

(2010) 05 P&H CK 0310

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 740 of 2010

Sardar Tirlochan Singh

APPELLANT

Vs

Sardar Balwant Singh

RESPONDENT

Date of Decision: May 28, 2010**Citation:** (2010) 159 PLR 757**Hon'ble Judges:** S.D. Anand, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

S.D. Anand, J.

In the on-going controversy between the parties (landlord and tenant), the provisional rent (alongwith interest and costs) came to be assessed by the learned Rent Controller, vide order dated 27.10.2008 and the matter was adjourned for tender. There was controversy about the rate at which rent was payable. Landlord claimed that the rent at the rate of Rs. 8500/- was payable; whereas the plea raised by the tenant was that the rate of rent had been fixed at rate of Rs. 2000A per month. A part of the rent was paid up on 27.10.2008 and accepted by the petitioner-landlord under protest. It was thereafter that the petitioner-landlord filed an application for ejectment forthwith of the respondent-tenant on account of the non payment in entirety of the provisional assessed rent etc. The plea did not find favour with the learned Rent Controller who negatived it by observing that the controversy about rent could be decided only after the parties have had an opportunity to adduce evidence in support of their respective plea at the trial.

2. Learned Counsel appearing on behalf of the petitioner landlord (hereinafter referred to as "the petitioner") argued that in view of the law laid down by the Apex Court in [Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others](#), and a Division Bench of this Court in Civil Revision No. 3577 of 2006 (Rajan alias Raj Kumar v. Rakesh Kumar), it is incumbent upon the Rent Controller to evict the tenant forthwith if the provisionally assessed rent (interest and costs etc.) is not

paid on the first date of hearing. Reliance, in support of the projected view, is placed upon Vinod Kumar v. Prem Lata 2003(2) R.C.R. (Rent) 329.

3. The plea was resisted by the learned Senior Counsel who appeared on behalf of the respondent-tenant and argued that in the given situation, it was incumbent upon the learned Rent Controller to finally determine the controversy on the conclusion of the trial and, then, afford an opportunity to the tenant to pay up or face eviction in default thereof.

4. The resistance to the above effect is negatived for want of sanction of the law of the land. As already noticed in an earlier part of this order, the Apex Court categorically laid down in Rakesh Wadhawan's case (supra) that the eviction of the tenant is the only option available with the learned Rent Controller, the moment he comes to the conclusion that arrears of rent were not tendered on the first date of hearing. (Reference is to the date fixed after provisional rent assessment comes to be made). That judgment was also noticed by a Division Bench of this Court in Rajan alias Raj Kumar's case (supra) wherein it was observed as under:

This Court is of the view that the ratio of judgment in Rakesh Wadhawan's case (supra) leaves no manner of doubt that the provisional rent and other ancillary charges assessed by the Rent Controller had to be deposited by the tenant on the next date of hearing alongwith arrears, interest and costs etc., as may be determined by the above said authority. The "first date of hearing" has also been interpreted to mean, the first date of hearing after determination of provisional rent and other expenses by the Rent Controller. A reading of conclusions drawn in para No. 30 of the judgment in Rakesh Wadhawan's case (supra) leaves no doubt that if after determination of the provisional rent, a tenant fails to deposit the same, nothing remains to be done and an order of ejectment of a tenant has to be passed. The language of conclusion No. 4 in the said para is very clear and needs no further interpretation. The Court is further of the view that the benefit of conclusions No. 5 and 6 would become available to a tenant only on his making a deposit of the provisional rent and other ancillary charges determined by the Rent Controller and not otherwise. It was implicitly made clear that it is the bounden duty of the tenant to deposit the provisional rent determined by the Rent Controller, otherwise it will entail the tenant's ejectment from the premises in dispute. This Court feels that if a tenant is dissatisfied with the interim order passed by the Rent Controller, he has an opportunity to challenge the same before the date fixed for payment, in the higher forum.

5. There is no warrant for the proposition expounded on behalf of the respondent. The respondent-tenant shall be liable to eviction forthwith in view of the conceded position that the provisional rent was not paid on the first date of hearing.

6. In the light of foregoing discussion, the petition shall stand allowed. The impugned order shall stand set aside. The respondent-tenant shall have two months

time from today to vacate the premises aforementioned.