

(2010) 11 P&amp;H CK 0481

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Civil Revision No. 7682 of 2010 (O and M)

Surjit Singh

APPELLANT

Vs

Manjit Singh and Another

RESPONDENT

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**Date of Decision:** Nov. 25, 2010**Hon'ble Judges:** Alok Singh, J**Bench:** Single Bench**Final Decision:** Dismissed

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**Judgement**

Alok Singh, J.

Learned Counsel for the Petitioner has challenged the order dated 18.11.2010 passed by learned Rent Controller, Ludhiana, thereby assessing provisional rent and directing the tenant/Petitioner to make payment of assessed amount on or before 29.11.2010.

2. Learned Counsel for the Petitioner/tenant argued that rent should have been assessed the moment tenant appears and files his written statement and Rent Controller has absolutely no jurisdiction to assess the rent during the pendency of the eviction petition after evidence is recorded by the Rent Controller.

3. Hon"ble Apex Court in the matter of [Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others](#), has held as under :-

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.

4. Division Bench of this Court in the matter of Rajan alias Raj Kumar v. Rakesh Kumar CR No. 3577 of 2006 decided on 7.1.2010 has observed as under : -

We have gone through the findings given in Rajinder Lal case (supra). We respectfully are unable to agree with the proposition of law laid down therein. The rationale of the assessment as laid down in Rakesh Wadhawan's case (supra) is to be discerned from the view as expressed in para No. 29 of the said judgment because the Hon"ble Supreme Court has balanced the interests of the landlords and tenants so as to ensure that the tenants get an adequate opportunity to deposit the rent consequent upon determination of the provisional rent. Whatever may be the extent of emphasis, which have been put on the view taken in the judgment relied upon by the Petitioner, this Court is bound by the conclusions arrived at by the Supreme Court in Rakesh Wadhawan's case (supra) wherein it has been held that if a tenant does not comply with the order on the first date of hearing after determination of the provisional rent and other ancillary expenses by the Court, then eviction has to follow.

5. In the present case, eviction petition was filed in the year 1996 prior to the judgment of the Hon"ble Apex Court in the matter of Rakesh Wadhawan's case (supra). Since no provisional assessment was done and after the judgment of the Hon"ble Apex Court in the matter of Rakesh Wadhawan's case (supra), Rent Controller has to assess the provisional rent giving an opportunity to the tenant to deposit the amount so assessed, hence, in my opinion, learned Rent Controller has committed no jurisdictional error while passing the impugned order.

6. Learned Counsel for the Petitioner is not disputing the rate of rent and is not suggesting that as to whether any rent was paid by the tenant during the pendency of the suit, hence in my opinion learned Rent Controller was perfectly well in its jurisdiction in passing the impugned order. Moreover, in the matter of Rakesh Wadhawan's case (supra) also the Hon"ble Apex Court has remanded the matter to the Rent Controller to assess the rent and to give an opportunity to the tenant to make payment since in that case also initially there was no assessment done by the Rent Controller.

7. If tenant/Petitioner deposits entire amount, as directed by the Rent Controller vide impugned order, he would be saved from the eviction, however, if he fails to make compliance of the impugned order, Rent Controller will have no option except to pass eviction order.

8. No illegality or perversity is pointed out in the impugned order.

9. Dismissed.