

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).1644/2007
(From the judgement and order dated 13/11/2006 in CR No. 5973/2006 and order dated 30.11.2006 in RA No. 109/2006 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

MADAN LAL Petitioner(s)

VERSUS

RAJ KAUR Respondent(s)
(With prayer for interim relief and office report)

Date: 24/09/2007 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE H.S. BEDI

For Petitioner(s) Mr. P.S. Patwalia, Sr.Adv.
Mr. A. Narayan, Adv.
Mr. Ashok Mathur,Adv.

For Respondent(s) Mr.V.K. Jhanji,Sr.Adv.
Ms. Jyoti Mendiratta,Adv.

UPON hearing counsel the Court made the following
ORDER

Leave granted.

The appeal is allowed in terms of the signed order. There shall, however, be no order as to costs.

[Meenu Sethi]
Court Master

[Pushap Lata Bhardwaj]
Court Master

Signed order is placed on the file
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.4494 /2007
(@ SLP(C) No.1644/2007)

Madan Lal ...Appellant

Versus

Raj Kaur ...Respondent

ORDER

Leave granted.

Heard learned counsel for the parties.

The question which arises for consideration in this appeal arising out of order dated 13.11.2006 in C.R.No. 5973/2006 and order dated 30.11.2006 in Review Application No.109-CII/2006 passed by the learned Single Judge of the Punjab and Haryana High Court, is as to whether the appellant has deposited the rent in the Court of Rent

Controller in terms of Section 13(2)(i) of the East Punjab Rent Restriction Act, 1949 or not.

Indisputably, the respondent herein had filed two applications for eviction of the appellant herein from the tenanted premises. In the first application she, inter alia, alleged non payment of rent for the period from 1.7.1997 to 14.2.2000. The rate of rent is said to be Rs.3,000/- per month. The said application was filed on 14.2.2000. Although, the respondent claimed the stipulated monthly rent of Rs.3,000/-, according to the appellant the same was at Rs. 1,600/- per month.

However, it appears that another eviction petition was filed by her on 21.8.2001 alleging that appellant has been in arrears of rent @ Rs. 3,000/- per month excluding water and electricity charges for the period 1.9.1997 and onwards.

We may notice that by an order dated 6.10.2003, the Rent Controller directed as follows:

"..Admittedly, the rent petition between the same parties regarding the same premises is pending before the Court of Sh. Pushvinder Singh, but this present rent petition is for the subsequent period and not the period for which the rent petition is pending in the Court of Shri Pushvinder Singh, Rent Controller, Chandigarh so cause of action arose with the landlord in this rent petition is different than that of pending before the Court of Shri Pushvinder Singh RC, Chandigarh. Hence the application filed by respondent U/s 10 of CPC fails and the same is hereby dismissed. Now to come up on 20.10.2003 for filing the written statement."

As against the said order, a Revision Petition was filed and by an order dated 23.1.2004, it was directed as follows:

" After hearing the learned counsel for the petitioner, the order passed by the Rent Controller directing the petitioner to pay rent with effect from July 1, 1997 @ Rs.1600/- p.m. shall be after taking into consideration the rent tendered by the petitioner, as mentioned in para 9 of the grounds of revision petition. The petitioner shall pay the balance rent after deducting the rent so mentioned in para 9 of the revision petition. The petitioner may deposit the provisional rent within two months from today. However, such deposit shall abide the final order."

It, furthermore, appears that on or about 22.4.2005 the Rent Controller, Chandigarh directed as under:

" The above said order was passed on 21.1.2004 and till date the respondent-tenant has not tendered the rent as directed by Hon'ble High Court in terms of above order instead filed several applications which have already been disposed of by this Court. Till date the respondent/tenant has not tendered the rent as directed by the Hon'ble High Court, therefore, the petition filed by the petitioner is hereby allowed on the ground of non-payment of rent. The respondent is directed to vacate the tenanted premises within a period of two months from today. Memo of costs be prepared and file be consigned to the

record room".

An appeal challenging the above order was dismissed

by the Appellate Authority stating as follows:

" Concededly, the appellant has challenged the order of the learned Rent Controller, Chandigarh in C.R. No.406 of 2004 and on 23.1.2004, the Hon'ble High Court directed the appellant to pay the balance rent after deducting the rent so mentioned in para 9 of the revision petition. The appellant was also advised to deposit the provisional rent within two months from 23.1.2004, the date of order. A perusal of para 9 of ground of revision shows that the tenant has mentioned in this para that he has already tendered/deposited the rental w.e.f. 1.5.2000 to 31.10.2003, amounting to Rs. 10,250/- in the Court of Shri Pushvinder Singh on 4.10.2000, from 1.11.2000 to 31.8.2003 amounting to Rs. 59,200/- in the court of Ms. Poonam Ratti on 16.8.2003, from 1.9.2003 to 30.9.2005 amounting to Rs. 1600/- in the Court of Ms. Poonam Ratti on 9.9.2003 and from 1.10.2003 to 31.10.2003 amount to Rs. 1600/- in the Court of Ms. Poonam Ratti on 9.10.2003. In the rent application, the landlady has demanded the arrears of rent w.e.f. 1.7.1997. Even if the assertion of the appellant is admitted to be correct that he has deposited the arrears of rent in different court w.e.f. 1.5.2000 to 31.10.2003, but he has miserably failed to prove the payment of arrears of rent w.e.f. 1.7.1997 to 30.4.2000. Though it is the case of the tenant that he is not in arrears of rent w.e.f. 1.7.97 but there is nothing on the record to show that he has paid the arrears of rent of the demised premises w.e.f. 1.7.97 to 30.4.2000. It is also pertinent to mention here that the above said order was passed by the Hon'ble High Court ex-parte on the petition filed by the tenant himself. However, the tenant-appellant has himself failed to comply with the above said order passed in the revision petition filed by him. As such, the learned Rent Controller, Chandigarh has correctly passed the ejectment order against the tenant-appellant on the ground of non-payment of arrears of rent and finding of the learned Rent Controller, that the tenant has not tendered the rent as directed by the Hon'ble High Court, therefore, the petition filed by the applicant is hereby allowed on the ground of non payment of rent, is affirmed in this appeal."

By reason of the impugned judgment, the High Court, inter alia, held as under:

"The learned Counsel for the petitioner thereafter contends the provisional rent could not be taken to be final assessment as the parties are yet to lead evidence and thereafter that order of ejectment can be passed. This contention of the learned counsel for the petitioner is also liable to be rejected. The petitioner was bound to pay the provisional rent as assessed and thereafter contest the case on merit. However in case the tenant fails to pay the provisional rent as assessed within the stipulated period the Rent Controller is bound to pass an order of ejectment as no further proceedings are required to be taken in that case. Faced with this situation the learned counsel raised the contention that the tenant has already paid rent from 1.7.1997 to 30.4.2000. This contention is also totally misconceived as this Court was pleased to issue directions to the petitioner to deposit provisional rent as assessed from 1.7.1997 to 30.4.2000. The said order has attained finality and, therefore, it is not open to the petitioner to arise this contention at this stage."

From the proceeding dated 5.2.2007, it appears that this Court issued notice on the basis of the submissions made by the learned senior counsel appearing on behalf of the appellant that the High Court passed the impugned order on a wrong premise inasmuch as whereas

the first application was in respect of default in payment of rent for the period 1st July, 1997 to February, 2000 onwards; the second application was in respect of default in payment of rent for the period March 2000 onwards. The impugned order has been passed in the second application. Despite the fact that rent had been already deposited in terms of order passed by the Rent Controller for the period from July 1, 1997 to February 2000, the same had not been taken into consideration by the Courts below.

Mr. Jhanji, learned senior counsel appearing on behalf of the respondent, however, would submit that the appellant had not deposited the rent @ Rs. 3,000/- p.m.. In response to the said contention, Mr. Patwalia, learned senior counsel appearing for the appellant drew our attention to the fact that an application had been filed in the second application for stay of the proceedings under Section 10 of the Code of Civil Procedure wherein the respondent herself contended that the cause of action in the second petition had been for the subsequent period meaning thereby the period subsequent to 14.2.2000.

According to the learned counsel, rent had been deposited in both the abovementioned proceedings, particularly, for the aforementioned period and in that view of the matter, the question of adduction of evidence in regard to deposit of rent relating to first period having not arisen in the second application, an error of record has been committed by the Courts below in relation thereto.

Having heard learned counsel for the parties, we are of the opinion that in the aforementioned situation interest of justice would be subserved if both the eviction applications filed by the respondent herein are directed to be clubbed together and the Rent Controller is directed to consider the matter relating to deposit of rent in both the matters in order to enable it to ascertain as to whether the appellant has indeed complied with the order of the Rent Controller which has been affirmed by the higher Courts as noticed hereinbefore, or not.

Keeping in view the facts and circumstances of this case, we direct the Rent Controller to dispose of the matter as expeditiously as possible and preferably within a period of two months from the date of

receipt of copy of this order.

The impugned judgment is set aside. The appeal is allowed.

There shall, however, be no order as to costs.

.....J.

[S.B. SINHA]

.....J.

[H.S. BEDI]

New Delhi,
September 24, 2007