Ramaswamy Nadar v. State of Madras, AIR 1958 SC 56 wherein it has been held:

"If in construing the section, the Court has to supply some words in order to make the meaning of the statute clear, it will naturally prefer the construction which is more in consonance with reason and justice."

22 Though at the time of filing of the petition seeking eviction of the tenant for non-payment of rent, landlord cannot claim future rent but the liability of the tenant to pay rent is recurring and continues till he enjoys possession. It is for this reason that the legislature in its own wisdom has used different expressions. The landlord claims 'rent due' but the tenant is liable to tender 'arrears of rent'. Though apparently the expressions seem to be conveying the same meaning, but these are different expressions comprising different words. Trite it is where in relation to same subject matter, same words are used in the same statute, there is a presumption that they are not used in the same sense. Reference can be made to observations made by Supreme Court in the case of ***The Member, Board of Revenue Vs. Arthur Paul Benthall, 1956 AIR Supreme Court 35.***

23 I may add here that, Under Section 23 of the 1973 Act, State Government has been empowered to make rules to carry out all or any of the purposes of the Act. State of Haryana framed Haryana Urban (Control of Rent and Eviction) Rules, 1976. Rule 7 thereof reads as under :-

> *"7. Procedure to be adopted by Controller [Section 23].-*
> *(1) When an application under the Act is presented to the Controller he shall fix the date, time and place at which the enquiry in respect of the application will be held and send a notice along with a copy of the application to each respondent in Form 'A' appended to these rules.*
> *(2) The Controller shall give to the parties, a reasonable opportunity to state their case. He shall also record the evidence of the parties and witnesses examined on either side and in doing so and in fixing dates for the hearing of parties and their witnesses, in adjourning proceedings and dismissing application for default or for other sufficient reasons, the Controller shall be guided by the principles of the procedure as laid down in the Code of Civil Procedure."*

24 Thus as per the Rule 7 of 1976 Rules, principles of procedure laid down in Civil Procedure, 1908 have been prescribed as a guide to Rent Controller. State of Haryana vide Gazette notification dated 13.05.1991 amended CPC by incorporating Order XV Rule 5 which reads as under :-

"5. Striking off defence for failure to deposit admitted rent.

> *(1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent. per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit*

regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or monthly amount due as aforesaid, the Court may, subject to the provisions of sub-rule (2) strike off his defence."

2) Before making an order for striking off defence, that Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days of the first hearing or, of the expiry of the week referred to in sub-section (1) as the case may be.

(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff:

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited:

Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible or any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same."

25 In view of aforesaid provision, also a duty is casted upon the lessee to pay monthly rent during the pendency of the petition.

26 Once the dispute between landlord and tenant spills on the floor of the Courts, either landlord stops accepting the rent or the tenant stops paying it. Section 6(A) of the 1973 Act contemplates such situation and saves tenant from ending up paying interest and costs apart from saving him from eviction proceedings. So far as landlord is concerned, to get rid of a bad tenant, he is required to file a fresh eviction petition. Once the provisional rent is tendered, the recalcitrant tenant often protracts the litigation enjoying possession without paying rent. In such situation landlord is forced either to file another

eviction petition for non-payment of rent or to await the result of the first eviction petition. Once tenant is ordered to be evicted on a ground other than the non-payment of rent, the unpaid arrears of rent pendent lite becomes a tool in hands of tenant enhancing his bargaining power. The interpretation of law as suggested by Mr. Chadha, Senior counsel representing the tenant not only breeds unfairness but also leads to filing of successive eviction petitions thereby clogging the whole system.

***27** Observation made by Supreme Court **Rakesh Wadhawan'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."*

[10] Necessary exercise be carried out on the next date of hearing i.e. 15.09.2025 or a date fixed beyond that. So far as the issue of GST is concerned, the same has to be taken care of by the GST Authorities and not by the Rent Controller.

[11] **Disposed off**.

(PANKAJ JAIN)
JUDGE

08.09.2025
'R. Sharma'

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