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DHIAN KAUR

v.

PREM PAL SRAN

(Civil Appeal No. 9978 of 2014)

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OCTOBER 29, 2014

**[FAKKIR MOHAMED IBRAHIM KALIFULLA AND
ABHAY MANOHAR SAPRE, JJ.]**

EAST PUNJAB URBAN RENT RESTRICTION ACT,
1949:

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s.13(2)(i), proviso – Opportunity granted by High Court to tenant to clear arrears found due in final adjudication by authorities below – High Court was justified in reaching the conclusion that after the finding of Appellate Authority as regards defaultable arrears that was found due and payable by respondent, the invocation of the proviso to s.13(2)(i) was necessitated – The rights of landlady-appellant have been duly protected inasmuch as in the event of failure of respondent-tenant in duly discharging his stand as regards payment of defaultable arrears, consequence in not complying with the requirement of proviso to s.13(2)(i) would follow and it would be open to appellant to exercise the liberty granted in her favour in the impugned judgment by approaching the High Court and seeking for appropriate orders.

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Rakesh Wadhawan & Ors. v. Jagdamba Industrial Corporation & Ors. 2002 (3) SCR 468 : (2002) 5 SCC 440 – cited.

Case Law Reference:

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2002 (3) SCR 468 **cited** **Para 3**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9978 of 2014.

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From the judgment and order-dated 17.09.2012 in CR No. 4510 of 2000 passed by the High Court of Punjab & Haryana at Chandigarh.

P. S. Khurana, Vibhuti Sushant Gupta and Dr. Kailash Chand, Advs. for the Appellant. A

Tarunvir Singh Khehar and Ashok K. Mahajan, Advs. for the Respondent.

The following Order of the Court was passed:

ORDER B

1. Leave granted.

2. Appellant, landlady, is aggrieved by the order of the High Court of Punjab and Haryana at Chandigarh in Civil Revision No. 4510 of 2000 dated 17th September, 2012. The said revision arose at the instance of the respondent-tenant against the order of eviction passed by the Appellate Authority under the East Punjab Urban Rent Restriction Act, 1949, by which the respondent herein was granted two months' time to vacate the premises and hand over possession to the appellant herein. C D

3. By the impugned order, the High Court after making reference to the decision of this Court in Rakesh Wadhawan and Others v. Jagdamba Industrial Corporation and Others (2002) 5 SCC 440 Bench insisted to apply the consequence of proviso to Section 13(2)(i) of the Act and extend an opportunity for clearing the arrears found due in the final adjudication of the rent proceedings by the lower authorities. While applying the ratio laid down by this Court in the above referred to decision, the learned Judge passed the following order: E F

"The tenant shall be liable to pay all the rent payable from December, 1994 till date and the tenant shall give memo of statement giving the particulars of the amount due and the amounts actually paid or deposited which is a legal tender. The said calculation shall be rendered within 30 days from the date of receipt of copy of the order and delivered to the landlord within the time stipulated above. The petition for eviction is dismissed G H

A *on the statement made that the entire amount has been*
deposited. If there is any default of arrears in the manner
canvassed by the landlord, the landlord shall be at
liberty to approach this Court for appropriate
modification of this order. The order of eviction passed
B *by the court below is set aside and the civil revision is*
allowed.”

4. To briefly reiterate the background of the proceedings, the appellant initiated the rent proceedings for ejection on the ground of arrears of rent right from December, 1994. while
C dealing with the proceedings a question arose whether the rent was at the rate of Rs.3,500/- (Rupees Three thousand five hundred) per month as claimed by the appellant or Rs. 1,500/-(Rupees One thousand five hundred) per month as claimed by the respondent herein. Based on the evidence led
D before the Rent Controller, a categoric finding came to be made by the Rent Controller that the rent agreed between the parties was only Rs.1,500/-(Rupees One thousand five hundred) per month. Ultimately, learned Rent Controller held that the appellant failed to prove her case and consequently
E dismissed the petition.

5. Before the Appellate Authority, the issue relating to the rate of rent, though was raised, it was concluded by the Appellate Authority also by holding that the rate of rent was only Rs. 1,500/-(Rupees One thousand five hundred) per month.
F However, as regards the default in the payment of rent was concerned, the Appellate Authority held that the respondent was in arrears from January, 1995 to 30th November, 1995.

6. In the above stated background the respondent preferred a revision before the High Court in Civil Revision
G No. 4510 of 2000 which came to be ultimately disposed of by the impugned order on 17th September, 2012. The decision referred to by the learned Judge interpreting the proviso to Section 13(2)(i) of the Act, came to be rendered in Rakesh Wadhawan's case (supra). Para 29 and 30 of the said
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decision laid down the effect of the proviso to Section 13(2)(i) of the Act. It would be useful to refer to the said paragraphs for proper appreciation of this case as well. Paras 29 and 30 are as under:-

The result of the discussion may be summarized. Under proviso to Section 13(2)(i), the Controller having discharged his obligation of passing an order under the proviso, either suo moto or on his attention in this regard being invited by either of the parties, it will be for the tenant to pay or tender the amount provisionally assessed by the Controller on the first date of hearing of the application for ejection. On compliance, the Controller would proceed to adjudicate upon the controversy arising for decision by reference to pleadings of the parties and by holding a summary enquiry for the purpose. Such adjudication shall be provisional and subject to the later final adjudication. The finding that may ultimately be arrived at by the Controller may be one of the following-three. The Controller may hold that the quantum of arrears as determined finally is (i) the same as was found to be due and payable under the provisional order, (ii) is less than what was determined by the provisional order, or (iii) is more than the one what was held to be due and payable by the provisional order. In the first case the Rent Controller has simply to pass an order terminating the proceedings. In the second case the Controller may direct the amount deposited in excess by the tenant to be refunded to him. In the third case it would not serve the purpose of the Act if the tenant was held liable to be evicted forthwith as is the view taken by the Punjab High Court in the case of Dial Chand (supra). The Controller directing the eviction of the tenant may pass a conditional order affording the tenant one opportunity of and a reasonable time for depositing the amount of

A deficit failing which he shall be liable to be evicted. This power in the Rent Controller can be spelled out from the use of the word "may" in the expression". The Controller may make an order directing the tenant to put the landlord in possession", as also from the principle of equity and fair play that the tenant having complied with provisional order passed by the Controller should not be made to suffer if the finding arrived at by the Controller at the termination of the proceedings be different from the one recorded in the provisional order. While exercising the discretion to make a conditional order of eviction affording the tenant an opportunity of purging himself of the default the Controller may also take into consideration the conduct of the tenant whether he has even after the passing of the provisional order continued to pay or tender the rent to the landlord during the pendency of the proceedings as a relevant factor governing the exercise of his discretion. Such a course would be beneficial to the landlord too as he would be saved from the trouble of filing a civil suit for recovery of rent which fell due during the pendency of proceedings for eviction before the Controller.

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 cost 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. A

3. Of necessity, 'the date of first hearing of the application' would mean the date falling after the date of such order by Controller. B

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. C

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. D
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6. While exercising discretion for affording the tenant an opportunity of making good the deficit, one 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." G

7. When we apply the said decision to the facts of this case, it will have to be held that the learned Judge was justified H

A in reaching the conclusion that after the finding of the Appellate Authority as regards the defaultable arrears that was found due and payable by the respondent for the period between January, 1995 and 30th November, 1995, the invocation of the proviso to Section 13(2)(i) was necessitated. The learned
B Judge after holding so held that the respondent was liable to pay all the rents from December, 1994 onwards till the date of the order and that he was bound to furnish the memo of statement giving the particulars of the amounts due and the amounts actually paid or deposited which was by way of a
C legal tender. The said direction was issued by the learned Judge based on the submission made on behalf of the respondent that entire arrears which was found due and payable by the respondent by the Appellate Authority was duly cleared even at the time when the Civil Revision Petition came to be entertained by the High Court of Punjab and Haryana
D and that the future rents were also paid regularly without any default.

8. However, the learned Judge prescribed a time limit of 30 days for making calculation of the arrears which was
E claimed to have been paid by the respondent from the date of the receipt of the copy of the impugned order by delivering a copy of such statement to the appellant. The learned Judge further gave liberty to the appellant to move the High Court in the event of the respondent's failure to satisfactorily disclose
F that the entire arrears as found due and payable by the respondent was not paid as claimed by the respondent.

9. In such circumstances, we find that the learned Judge was perfectly justified in applying the law laid down by this Court in the above referred to judgment. We also find that the rights
G of the appellant has been duly protected inasmuch as the event of failure of the respondent in not duly discharging his stand as regards the payment of defaultable arrears, consequence that would follow in not complying with the requirement of the proviso to Section 13(2)(i) as has been noted by the learned
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Judge was axiomatic. Therefore, while affirming the judgment of the learned Judge impugned in this appeal, we preserve the liberty granted by the learned Judge and it is for the respondent to comply with the direction as contained in paragraph 3 of the impugned judgment. In the event of the respondent's failure to do so, then it is always open to the appellant to exercise the liberty granted in her favour in the impugned judgment by approaching the High Court and seek for appropriate orders.

10. This appeal stands disposed of on the above terms.

Rajendra Prasad

Appeal disposed of.