

(2009) 09 P&amp;H CK 0158

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Civil Revision No. 5170 of 2009 (O and M)

Puneet Ahluwalia (NRI)

APPELLANT

Vs

Dr. Mrs. Gurjeewan Garewal

RESPONDENT

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**Date of Decision:** Sept. 9, 2009**Citation:** (2010) 1 RCR(Rent) 227**Hon'ble Judges:** Surya Kant, J**Bench:** Single Bench**Advocate:** D.S. Walia, for the Appellant;

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**Judgement**

@JUDGMENTTAG-ORDER

Surya Kant, J.

The petitioner-landlord impugns the order dated 24.07.2009 passed by the Rent Controller, Chandigarh, whereby provisional rent in respect of the demised premises has been assessed @ Rs.650/- per month w.e.f. 01.10.2006 alongwith interest @ 6% per annum alongwith cost of Rs.500/-, and the respondent-tenant was directed to tender the arrears of the assessed rent on 21.08.2009.

2. Counsel for the petitioner-landlord states that the assessed rent has been tendered by the respondent-tenant on the date fixed.

3. The counsel, however, maintains that the Rent Controller, instead of assessing the provisional rent and/or giving an opportunity to the respondent-tenant to tender its arrears, should have directed her eviction on the ground that she was a "habitual defaulter". He has placed reliance on a recent decision of the Hon'ble Supreme Court in [Sarla Goel and Others Vs. Kishan Chand](#), . The learned counsel also referred to an earlier decision of the Hon'ble Supreme Court in Rakesh Wadhawan & Ors. v. M/s.Jagdamba Industrial Corporation and others, 2003 (2) CCC 361 (SC).

4. The petitioner's case appears to be that he has filed the eviction petition, inter-alia, on the grounds of (i) non-payment of rent; (ii) bona fide personal

necessity, and (iii) that the tenant has ceased to occupy.

5. The respondent-tenant appears to have filed the written statement, (reference to which has been made by the Rent Controller in para No.3 of the impugned order) denying the relationship of the landlord and the tenant between the parties and claiming that the sale deed relied upon by the petitioner in support of his ownership of the demised premises, has been allegedly obtained by fraud and is void ab-initio etc. The respondent-tenant also appears to have taken the plea that in order to save herself from eviction, she is ready to tender the arrears of rent at the assessed rate and from the due date, though without prejudice to her legal rights.

6. The Rent Controller, having regard to the rival pleas noticed above, has assessed the provisional rent w.e.f. 01.10.2006, i.e., the date from which the petitioner-landlord demanded and at the admitted rate of Rs.650/- per month. In addition to that and as noticed earlier, the Rent Controller directed the respondent-tenant to pay interest on the assessed arrears of rent @ 6% per annum alongwith cost of Rs.500/-, which, as noticed earlier, has already been tendered by the respondent-tenant under protest.

7. Learned counsel for the petitioner submits that though the respondent-tenant has denied the relationship of landlord and tenant, however, the same has already been proved vide order dated 12.06.2009 passed by the Rent Controller and/or upheld by this Court. On this premise, it is argued that the respondent-tenant is obligated to pay the rent regularly and the reluctance shown by her against such payment should be sufficient to hold her to be a "habitual defaulter", and liable to be evicted in terms of the decisions already cited.

8. Having heard learned counsel for the petitioner at some length and on perusal of the impugned order, I am of the considered view that this revision petition is wholly misconceived and devoid of any merit. In the eviction petition, the petitioner is claiming rent w.e.f. 01.10.2006 @ Rs.650/- per month and the Rent Controller has also assessed, though provisionally, the rent at the same rate and from the same date. The arrears of the rent have been admittedly tendered by the tenant alongwith interest and costs. The procedure followed by the Rent Controller is, thus, strictly in accordance with the mandate contained in Rakesh Wadhawan's case (supra). There can indeed be no doubt that if a tenant refuses to pay/tender the rent despite an opportunity given as per law, such tenant would do so at his/her own risk and peril. Whether a tenant has deliberately evaded payment of rent and is liable to be termed as a "habitual defaulter" is a question of fact to be proved by way of evidence. That stage is yet to come in this case. The Rent Controller was neither required to address the aforesaid issue nor to apply the principle laid down in Sarla Goel & Ors. case (supra) at this initial stage of the eviction proceedings.

9. No interference with the impugned order is called for by this Court in exercise of its revisional jurisdiction. Dismissed.