

decision regarding surplus area is finalized and the surplus area already found is set aside, a resettled tenant's status automatically would come to an end. The proceedings for *de novo* determination of surplus area has to commence and in such an eventuality even a resettled tenant is not a necessary party. The Division Bench went as far as to state that even a notice to resettled tenants for redetermination of surplus area is unnecessary.

8. All the above writ petitions would therefore require to be allowed and the decisions taken by the authorities under the Punjab Tenancy Act by dismissals of actions for ejectment are set aside and the petitioners are entitled to secure possession of properties from the hands of the resettled tenants.

9. All the writ petitions are allowed with costs against the State assessed at Rs.5,000/- in each case.

Petitions allowed.

PUNJAB AND HARYANA HIGH COURT

Before: G.S. Sandhawalia, J.

C.R. No.99 of 2012 (O&M)

Decided on: 27.04.2012

Parshotam Das Goel

Petitioner

Versus

Rajender Jain

Respondent

Present: Mr. S.S. Swaitch & Mr.Satish Goel, Advocates, for the petitioner.
Mr.Yowan Sharma, Advocate, for Mr. Vikram Singh, Advocate, for the respondent.

Haryana Urban (Control of Rent and Eviction) Act, 1973 (11 of 1973), Section 13(2)(i) – Arrears of rent -- Assessment of provisional rent – Application for re-assessment of rent by tenant – Maintainability of – Once the provisional rent has been assessed, the tenant is bound to pay the same and if he does not, then ejectment has to follow – Rent Controller does not have jurisdiction to extend the time for tendering the provisional rent -- Order passed by the Rent Controller for re-assessment of rent is not sustainable.

(Para 2-6)

Cases referred:

1. Sanjay Sharma & another v. Ajmer Singh & another, 2007(3) Civil Court Cases (P&H) 47.
2. Rakesh Wadhawan v. M/s Jagdamba Industrial Corporation, AIR 2002 SC 2004.
3. Vinod Kumar v. Prem Lata, 2003(2) RCR (Rent) 329.
4. Rajinder Lal v. Gopal Krishan, 2006(2) PLR 124.
5. Rajan @ Raj Kumar v. Rakesh Kumar, 2010(1) L.A.R. 662 (P&H DB) = 2010(1) RCR (Rent) 386.

6. Arun Jain v. Kulbir Kaur, 2011(3) RCR (Civil) 92.
7. Mrs. Birender Khullar v. Maninder Singh, 2011(2) Civil Court Cases 438.

JUDGMENT

G.S. SANDHAWALIA J. –

1. The present revision petition filed by the landlord is directed against the order dated 28.11.2011 of re-assessment of provisional rent by the Rent Controller, Safidon.

2. The petitioner-landlord filed an application under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for brevity, the 'Act') for eviction of the respondent-tenant from a single storey shop along with chabutra situated near Muthoot Cooperative Bank, Canal Bridge, Safidon City, Distt. Jind, the boundaries of which were given in the headnote of the ejectment application.

3. The Rent Controller, Safidon, vide order dated 31.10.2011 after taking into consideration the assertions of the landlord that the rate of rent was Rs.9000/- per month and the tenant was in arrears of rent since February, 2009 and the defence of the tenant was that the rate of rent was Rs.4000/- per month and the dues were only for the last 2 months, came to the conclusion that the rate of rent was Rs.5000/- per month and the tenant was in dues from February, 2009 up to September, 2011 and thus assessed a sum of Rs.1,55,000/- as provisional rent till date along with interest @ 9% per annum and cost of Rs.1000/-. Accordingly, the respondent-tenant was directed to tender the arrears of rent along with interest on or before 14.11.2011. Instead of tendering the rent, the tenant filed an application dated 14.11.2011 for re-assessment of the provisional rent on the ground that it was very excessive from the prevailing market rate and the shops of Municipal Committee, Safidon were new ones and rate of rent was only Rs.2700/- per month. Therefore, the provisional rent was liable to be reassessed and accordingly, it was pleaded that there was no proof of rent and the landlord had initially pleaded that the rent was Rs.9000/- per month but evidence of Rs.2700/- per month had been produced and the applicant was only earning Rs.6000/- per month and was not in condition to pay the excessive rent, and therefore, the rent should be re-assessed. The application was contested and it was contended that it was not maintainable and there was no provision under the Act for re-assessment and the Court had decided the provisional rent at Rs.5000/- per month after taking into consideration background of Municipal Committee, house tax etc. and various instances of tenants paying Rs.3000/- to 3500/- per month was given in the reply and that the Municipal Committee has taken Rs.3 lacs as security, and therefore, the rate of provisional rent was rightly assessed. The Rent Controller, Safidon, on the said application, came to the conclusion that in order to do justice between the parties, which had inherent powers to re-assess and placed reliance upon **Sanjay Sharma & another Vs. Ajmer Singh & another 2007 (3) Civil Court Cases (P & H) 47** re-assessed the rent at Rs.2800/- per month payable with effect from February, 2009 upto date with interest @ 9% and costs of Rs.1000/- and directed to tender the re-assessed rent by 01.12.2011 vide impugned order dated 28.11.2011 which is now the

subject matter of challenge.

4. Counsel for the petitioner-landlord has contended that the Rent Controller had no jurisdiction to pass such an order and once the rent had not been tendered, ejectment had to follow automatically and the Rent Controller had no power to re-assess and grant extension to the tenant. On the other hand, counsel for the tenant has contended that the Rent Controller had rightly exercised jurisdiction and it had inherent powers and reliance was placed upon **Sanjay Sharma's** case (supra). The Hon'ble Supreme Court in **Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation AIR 2002 SC 2004** has laid down these principles wherein it was held that after the provisional order of assessment of rent, the tenant must pay on the first date of hearing after passing of such an order and on the failure of the tenant in doing so, nothing remains to be done and eviction should follow and there can be variance only at the final stage by the Rent Controller. This view was further reiterated in **Vinod Kumar Vs. Prem Lata 2003 (2) RCR (Rent) 329**. There was a divergent view expressed by this Court in **Rajinder Lal Vs. Gopal Krishan 2006 (2) PLR 124**. However, a Division Bench judgment of this Court in **Rajan @ Raj Kumar Vs. Rakesh Kumar 2010(1) L.A.R. 662 (P&H DB) = 2010 (1) RCR (Rent) 386** has held that once the provisional rent has been assessed and the tenant objects to pay the arrears of provisional rent, then the order of ejectment has to be passed as nothing else remains. It was also laid down that the tenant, if he was dissatisfied with the order passed by the Rent Controller, he has a liberty to challenge the same before the date fixed before a higher forum. Relevant part of the judgment reads as under:

"13. This Court is of the view that the ratio of judgment in Rakesh Wadhawan's case (supra) leave no matter 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. The judgment relied upon by the Rent Controller in **Sanjay Sharma's** case pertains to re-assessment made on an application filed by the landlord and in that fact and circumstance, this Court has held that the Tribunal has a

right to do justice and it could re-assess the provisional rent after taking into consideration the observations made in **Rakesh Wadhawan's** case (supra) which was relied upon by the tenant. Thus, the said judgment has no applicability in the facts and circumstances of the present case. The principle which is basically scaled out by the above judgment is that once the provisional rent has been assessed, the tenant is bound to pay the same and if he does not, then ejectment has to follow. This Court in **Arun Jain Vs. Kulbir Kaur 2011 (3) RCR (Civil) 92** has also taken a similar view whereby the Rent Controller had extended the time for tendering the provisionally assessed rent. Accordingly, this Court came to the opinion that the Rent Controller does not have jurisdiction to extend the time for tendering the provisional rent and dismissed the revision petition whereby such relief was being claimed. A similar view has also been taken by this Court in **Mrs. Birender Khullar Vs. Maninder Singh 2011 (2) Civil Court Cases 438**.

6. Keeping in view the said settled principles, revision petition is allowed and the order dated 28.11.2011 passed by the Rent Controller, Safidon which is not sustainable, is set aside. The Rent Controller, Safidon is directed to proceed further in accordance with law.

7. Accordingly, the present revision petition is disposed of.

Petition allowed.

PUNJAB AND HARYANA HIGH COURT

Before: Ram Chand Gupta, J.

Civil Revision No.7327 of 2011(O&M)

Decided on: 29.11.2011

Mr.Pramil Khandelwal

Petitioner

Versus

Mr.Shivraj Puri and another

Respondents

Present: Mr. Amit Jain, Advocate for the petitioner.

Court Fees Act, 1870 (VII of 1870), Section 7 – Constitution of India, Article 227 – Ad-valorem fees – Supervisory jurisdiction of High Court -- Court is to see as to what relief actually being claimed by plaintiff in the suit and in order to claim that relief, as to what Court fee is required to be affixed -- Trial Court comes to conclusion that the suit is in fact for specific performance of agreement and order to affix ad-valorem court fees – It cannot be said that any illegality or material irregularity has been committed by learned trial Court or that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by High Court – Moreover, supervisory jurisdiction is not available to be exercised for indulging in re-appreciation or evaluation of evidence or correcting the errors for drawing inference like a Court of appeal.

In view of the above proposition, this Court is to see as to what relief actually being claimed by plaintiff in the suit and in order to claim that relief, as to what Court fee is required to be affixed. It has been rightly observed by learned trial Court on the facts of the present case that the present suit is in fact for specific performance of agreement executed between the present petitioner and respondent-defendant no.1.