

VINOD KUMAR

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v.

PREM LATA

AUGUST 19, 2003

[R.C. LAHOTI, SHIVARAJ V. PATIL AND BRIJESH KUMAR, JJ.]

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Rent Control and Eviction:

Haryana Urban (Control of Rent and Eviction) Act, 1973—Section 13(2)(i)—Default in payment of rent—Eviction—By Courts below—Supreme Court sent back the case to rent controller for hearing afresh in accordance with law laid down in Rakesh Wadhawan's case—Review petition—Challenging correctness of law in Rakesh Wadhawan's case on the ground that the earlier decisions not brought to the notice of Court while deciding the case and that Wadhawan's case being under Punjab Act was not applicable to the case under Haryana Act—Held, Rakesh Wadhawan's case correctly lays down the law—The interpretation in that case applies for interpreting the provision under Haryana Act—East Punjab Urban Rent and Restriction Act, 1949—Section 13(2)(i).

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Proceedings for eviction were initiated under Section 13(2)(i) of Haryana Urban (Control of Rent and Eviction) Act, 1973 which was decided by the Courts below in favour of the landlord on finding that the tenant had not paid the rent due, in respect of the rented premises. In appeal by special leave this Court set aside the judgments of High Court and the authorities below and directed the case to be sent back to Rent Controller for hearing and deciding afresh in accordance with the law laid down in *Rakesh Wadhawan and Ors. v. Jagdamba Industrial Corporation and Ors.*, [2002] 5 SCC 440, wherein it was held that the expression “assessed by the Controller” as occurring in the proviso to Section 13(2)(i) of the Act qualifies all the three things, i.e. (i) the arrears of rent, (ii) interest at 6% per annum on such arrears, and (iii) the cost of application, which are included in the preceding part of the sentence; and that order of the Rent Controller making an assessment shall, in the scheme of the section, be an interim or provisional order which would be based on a summary enquiry leading to the formation of a prima facie opinion based on the consideration of relevant material brought on record by the parties, which may consist of the documents, affidavits and pleadings which

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- A would enable the Controller to make a provisional and yet judicial assessment, and place it on record by way of an order to satisfy the spirit of the proviso.

- B In Review Petition the petitioner questioned the correctness of the law laid down in Rakesh Wadhawan's case on the ground that two earlier decisions of this Court i.e. *M/s. Rubber House v. M/s. Excelsior Needle Industries Pvt. Ltd.*, [1989] 2 SCC 413 and *Rajinder Kumar Joshi v. Veena Rani*, [1990] 4 SCC 526 were not brought to the notice of this Court while deciding Rakesh Wadhawan's case; and that there is a distinction between the provisions of Punjab Urban Rent and Restriction Act, 1949 and the Haryana Act, as the phraseology employed in the two acts is different and, therefore, the decision in Rakesh Wadhawan's case which is under the Punjab Act has no relevance and applicability in so far as the provisions of the Haryana Act are concerned.

Dismissing the petition, the Court

- D HELD: 1. On the plain language of the Haryana Urban (Control of Rent and Eviction) Act, 1973, the expression "to be calculated by the Controller" qualifies both the arrears of rent and interest. The succeeding expression "such costs of the application" is again qualified by the expression "if any, as may be allowed by the Controller". Thus the provision itself casts an obligation on the Controller to calculate and determine by its order (i) the arrears of rent; (ii) the interest; and (iii) the costs, quantifying the amount which should be paid or tendered by the tenant (at that stage) to comply with the proviso. The words 'calculated' and 'allowed' occurring in the proviso imply a duty cast on the Controller which has to be discharged judicially. Such determination will be only for the purpose of securing compliance by the tenant on 'the first date of hearing' succeeding the date of order by the Controller, which order would be based on a summary enquiry and would obviously be subject to final determination by the Controller at the end of the regular full-fledged enquiry. Thus it is not correct to say that the provision does not contemplate an enquiry, nor is it correct to say that such an interpretation would result in the holding of a full fledged enquiry on the first date of hearing, which is not possible. [809-G-H; 810-A, B, C]

- G 2. It is true that the decisions in *M/s. Rubber House* and *Rajinder Kumar Joshi* were not brought to the notice of the Court deciding *Rakesh Wadhawan's* case and it would have been better if that would have been done. However, the present petition has given the Court the opportunity of examining afresh the merits of the three decisions under consideration and also for making a comparative study of the provisions contained in the Punjab Act and the

Haryana Act insofar as the ground for eviction on account of default in payment or tendering the arrears of rent by the tenant is concerned. *M/s. Rubber House's* case and *Rajinder Kumar Joshi's* case do not place a correct interpretation upon the provisions. The decision in *Rakesh Wadhawan's* case correctly lays down the law and is re-affirmed. The interpretation placed by this Court in *Rakesh Wadhawan's* case on Section 13(2)(i) with the proviso in the Punjab Act applies for interpreting Section 13(2)(i) and the proviso as contained in the Haryana Act. [811-C-E]

Rakesh Wadhawan and Ors. v. Jagdamba Industrial Corporation and Ors., [2002] 5 SCC 440, affirmed.

M/s. Rubber House v. M/s. Excelsior Needle Industries Pvt. Ltd. [1989] 2 SCC 413; *Rajinder Kumar Joshi v. Veena Rani* [1990] 4 SCC 526, overruled.

CIVIL APPELLATE JURISDICTION : Review Petition (C) No. 436 of 2003 in Civil Appeal No. 8444 of 2002.

From the Judgment and Order dated 7.2.2002 of the Punjab and Haryana High Court in C.R. No. 860 of 2002.

R.P. Gupta, Parmanand Gaur and Jamshed Bey for the Petitioner/Appellant.

Prem Malhotra and Rishi Malhotra for the Respondent.

The Judgment of the Court was delivered by

R.C. LAHOTI, J. Proceedings for eviction were initiated under clause (i) of sub-section (2) of Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (hereinafter referred to as the 'Haryana Act' for short) and culminated in favour of the landlord, directing the tenant to be evicted from the premises in his occupation, on the finding that he had not paid or tendered the rent due from him in respect of the rented premises. The tenant preferred Appeal by Special Leave. By judgment dated 16.12.2002 this Court allowed the tenant's appeal, set aside the judgments of the High Court and the authorities below and directed the case to be sent back to the Controller for hearing and decision afresh in accordance with the law laid down by this Court in *Rakesh Wadhawan and Ors. v. Jagdamba Industrial Corporation and Ors.*, [2002] 5 SCC 440. This petition for review of the judgment dated 16.12.2002 seeks to question the correctness of the law laid down by this Court in *Rakesh Wadhawan's* case.

A We have heard the learned counsel for both the parties. The principal submission, rather the only one, made by the learned senior counsel for the Review-petitioner is that two earlier decisions of this Court, namely, *M/s. Rubber House v. M/s. Excelsior Needle Industries Pvt. Ltd.*, [1989] 2 SCC 413 and *Rajinder Kumar Joshi v. Veena Rani*, [1990] 4 SCC 526, were not brought to the notice of this Court while deciding *Rakesh Wadhawan's* case and, therefore, *Rakesh Wadhawan's* case does not lay down the correct law. All the three decisions, namely, the decisions in *Rakesh Wadhawan's* case (supra), *M/s. Rubber House's* case (supra) and *Rajinder Kumar Joshi's* case (supra), are two-Judges Bench decisions and, therefore, the matter has been placed for consideration by a three-Judges Bench.

C In *Rakesh Wadhawan's* case, the decree for eviction was passed under Section 13(2)(i) of the East Punjab Urban Rent & Restriction Act, 1949 (hereinafter referred to as 'the Punjab Act' for short). It is, therefore, necessary to consider the relevant provisions of the two Acts. The same are extracted and re-produced hereunder:

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PUNJAB ACT

HARYANA ACT

S.13. Eviction of tenants.-

S.13. EVICTION OF TENANTS.-

E (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, or in pursuance of an order made under section 13 of the Punjab Urban Rent Restriction Act, 1949 as subsequently amended.

(1) A tenant in possession of a building or a rented land shall not be evicted there-from except in accordance with the provisions of this Section.

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G (2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing

2. A landlord who seeks to evict his tenant shall apply to the Controller, for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing

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cause against the applicant, is satisfied- A
 cause against the application, is satisfied -

(i) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable: B

(i) that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable: C

Provided that if the tenant on the first hearing of the applications for ejectment after due service pays or tenders the arrears of rent and interest at 6% per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid; D

Provided that if the tenant, within a period of fifteen days of the first hearing of the application for ejectment after due service, pays or tenders the arrears of rent and interest, to be calculated by the Controller, at eight percentum per annum on such arrears together with such costs of the application, if any as may be allowed by the controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid: E

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Provided further that the landlord shall not be entitled to claim arrears of rent for a period exceeding three years immediately preceding the date of application under the provision of this Act. F

the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application: G

the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application: H

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| A | Provided that the Controller may given the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate." | B | Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate." |
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- The learned senior counsel for the Review-petitioner tried to draw a distinction between the provisions of the Punjab Act and the Haryana Act, submitting that the phraseology employed in the two Acts is different, and, therefore, the decision in *Rakesh Wadhawan's* case which is under the Punjab Act has no relevance and applicability insofar as the provisions of the Haryana Act are concerned. We find no merit in the submission so made. Except for a difference in the manner of constructing the sentences there is no substantial difference in effect between the two provisions and the crux of the issue emerging for decision under the relevant provisions of the two Acts remains the same.

- In *Rakesh Wadhawan's* case, this Court noticed a lacuna in the drafting of Section 13(2)(i) of the Punjab Act and resolved the same by applying well-settled principles of statutory interpretation so as to cull out the legislative intent and then held that the expression "assessed by the Controller" as occurring in the proviso to Section 13(2)(i) of the Act qualifies all the three things, i.e., (i) the arrears of rent, (ii) interest at 6% per annum on such arrears, and (iii) the cost of application, which are included in the preceding part of the sentence. The order of assessment made by the Controller is not an assessment of costs alone; it is an assessment of the arrears and interest as well. The Court further held that such order of the Rent Controller making an assessment shall, in the scheme of the section, be an interim or provisional order which would be based on a summary enquiry leading to the formation of a prima facie opinion based on the consideration of relevant material brought on record by the parties, which may consist of the documents, affidavits and pleadings which would enable the Controller to make a provisional and yet judicial assessment, and place it on record by way of an order to satisfy the spirit of the proviso. Having said so, the Court explained the mechanism to be followed by the Controller in this regard and the meaning to be assigned to the expression "the first date of hearing" so as to make it practical and workable. Failing the interpretation adopted by the Court in *Rakesh Wadhawan's* case, the provision under consideration could have run

the risk of being struck down, because it would be unworkable and lead to uncertainty. The provision had remained on the statute book for more than 50 years but was creating practical difficulties in its working and applicability to different sets of facts. Such meaning has been placed on the language of the proviso to Section 13(2)(i) as would make it workable and sensible and would least offend the sense of justice. Care has been taken to protect the interests of both the landlord and the tenant. The interpretation protects the landlord from frivolous pleas raised by recalcitrant tenants and at the same time saves the tenants from undue hardship likely to be caused by unscrupulous landlords accusing the tenants of such default as may not exist.

In *M/s. Rubber House's* case (supra), the provisions of the Haryana Act came up for the consideration of the Court. Having scrutinized Section 13(2)(i) and the first proviso thereto, the Court held that there is no statutory duty cast on the Controller even in the first instance to determine and calculate the arrears of rent and the interest but, on the contrary, the proviso requires the tenant to pay or tender the actual arrears of rent within 15 days of the hearing of the application for ejectment after due service. The calculation by the Controller is confined only to calculating the interest at 8% per annum on such arrears together with the cost of the application. The argument advanced by the learned counsel for the tenant in that case that the proviso casts a statutory duty on the Controller to calculate and determine the arrears of rent as well as the interest to be paid by the tenant within a period of 15 days of the first hearing of the application for ejectment after due service was rejected by the Court on the reasoning that such an argument, if accepted, would result in the Rent Controller holding an enquiry at the first instance in every case and determining the arrears of rent even on the first date of hearing which is in the nature of things not possible without any evidence, nor is contemplated under the scheme of the Act. We find it difficult to agree with the above-said reasoning in *M/s. Rubber House's* case. On the plain language of the Haryana Act, the expression "to be calculated by the Controller" qualifies both the arrears of rent and interest. The succeeding expression "such costs of the application" is again qualified by the expression "if any, as may be allowed by the Controller". Thus the provision itself casts an obligation on the Controller to calculate and determine by its order (i) the arrears of rent; (ii) the interest; and (iii) the costs, quantifying the amount which should be paid or tendered by the tenant (at that stage) to comply with the proviso. The words 'calculated' and 'allowed' occurring in the proviso imply a duty cast on the Controller which has to be discharged judicially. Such determination will be only for the purpose of securing compliance by

- A the tenant on 'the first date of hearing' succeeding the date of order by the Controller, which order would be based on a summary enquiry and would obviously be subject to final determination by the Controller at the end of the regular full-fledged enquiry. Thus it is not correct to say that the provision does not contemplate an enquiry, nor is it correct to say that such an interpretation would result in the holding of a full-fledged enquiry on the first date of hearing, which is not possible.
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- In *M/s. Rubber House's* case, the Court further held that it is for the tenant to calculate the exact arrears of rent due and to pay or tender the same and if the tenant fails to do so, he is deemed not to have paid or made the valid tender of the rent. However, the case does not answer the question as to what would happen if the tenant, having paid or tendered the arrears of rent as per his own calculation, is found at the end of the enquiry to have made a wrong - if not a deliberately wrong - calculation of the arrears.
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- Rajinder Kumar Joshi's* case is under the Punjab Act. There also the Court had noticed a lacuna in the legislative drafting raising a contention worthy of serious consideration and the hardship to which a tenant may be put where the landlord makes a demand on the tenant for rent which is not due from him, as was found to have been done in that case. The Court was faced with a dilemma in adopting either interpretation. If the provisions of Section 13(2)(i) of the Act were to be so interpreted as to require the tenant to tender the rent as demanded (though the demand is exaggerated by reference to the rate of rent or the period of default) or to face the consequences of eviction from the rented premises, the provision would result in causing hardship to the tenant. On the other hand, to hold the requirement of the proviso to Section 13(2)(i) to tender the rent as meaning the tender of the rent as the tenant thinks he is in arrears of, would render nugatory the requirements of the said proviso. The Court felt the need for striking a balance between the two situations so as not to render the protection given by the Act to the tenant illusory, and at the same time not to deprive the landlord of his minimum legitimate expectation to be paid regularly the rent for the use and occupation of his premises. The solution which the Court provided was in the background of the facts of that case, and is hence a limited one. The Court said that if the rate of rent is not fixed or becomes the subject matter of dispute, the tenant may have resort to Section 4 of the Act and apply to the Controller to fix the fair rent failing which he must deposit the rent at the rate as demanded by the landlord. If there is any dispute as to the period of default, the tenant may deposit the rent which he thinks to be in arrears,
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but he must take the risk for doing so. If it is proved ultimately that the rent paid or tendered by him was less than what was due, he must face eviction. Such an interpretation gives an uncertainty to the litigation and does not take care of several situations which may emerge in a litigation other than the one as arose in that case before the Court. A

It is true that the decisions in *M/s. Rubber House* (supra) and *Rajinder Kumar Joshi* (supra) were not brought to the notice of the Court deciding *Rakesh Wadhawan's* case (supra) and it would have been better if that would have been done at the Bar. However, the present petition has given us the opportunity of examining afresh the merits of the three decisions under consideration and also for making a comparative study of the provisions contained in the Punjab Act and the Haryana Act insofar as the ground for eviction on account of default in payment or tendering the arrears of rent by the tenant is concerned. We are of the opinion that *M/s. Rubber House's* case and *Rajinder Kumar Joshi's* case do not place a correct interpretation upon the provisions. The decision in *Rakesh Wadhawan's* case correctly lays down the law and is re-affirmed. The interpretation placed by this Court in *Rakesh Wadhawan's* case on Section 13(2)(i) with the proviso in the Punjab Act applies for interpreting Section 13(2)(i) and the proviso as contained in the Haryana Act. B C D

The petition is held devoid of any merit and is dismissed. E

K.K.T.

Petition dismissed