(2011) 03 P&H CK 0774

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 8076 of 2010 (O and M)

Gurpreet Singh and Another	APPELLANT
Vs	
Brijinder Bhardwaj and Another	RESPONDENT

Date of Decision: March 4, 2011

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13, 13(2)
- Limitation Act, 1963 - Section 5

Citation: (2011) 2 CivCC 290 : (2011) 163 PLR 212 : (2011) 2 RCR(Civil) 770

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Judgement

Rakesh Kumar Jain, J.

The tenants are in revision against the order dated 23.10.2010, passed by the learned Rent Controller, Chandigarh, by which an application filed by them to deposit part of rent which was leftover due to bona fide mistake of calculation, was dismissed and order dated 23.10.2010 by which eviction petition of the landlord has been allowed on the ground of short tender having been made on 24.5.2010.

2. Brief facts of the case are that the landlords filed an eviction petition u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short, ''the Act) against the tenants on the ground of nonpayment of arrears of rent of the demised premises, namely Flat No. 1244, Progressive House Building Society,Sector 50-B Chandigarh, w.e.f. 11.1.2007 to April 2010. It is alleged in the petition that the landlords had let out the demised premises to the tenants at a monthly rent of Rs. 20,000/-. A rebate of Rs. 9000/- per month was given out of Rs. 20,000/-per month up to 06.8.2007. It was alleged that as per the Rent Deed, rate of rent payable by the tenants to the landlords was Rs. 11,000/- per month until 06.8.2007 and from 07.8.2007 onwards at the rate of Rs. 20,000/- per month. The tenants denied the rate of rent of the demised premises, as alleged by the landlords and averred that rate of rent is Rs.

5000/- per month, which they had already paid up to 31.3.2008.

3. The learned Rent Controller found that there was. no dispute of relationship of landlord and tenant between the parties as the execution of the Rent Deed has been admitted but for the denial of rate of rent which was allegedly claimed by the landlords @ Rs. 20,000/- per month and @ Rs. 5000/- per month by the tenants. So, in these circumstances, vide his order dated 08.4.2010, the learned Rent Controller passed the order of assessment of rent. The relevant portion is reproduced as under:

Accordingly, the provisional rate of rent to be paid by the Respondent is assessed at the rate of Rs. l1.000/- per month and the period for which the Respondents are to pay the provisional rent is w.e.f. 11.1.2007 till the month of passing of this order i.e. April 2010, the cost of the application is assessed at Rs. 500/- the provisional rent is to be paid alongwith interest at the rate of 6% per annum.

On 24.5.2010, the tenants tendered a sum of Rs. 3,32,000/- (Rs. three lakh thirty two thousand) as provisional rent. Statement of the Advocate appearing on behalf of the tenant recorded on that date reads as under:

I tender the admitted rent as assessed by the Hon We Court under protest at the rate of Rs. 11,000/- per month for the period from 11.1.2007 to April 2010 alongwith 6% interest and Rs. 500/- cost total amounting to Rs. 3,32,000/- (''three lakh thirty two thousands) and reserving my right to recover excessive amount for which Respondent Nos. 3 and 4 are filing counter claim before this Hon''ble Court.

4. The learned Counsel for the landlords made the following statement:

I have received the tendered rent under protest being short, insufficient and invalid.

On the same date i.e. 24.5.2010, the tenants filed counter claim before the learned Rent Controller, alleging therein that they have already tendered the provisional rent and have the apprehension that the landlord may withdraw the rent petition thereafter, whereas they had already received rent at the rate of Rs. 5000/- per month up to 07.9.2007 and issued the receipt. The tenants had claimed that they have made excessive payment in the garb of provisional rent which they have right to recover by way of counter claim.

5. Two days thereafter, the tenants filed an application on 27.5.2010, seeking permission of the learned Rent Controller to tender some more amount of rent which was inadvertently left out at the time of tendering the provisional rent due to miscalculation. In this application, it was alleged that they have been informed on 26.5.2010 by the learned Counsel for the landlords that they have tendered less amount of rent of a period of 12 months, which on calculation was found to be correct and immediately thereafter, a sum of Rs. 1,60,000/- was offered by the tenants which was calculated as under:

Rs. 1,32,000-00 11000x12

Interest for 12 months Rs. 22,770-00

Rs. 1,54,770-00. Total:

However, a lump sum amount of Rs. 1,60,000/- was offered to be deposited to make good the deficiency in the order of provisional rent.

6. This application was contested by the landlords which was dismissed on 23.10.2010 by the learned Rent Controller on the ground that in view of the decision of the Supreme Court in the case of Rakesh Wadhawan and Ors. v. Jagdamba Industrial Corporation and Ors. 2002 (1) RCR (Rent) 514, the Rent Controller had no jurisdiction to allow to make up the deficiency in the provisional rent which was tendered ''short''.

The landlords filed an application for passing an order of ejectment on the ground of non-payment of arrears of rent as assessed by the learned Rent Controller provisionally. The said application was contested by the tenants by filing reply, but vide his order dated 23.10.2010, the learned Rent Controller, allowed the application and passed the order of eviction again relying upon the decision of the Supreme Court in the case of Rakesh Wadhawan (Supra) holding that the tenants had failed to comply with the order dated 08.4.2010 by which the provisional rent was assessed and as such, nothing remains to be done by the learned Rent Controller, but to order ejectment.

7. In view of the above, the present revision has been preferred by the tenants in which they have challenged the two orders dated 23.10.2010 by which an application for tendering the rent, which had fallen short due to inadvertence and application for passing the order of eviction was allowed.

8. Opening his arguments, learned Counsel for the tenants/Petitioners has submitted that the error in calculating the rent was bonafide which has caused due to miscalculation as in the statement of the learned Counsel, he had submitted that he is tendering the rent for the period 11.1.2007 to April 2010, meaning thereby the tenants/Petitioners did not deliberately tender the rent of a period of one year which was offered immediately as soon as they came to know about short-fall due to miscalculation. It is submitted that in terms of Section 13(2)(i) (proviso) of the Act, it is the duty of the Rent Controller to assess the arrears of rent, interest accrued thereon and cost of the application. The learned Rent Controller is obliged to give exact figure which is to be tendered towards provisional rent by the tenant and if there is any default then it is of the Rent Controller for which the tenants should not be made to suffer on the principle of "Actus curiae neminem gravabit". In this regard, he has drawn attention of this Court to the order dated 08.4.2010 in which the Rent Controller did not assess the exact amount of arrears of rent and also did not calculate the interest and had left everything to the imagination and calculation

of the tenants. He has relied upon the decisions of the Supreme Court in the cases of Jang Singh Vs. Brijlal and Others, , Umesh Chand Gandhi v. Ist Addl. Distt & Sessions Judge 1994 (1) R.C.R. (Rent) 137, Vinod Kumar v. Prem Lata 2003 (2) R.C.R. (Rent) 329 and a copy of an order passed by this Court in Civil Revision No. 7374 of 2010 titled as Lambher Singh and Anr. v. Saurav Thakur and Anr., decided on 12th November 2010, in support of his submissions.

9. On the other hand, learned Counsel for the Respondents/landlords has vehemently argued that the tenants cannot be given a premium of their default in not making the tender of entire rent on the date fixed by the Court. It is submitted that neither such extension can be given to the tenants for the purpose of depositing the entire arrears of rent nor any such delay could be condoned. In this regard, he has relied upon a decision of this Court in Madan Lal and Anr. v. Baldev Raj 2004 (2) R.C.R. (Rent) 93 : (2004) P.L.R. 834 and a decision of Supreme Court in Nasiruddin and Others Vs. Sita Ram Agarwal, .

10. I have heard learned Counsel for both the parties and have perused the record with their assistance.

11. The relationship of landlord and tenant between the parties is not denied. The landlords claimed arrears of rent w.e.f. 11.1.2007 to 06.8.2007 at the rate of Rs. 9000/- per month and w.e.f. 07.8.2007 at the rate of Rs. 20,000/- per month. The tenants, however, claimed to have paid the rent at the rate of Rs. 5000/- per month up to 31.3.2008. The learned Rent Controller, however, fixed the provisional rent at the rate of Rs. 11,000/-per month w.e.f. 11.1.2007 till the month of passing of the order up to April,2010, with cost of Rs. 500/- and interest at the rate of 6% per annum.

12. At this stage, it would be worthwhile to notice as to whether is it not the duty of the Rent Controller to assess the exact amount of arrears of rent and also calculate the interest accrued thereon at the rate of 6% per annum as provided u/s 13(2)(i) (proviso) of the Act. To my mind, the Rent Controller is obliged under the Act to assess the exact amount of arrears of rent, exact amount of interest accrued thereon, cost of the petition and the exact total amount which is liable to be paid by the tenants as the provisional rent on the date fixed by the Court. Since consequence of non tendering the exact amount of provisional rent on the date fixed is very drastic, therefore, responsibility of the Rent Controller equally very high and if there is any mistake in the calculation of the amount, if it is not properly assessed by the Rent Controller, the tenant cannot be held liable on the principle that "Act of the Court should do no harm to the litigant". In this regard, decision of the Supreme Court in Jang Singh''s Case (Supra) needs a reference. In the said case, a preemption decree was drawn and the decree holder was directed to deposit Rs. 5951/- less Rs. 1000/- already deposited by him by a certain date and on failure, the suit was to stand dismissed. The decree holder approached the Court before the date for making the deposit and the Court Clerk prepared a bank challan for Rs.

4950/- instead of Rs. 4951/-and the decree holder made the deposit by Rs. one less. After the deposit, the decree holder obtained possession and the judgment debtor applied for release of the amount lying with the Court. It was found that the deposit was short by Rs. one.

13. The judgment debtor then applied for dismissal of the suit filed by the pre-emptor, which was allowed on the ground that the Court had no power to extend time fixed in the decree for payment of the price and failure of the pre-emptor of depositing of exact amount had incurred dismissal of the suit. Consequently, earlier order passed in favour of the decree holder was reversed and possession was restored back to the judgment debtor. Appeal filed by the decree holder was allowed by the learned first Appellate Court, but the same was reversed by the High Court.

14. The matter was then taken to the Supreme Court, where the appeal of the decree holder was allowed by holding that the time can be extended to make the payment of the pre-emption money, because for the error of the Court, the litigant should not suffer. Relevant observation of the Supreme Court is as under:

It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to Court and asks for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices, to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake, the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information, the Courts cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim: "Actus curiae neminem gravabit.

15. In the case of Umesh Chand Gandhi (Supra), there was a default in deposit of arrears of rent due to bona fide mistake of calculation. It was held that no ejectment could be ordered as there was a bona fide mistake in computation of arrears -Maxim "de minim is not curat lex" was applied. In the case of Vinod Kumar (Supra), it was held that in terms of Section 13(2)(i) of the Act, it is the duty of the Rent Controller to assess interim rent, interest and cost to be deposited by the tenant on the first date of hearing. Almost a similar controversy came up before this Court in the case of Lambher Singh (Supra) in which the landlord had come in revision. In that case also, the tenant skipped one year rent at the time of calculation. He filed the application for making deficiency good and simultaneously the landlord also filed an application in order to seek ejectment. The said application of the tenant was allowed by the Rent Controller. In the said application also, the provisional rent

was assessed by the Rent Controller for a particular period at a particular rate of rent without assessing the exact amount of rent and interest accrued thereon, as a result of which, the tenant skipped a period of 12 months in assessing the arrears of rent, but as soon as he realized his error of calculation, an application was filed for making the deficiency good and the said prayer was accepted by the Rent Controller unlike the present case in which the said prayer has been declined and the application of the landlord for passing an order of ejectment on that ground has been allowed. This Court in the case of Lambher Singh (Supra) discussed Rakesh Wadhawan (Supra) in extenso and also a Division Bench of this Court passed in 2010 (1) R.C.R.(Rent) 386: Civil Revision No. 3577 of 2006 titled as Rajan alias Raj Kumar v. Rakesh Kumar, decided on January 07,2010 and observed that the order of the Rent Controller granting permission to make deficiency of the rent tendered short to be made good, does not suffer from any infirmity.

15A. On the other hand, the judgments relied upon by the learned Counsel for the Respondents/landlords in the case of Madan Lal and Anr. (Supra) and Nasiruddin and Ors. (Supra) are altogether on different facts because in the case of Madan Lal and Anr. (Supra), provisional rent was assessed in accordance with law, namely exact amount of arrears, amount of interest and exact amount payable was notified by the Rent controller to the tenants to be paid on a particular date, but the tenants did not pay at all rather they challenged the order of assessment of provisional rent first. Consequently, the Rent Controller passed the order of ejectment. This is not the position in the present case because in this case, due to error of calculation, entire payment was not tendered due to the error on the part of the Court. In the case of Nasiruddin and Ors. (Supra), the provisional rent was not deposited on the date fixed and an application u/s 5 of the Limitation Act, 1963 (for short, ''the Act'') was filed for extension of time. It was held by the Supreme Court that application u/s 5 of the Act, was not maintainable and time cannot be extended. Thus, to my mind, both the judgments relied upon by learned Counsel for the Respondents/landlords are not applicable to the facts and circumstances of the present case.

16. Hence, in view of the aforesaid discussion, the present revision petition is found to be meritorious and the same is hereby allowed.

17. Before parting, it is pertinent to mention that a lot of time and energy of the Courts are being wasted in such type of litigation which is generated because of simple mistake on the part of the Rent Controllers, who fail to discharge their duties of assessing the provisional rent in accordance with law.

18. Hence, a direction is also given to all the Rent Controllers in the States of Punjab, Haryana and Union Territory, Chandigarh, to assess the provisional rent by multiplying the rate of rent with the period for which it is due, calculate the exact amount of interest @ 6% and after assessing the cost, give an accurate amount to the tenant which he is supposed to tender on the date fixed by the Court so that this

kind of situation may not arise in future because this Court has experienced that Rent Controllers are neither calculating the amount of interest nor are giving the accurate amount.

19. The Registrar of this Court is directed to circulate this order to all the Rent Controllers in the States of Punjab, Haryana and Union Territory, Chandigarh, in accordance with law.