

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Case: C. Rev. No. 55/2006

Date: 21.02.2009

Sudershan Kumar Khajuria Vs. Hari Krishan Gandotra

Coram:

Hon'ble Mr. Justice Virender Singh, Judge.

Appearing counsel:

For petitioner(s) : Mr. K. L. Sharma, Advocate.

For respondent(s) : Mr. N. A. Choudhary, Advocate.

Petitioner is a tenant of respondent. He is facing eviction proceedings in the Court of learned 1st Additional Munsiff (Forest Magistrate) Jammu. Vide impugned order dated 28.04.2006 (Annexure-C), his defence was struck off as he had not deposited the arrears of rent as directed by the concerned Court and affirmed by the High Court. Being aggrieved of the said order, he has filed the instant revision petition, in which respondent-landlord was put to motion. Pursuant to notice Mr. N. A. Choudhary has put in appearance on his behalf. Record of the trial Court has also been summoned.

I have heard Mr. K. L. Sharma, learned counsel for the petitioner and Mr. N. A. Choudhary, learned counsel representing the respondent. Relevant material from the lower Court has also been perused by me.

Mr. Sharma at the very outset submits that the petitioner has already paid Rs.80,000/- as arrears of rent upto March, 2008 and is ready to make the payment even upto date, but at the rate of Rs.2,500/- per month. He then submits that the respondent-landlord is claiming Rs.3,000/- per month whereas in this regard

there is no agreement between the parties. According to Mr. Sharma, since the petitioner has joined the issue with regard to the actual monthly rent, this issue can be decided only by leading evidence from either side and, therefore, he should not be asked to deposit Rs.3000/- per month.

Mr. Sharma then submits that, no doubt the petitioner could not deposit the arrears of rent on time and moved an application before the Court concerned for extension of time, but the same was rejected without assigning any cogent reason whereas the petitioner had projected his bona fides for not depositing the arrears of rent as directed. He also moved an application for bringing on record the fact that he had already paid Rs.70,000/- to the respondent-landlord in terms of Court order and had also attached the demand draft to the tune of Rs.10,000/-, but the said application also stands dismissed by a separate order of even date (28.04.2006) the date on which the defence of the petitioner was struck off. He has drawn the attention of this Court to the said order also.

Mr. Sharma then submits that in the instant petition also the petitioner has averred that he had taken loan from financial institution for running his factory in which he has suffered great losses. The said unit has now been declared as sick unit. He has not only faced financial crisis, his brother had also fallen ill and remained under long treatment and ultimately died. For his treatment also the petitioner had spent a huge amount and after his death he is supporting the family of his brother. The wife of the petitioner is also stated to be ill, on whose treatment lot of amount has been incurred. She is still getting the treatment. According to learned counsel, all these factors can be considered sympathetically

in favour of the petitioner for granting him, yet, another opportunity. He further submits that even otherwise the expression 'shall' in Section 12(4) of the Houses and Shops Rent Control Act, 1966 (hereinafter for short referred to as 'the Act') is to be construed as directory and not mandatory and the Court can always enlarge the time if the amount of rent is not deposited within the period fixed by the Court. However, the exercise of such discretion would depend upon the satisfaction of each case on the basis of particular facts and the cause shown by the tenant, which prevented him from depositing the rent within the fixed period and the present case is one in which the petitioner has projected his bona fides and, therefore, the discretionary tilt may be extended to him by giving him the extension of reasonable time as the Court deems it proper. In support of his contentions, Mr. Sharma relies upon a judgment of this Court rendered in '**Chaman Lal and others vs. Sarda Devi and others'**

2005 (2) JKJ 42 (HC).

Refuting the arguments advanced by Mr. Sharma, Mr. Choudhary submits that the petitioner cannot be benefited for his own wrongs. He contends that earlier also the respondent-landlord had filed an application under Section 12(4) of the Act directing the petitioner to pay the arrears of rent amounting to Rs.1,23,000/- from September, 1999 to January, 2003 and also to deposit the rent @ Rs.3000/- per month on monthly basis. That application was strongly contested by the petitioner in which the issue of monthly rent was also adjudicated upon and ultimately the learned Court vide order dated 29.01.2005 allowed the application of the landlord-respondent and directed the petitioner to pay arrears of rent to the tune of Rs.1,23,000/- from September, 1999 to January,

2003 within a period of fifteen days from the date of order. He was also directed to pay monthly rent at the rate of Rs.3,000/- by 15th of every month by way of depositing the said amount with the Nazir of the Court or to the respondent-landlord with a rider that in case the order is not complied with, his defence shall be struck out. The petitioner filed a revision petition bearing 37/2005 against the same order, which also came to be dismissed by this Court vide order dated 25.10.2005. Since the order of the learned trial Court was initially stayed by the High Court, the petitioner prayed for some time to deposit the rent and this Court allowed him to deposit the arrears of rent within a period of one month from the date of decision i.e., 25.10.2005 and Rs.3000/- on monthly basis. He has not deposited any amount before the Court till date and had been lingering on the matter on one pretext or the other. This is the reason that ultimately his application for extension of time was dismissed vide order dated 19.01.2006 as is indicated in the impugned order itself and ultimately on account of that failure on his part, his defence has been struck off. The learned counsel submits that the conduct of the petitioner in the present set of circumstances does not call for any discretionary relief on the grounds projected by him.

On a specific query put to Mr. Sharma as to whether he is ready to deposit the entire rent due from him upto date and also the monthly rent @ Rs.3000/- as held by the trial Court and upheld by the High Court, so that a fresh calculation can be made in this regard, he after getting the instructions has refused to agree to it.

In my view, the petitioner is on a very slippery footing even for the discretionary relief of this Court may be in the light of the difficulties averred and projected by him at the Bar. So far as fixing

of amount of rent is concerned, the petitioner cannot re-agitate this point at this stage as it already stands fixed at the rate of Rs.3,000/- per month by the original Court and also upheld by the High Court in the revision petition filed by him. He is, therefore, bound to pay the rent at the rate of Rs.3,000/- per month. Admittedly, he is in the arrears of rent as is the case of the petitioner himself. The other admitted position before me is that after the dismissal of the revision petition, the petitioner sought some time for depositing the arrears of rent and this Court acceded to his request and granted some period. The amount was still not deposited within that stipulated period as is admitted position before me. He did not even deposit the amount thereafter also and ultimately sought extension of time by moving a formal application, which stood dismissed on 19.01.2006 as is clear from the impugned order. He did not choose to file any revision against that order and slept over the matter. Ultimately, when his defence was struck off on 28.04.2006, he woke up from deep slumber and prays for discretionary sympathetic tilt for extension of time through the instant petition that too as per his choice as he is not agreeing to deposit the arrears of rent in one go in terms of the earlier order of this Court. His conduct is staring at him and deprives him of any discretionary relief. The judgment cited by Mr. Sharma, in my view, would not come at his rescue as it is distinguishable on facts. The petitioner is a defaulter throughout and wants to take advantage of his own wrongs. He rather loses the sympathy of this Court even on compassionate grounds for any discretionary relief as prayed for. Therefore, the petitioner has not been able to come out with any cause, much less sufficient cause,

which prevented him from depositing the rent within the period fixed by the Court.

Viewed the case on hand in the light of the aforesaid facts, the petitioner has no legs to stand in the instant revision petition, resultantly, the same is dismissed.

Order dated 15.05.2006, staying the proceedings before the trial Court, while disposing of the C.M.P. No.56/2006 shall also stand vacated.

The learned trial Court is requested to proceed with the case expeditiously as it is already delayed. Parties to appear before the Court on 02.03.2009. Trial Court record be sent back before that date.

**(Virender Singh)
Judge**

Jammu
21.02.2009
Narinder'