(2013) 07 P&H CK 0831

High Court Of Punjab And Haryana At Chandigarh

Case No: CM No. 7572-CII of 2013 in/and CR No. 6604 of 2012 (O and M)

Navdeep Singh Narang		APPELLANT
	Vs	
Kuldeep Singh Grewal		RESPONDENT

Date of Decision: July 26, 2013

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13(2)(i)

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Advocate: Rajesh Kataria, for Mr. Rajnish K. Jindal, for the Appellant; Divanshu Jain, for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.
This Court passed the following order on 24.7.2013:

This is tenant''s revision petition challenging the order of provisional assessment of rent.

Learned counsel representing the respondent has brought to the notice of this Court that the petitioner has not deposited the provisional rent on the date fixed and the instant petition has been filed after the said date and thus, the case is covered against the petitioner by a Division Bench judgment of this Court in Rajan alias Raj Kumar Vs. Rakesh Kumar, .

It may further be noticed that an adjournment slip has been filed stating that counsel for the petitioner is not well. Adjournment slip has been signed by Sh. Rajnish K. Jindal, counsel for the petitioner.

On the other corner of the adjournment slip, it has been shown that no objection has been granted by the counsel for the respondent. However, Mr. Divanshu Jain,

Advocate, who is appearing on behalf of the respondent-landlord has categorically stated before this Court that what to talk of giving no objection even he has not been informed by the counsel for the petitioner with regard to filing of the adjournment slip.

In view of the categoric statement made by the counsel for the respondent-landlord, let Sh. Rajnish K. Jindal, counsel for the petitioner, file an affidavit clarifying the facts as to from whom he has got no objection on the adjournment slip.

List on 26.7.2013.

To be shown in the urgent list.

No further adjournment shall be granted.

The petitioner may make alternative arrangement in case his counsel is not well.

Today, Mr. Rajesh Kataria, Advocate, is present in Court. He has very candidly admitted the fact that opposite counsel was not informed with regard to putting up of adjournment slip on 24.7.2013. He has also admitted that no objection by the counsel opposite shown on the adjournment slip has not been affixed/signed by the office of the respondent''s counsel. Mr. Rajesh Kataria, Advocate has further admitted that the same has been done inadvertently and without any mala fide intentions by the office of the counsel for the petitioner itself. He has regretted the lapse on the part of the counsel for the petitioner and tendered an apology.

2. Apology is accepted.

3. Mr. Rajesh Kataria, Advocate, has further stated that he will argue the case on behalf of Sh. Rajnish K. Jindal, Advocate.

4. In the eviction petition filed by the respondent against the petitioner, the Rent Controller, Mohali vide order dated 18.9.2012, assessed the provisional rent in the following terms and directed the same to be paid/deposited in the following terms:

The respondent is bound to abide both the clauses and resultantly is bound to make the rent @ Rs. 59610/- w.e.f. 01.10.2011 till the month of September 2012 amounting to Rs. 7,15,320/- along with interest @ 6% per annum amounting to Rs. 21459/- and costs of Rs. 1000/-, total amounting to Rs. 7,37,779/- on or before 12.10.2012, failing which to proceed in accordance with law.

5. According to the learned counsel representing the respondent-landlord, the petitioner was legally obliged to make the payment of the aforesaid provisionally assessed rent on or before the stipulated i.e. 12.10.2012 and in case of his failure to do so, he was liable to be evicted without any further opportunity.

6. To support the aforesaid contention, counsel for the respondent-landlord has relied upon a judgment of the Hon''ble Supreme Court in the case of Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others, wherein

the Hon''ble Supreme Court has 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 Rent 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.

7. Learned counsel for the respondent has further relied upon a Division Bench judgment of this Court reported as Rajan alias Raj Kumar Vs. Rakesh Kumar, to stress the argument to the effect that in case of failure to pay provisionally assessed rent, on or before the stipulated date will entail automatic eviction order. On the basis of the aforesaid law laid down by the Hon''ble Supreme Court and which has been followed by this Court, counsel for the respondent has further submitted that vide impugned order, the petitioner was supposed to deposit the provisionally

assessed rent on or before 12.10.2012 whereas he has filed the instant revision petition on 5.11.2012 and the interim stay was granted to him on 7.11.2012. Thus, according to the learned counsel for the respondent-landlord, the petitioner tenant had already committed default in making up the payment of provisionally assessed rent and thus, he is liable to be evicted forthwith and therefore, the instant revision petition is not maintainable in the present form.

8. Counsel for the petitioner-tenant has not addressed any argument on this issue except to state that the petitioner has deposited the rent @ Rs. 12,756/- per month total amounting to Rs. 1,77,778/- only.

9. No other argument has been raised.

10. In view thereof, this revision petition is dismissed being not maintainable having been filed after the stipulated date to make the payment of provisionally assessed rent and after earning the penalty of automatic eviction. Needless to say that interim order, if any, stands vacated.