

Raj Bala Vs. Surender Singh

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Court : Punjab and Haryana

Decided On : Oct-04-2011

Reported in : 2012(1)RCR(Rent)90; 2012(1)RCR(Civil)825

Judge : Rakesh Kumar Garg

Appeal No. : Civil Revision No.2990 of 2011 (O&M)

Appellant : Raj Bala

Respondent : Surender Singh

Judgement :

Rakesh Kumar Garg, J.

The petitioner who is landlord of the demised premises has challenged the impugned order on the ground that the same is against the well settled principles of law as envisaged in the judgment of the Hon'ble Supreme Court in the case of **Rakesh Wadhawan v. M/s Jagdamba Industrial Corporation AIR 2002 SC 2004** and further explained by Division Bench judgment of this Court in **Rajan alias Raj Kumar v. Rakesh Kumar 2010(1) RCR (Rent) 386**.

2. Noticing the contentions made on behalf of the petitioner, this Court passed following order on 5.5.2011:-

"Present: Mr. Amit Khatkar, Advocate, for the applicant/petitioner

CM No. 11848-CII of 2011

Allowed as prayed.

This is a revision petition filed by the landlady who had sought eviction of the tenant on the ground of non-payment of rent. The tenant disputes the rate of rent as well as the period. However, on the application moved by the landlady, the Rent Controller assessed the provisional rent which was not paid by the tenant on the stipulated date and thereafter, eviction order was passed against which the tenant filed an appeal which was allowed and the case was remanded back to the Rent Controller to decide it after taking evidence.

After taking the evidence, the Rent Controller allowed the tenant to deposit the deficient amount of rent within the stipulated time against which the landlady again filed an application which was dismissed by the learned Appellate Authority.

Learned counsel for the landlady submits that there was a conflict of views of the two Single Benches of this Court in which one view was that if the provisional rent is not paid by the tenant within the stipulated time, then the tenant would get another opportunity, whereas the other view was that if the rent is not paid, eviction order would follow. The matter was referred to a Larger Bench of this Court in the case of **Rajan alias Raj Kumar v. Rakesh Kumar 2010(2) P.L.R. 201** in which the view taken in the case of **Madan Lal and another v. Baldev Raj 2004(2) R.C.R.(Rent) 93 : (2004-2) PLR 834** has been approved and it has been held that in case of non-payment of provisional rent on the stipulated date, order of eviction has to follow and no opportunity will be granted.

Notice of motion for 25.5.2011.

05.05.2011

(Rakesh Kumar Jain)

Judge"

3. I have heard learned counsel for the parties and perused the impugned order of the Appellate Authority.

4. It is useful to refer to the conclusion drawn by the Hon'ble Supreme Court in the case of Rakesh Wadhawan (supra) which reads thus:-

"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 best of application'.

2. The proviso to Section 13(2)(i) of East Punjab Urban 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, the 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."

5. In the case of Rajan alias Raj Kumar (supra), after discussing the law laid down by the Hon'ble Supreme Court in Rakesh Wadhawan (supra) and other judgments, concluded as under:-

"13. 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.

14. We have gone through the findings given in Rajinder Lal case (supra). We respectfully are unable to agree with the proposition of law laid down therein. The rationale of the assessment as laid down in Rakesh Wadhawan's case (supra) is

to be discerned from the view as expressed in para No. 29 of the said judgment because the Hon'ble Supreme Court has balanced the interests of the landlords and tenants so as to ensure that the tenants get an adequate opportunity to deposit the rent consequent upon determination of the provisional rent. Whatever may be the extent of emphasis, which have been put on the view taken in the judgment relied upon by the petitioner, this Court is bound by the conclusions arrived at by the Supreme Court in Rakesh Wadhawan's case (supra) wherein it has been held that if a tenant does not comply with the order on the first date of hearing after determination of the provisional rent and other ancillary expenses by the Court, then eviction has to follow."

6. Thus, the impugned order cannot be sustained in view of authoritative law laid down by this Court in Rajan alias Raj Kumar (supra).

7. Accordingly, this petition is allowed and the impugned orders are set aside. Eviction of the tenant-respondent is ordered from the demised premises. The tenant-respondent is directed to hand over the vacant possession of the demised premises to the petitioner-landlord within a period of two months from today, failing which the petitioner shall be entitled to execute the order of this Court.

Petition allowed.

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