Nand Kishore Vs Smt. Kanta Devi

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 10, 2013

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Advocate: Sandeep Gupta, for the Appellant;

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.
This is tenant''s revision petition challenging the order of the Appellate Authority dated 18.7.2013, whereby

appeal filed by the respondent-landlady against dismissal of her eviction petition vide order dated 9.11.2010 by the Rent Controller, Kurukshetra

has been accepted and the petitioner-tenant has been ordered to be ejected on the ground of non-payment of rent. Suffice is to say that the

respondent-landlady sought eviction of the petitioner-tenant on the ground that he was in arrears of rent w.e.f. 1.3.2003 to 28.2.2006 @ Rs.

720/- per month besides house tax and interest.

2. In the written statement filed on behalf of the petitioner-tenant, it was pleaded that he has already made the up-to-date payments.

3. However, on appreciation of evidence, the Rent Controller reached to a conclusion that the petitioner has failed to prove payment of rent, as

claimed. The relevant paragraph of the order of the Rent Controller reads thus:-

In the present petition, there is no dispute regarding the relationship of landlord and tenant between the parties. From the perusal of the file shows

that rent for the period from 1.9.2005 to 28.2.2006 was paid by the respondent in the court on 14.6.2006. It is observed that the rent for the

period from 1.7.2005 to 31.8.2005 has not been paid by the respondent. Similarly, he has not paid the rent after 1.3.2006 to 30.6.2006 at the

rate of Rs. 720/- per month. Hence, the respondent is in arrears of rent but as per the settled law the respondent has to be given time to pay the

rent of the period mentioned above as no provisional rent was assessed by the court and therefore, one month time is given to the respondent to

make the payment of rent at the rate of Rs. 720/- per month for period from 1.7.2005 to 31.8.2005 and 1.3.2006 to 30.6.2006 failing which he

would be liable to be ejected from the shop in question and the petitioner would be entitled to the possession of the same. The issue is decided

accordingly.

4. After recording the aforesaid findings, the Rent Controller vide order dated 9.11.2010 disposed of the eviction petition in the following terms:-

In view of finding on the issue No. 1, the petition is disposed of subject to the payment of rent for the period from 1.7.2005 to 31.8.2005 and

from 1.3.2006 to 30.6.2006 at the rate of Rs. 720/- per month within one month from today which the petition would be deemed to be accepted

and the respondent would be liable to be ejected from the shop in question and the petitioner shall be entitled to the possession of the same. There

is no order as to costs. Memo of costs be prepared and file be consigned.

5. Feeling aggrieved from the aforesaid order, the landlady filed appeal before the Appellate Authority, which was allowed vide impugned order.

While allowing the appeal, the Appellate Authority found that the judgment of the Hon''ble Supreme Court in the case of Rakesh Wadhawan and

Others Vs. Jagdamba Industrial Corporation and Others, was not applicable to the present case, as the petitioner has based his claim of payment

of rent on forged and fabricated receipts, in spite of the fact that he was clearly in arrears of rent. He did not tender the same and failed to

discharge the onus to prove that he had paid the rent.

6. At this stage, it may be noticed that in Mohd. Fiaz Vs. Mohd. Gulzar and another, , it was held by this Court that a tenant who has denied his

liability to pay the rent is not entitled to any opportunity to make up deficiency of arrears of rent in terms of judgment in Rakesh Wadhawan & ors.

(SUPRA) on the final decision of the Rent Controller.

7. In view of the aforesaid, this Court finds no merit in this petition. Dismissed.