



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

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**CR-958-2025 (O&M)
Date of decision : 08.04.2025.**

Santokh Singh**..... Petitioner**

versus

Mithlesh Kumar**..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Sharad Mehra, Advocate
for the petitioner.

Mr. Vikash Gupta, Advocate
for the respondent.

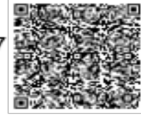
PANKAJ JAIN, J. (Oral)

1. On 14.02.2025, following order was passed:-

“The instant revision petition is directed against order dated 13.12.2024 (P-1), whereby Rent Controller has framed issues in an application filed by the tenant under Order IX Rule 13, CPC seeking setting aside of ex-parte eviction order.

Respondent-tenant was summoned to face eviction petition filed by the petitioner-landlord. The tenant appeared through his counsel on 29.04.2021 and was thereafter proceeded ex-parte. The proceedings finally culminated in an eviction order dated 11.05.2023.

As per the eviction order, at the time of passing thereof i.e. on 11.05.2023, tenant was already in arrears of more than Rs.9,22,150/-. Thereafter, the instant application under Order IX Rule 13 was filed on 09.11.2023 seeking setting aside of ex-parte order of eviction dated 11.05.2023, claiming that the tenant was summoned during Covid-19 for 29.04.2021. Though, the tenant appeared through his counsel, but the counsel could not enter the case in the case diary. There being a communication gap, the tenant was proceeded ex-parte after counsel failed to inform him of the next date.



Mr. Mehra has drawn attention of this Court to the interim orders passed by the Rent Controller during the pendency of the eviction petition to submit that the application on the face of it is malafide and is based upon facts which are against the records.

Notice of motion for **21.02.2025**.

Process *dasti* as well.

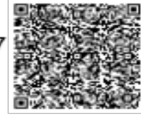
The petitioner is also granted liberty to serve tenant through the counsel representing tenant before the Rent Controller in proceedings under Order 9 Rule 13, CPC.”

2. Counsel for the tenant submits that the tenant is ready to pay the arrears of rent, but in installments.

3. The issue of liability of tenant to pay arrears of rent and the consequence of non-payment have been elaborately dealt by the Supreme Court in the case of ***Rakesh Wadhwan & Ors. vs. Jagdamba Industrial Corporation & Ors. 2002(1) RCR (Rent) 514***, wherein it has been held as under:-

“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 ejection. 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



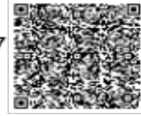
Controller to make an assessment of (i) arrears of rent (ii) the interest on such arrears, and (iii) the cost of application and then quantify by way of an interim or provisional order the amount which the tenant must pay or tender on the 'first date of hearing' after the passing of such order of 'assessment' 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.”



4. In the considered opinion of this Court, once the tenant pleads inability to pay the arrears of rent, no further order is required to be passed, but to order his eviction from the demised premises.

5. In view thereof, the impugned order is set aside and the tenant is directed to handover physical vacant possession within a period of three months from the date of this order. He shall remain bound to pay rent on or before 10th day of every month and shall be liable to clear entire arrears of rent.

6. Disposed off, accordingly.

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

(PANKAJ JAIN)
JUDGE

08.04.2025

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No