
Before M.M. Kumar, J

M/S NIHAL SINGH MOTORS & OTHERS,—*Petitioners*

versus

SMT. SHAMA MALHOTRA & ANOTHER,—*Respondents*

C.R. No. 3462 of 2004

12th August, 2004

East Punjab Urban Rent Restriction Act, 1949—S. 13(2)(i)—Non-payment of rent—Ejectment petition—Assessment of rent—Rent Controller fixing date for payment of rent—On request Rent Controller granting adjournment to tenant to deposit the rent—Tenant failing to appear before the Court on the date fixed—Ejectment of the tenant ordered after striking off defence—No illegality by the Court below in striking off the defence—Defence of tenant struck off for non-compliance of Court's orders—Tenant not proceeded against ex parte—Order of Rent Controller holding the application under O.IX Rl. 13 CPC filed by tenant not maintainable also deserves to be upheld—Petitions liable to be dismissed.

Held, that the Rent Controller had drawn a provisional order of assessment of rent on 31st May, 2003. Thereafter the case was posted for 10th June, 2003 for depositing the rent by the tenant in accordance with the order dated 31st May, 2003. On 10th June, 2003, a request was made for grant of further time and the case was posted for depositing the arrears of rent for 24th July, 2003. The tenant failed to appear before the Rent Controller on that date and then their defence was struck off. As a result the ejectment of the tenant was ordered on 12th August, 2003. In fact when the tenant has requested for further time on 10th June, 2003 there was no necessity to grant any time till 24th August, 2003 as laid down by the Supreme Court in *Rakesh Wadhawan versus Jagadmba Industrial Corporation*, 2002(2)PLR 370 that on the failure of the tenant to comply with the provisional order of assessment of rent nothing remains to be done and an order for eviction must follow. The Rent Controller has even granted time by adjourning the case from 10th June, 2003 to 24th July, 2003. Therefore, there is no illegality committed by the Court below in passing the order dated 12th August, 2003.

(Para 14)

Further held, that the impugned order dated 14th June, 2003 passed by the Rent Controller dismissing the application of the tenant-petitioner for setting aside the order dated 12th August, 2003 does not suffer from any illegality because firstly no application under order IX Rule 13 of the Code was maintainable as the tenant-petitioner was not proceeded against *ex parte*. Moreover, it has been rightly observed by the Rent Controller that the order dated 12th August, 2003 cannot be challenged by the tenant-petitioner before the Executing Court.

(Para 15)

J.S. Chowdhary, Sr. Advocate with D.S. Chanan, *Advocate for the petitioners.*

Rohit Malhotra, *Advocate for the respondents.*

JUDGMENT

M.M. KUMAR, J.

(1) This order shall dispose of Civil Revision No. 3462 of 2004 (1st petition) and Civil Revision No. 3463 of 2004 (2nd petition) filed by the tenant-petitioners under Section 15 (5) of the East Punjab Urban Rent Restriction Act, 1949 (for brevity the Act). The challenge in both the petitions is to the two orders dated 14th June, 2004.

(2) In the 1st petition challenge is to order dated 14th June, 2004 passed by the Rent Controller, Ludhiana dismissing an application in which prayer was made for setting aside '*ex parte*' order dated 12th August, 2003. In the second petition, challenge is to order dated 14th June, 2004 passed by executing Court dismissing the objection of the tenant-petitioner-judgment debtor to the execution proceedings taken by the land-lady respondent. The land-lady respondent had filed an application for execution of order dated 12th August, 2003 passed by the Rent Controller for ejection of the tenant-petitioners from the demised shop.

Brief facts concerning the order of provisional rent and striking off defence.

(3) Brief facts necessary for deciding the controversy raised in the instant petitions are that the land-lady respondent filed an ejection petition registered as Civil Suit No. RA 25-A instituted on 20th March, 2003 under Section 13 of the Act before the Rent Controller,

Ludhiana. The ground for ejection pleaded in the ejection petition was non payment of rent in respect of period from 1st June, 2002 to 28th February, 2003. Notice of the application was issued to the tenant-petitioners and the case was posted for arguments to pass a provisional order of assessment on 31st May, 2003. On 31st May, 2003, the Rent Controller after hearing both the sides concluded that the land-lady respondent was entitled to recover rent from 1st June, 2002 to 28th February, 2003 @ Rs. 42,875 p.m. plus house tax of Rs. 6,431.25 p. plus interest @6 percent thereon and costs of Rs. 400. An amount of Rs. 20,223 already deposited in excess as per the orders passed by the Appellate Authority was to be adjusted. Thereafter the Rent Controller fixed 10th June, 2003 as the next date for payment of rent in accordance with the order dated 31st May, 2003 following the law laid down by the Supreme Court in the case of **Rakesh Wadhawan versus Jagadmba Industrial Corporation (1)**. However, on 10th June, 2003 the tenant-petitioner sought another adjournment for depositing the rent and the Rent Controller showing indulgence posted the case for depositing rent on 24th July, 2003 on which date the tenant-petitioner failed to appear on the pretext that Surinder Singh, Managing partner, was unwell. It is appropriate to mention that the tenant-petitioner in this case is a partnership firm under the name and style of M/s S. Nihal Singh Motors and all the three partners were impleaded as respondents besides the partnership firm. The Rent Controller felt dissatisfied and ordered striking of the defence of the tenant-petitioner. On 12th August, 2003, the Rent Controller passed an order of ejection following the dictum of law laid down in **Rakesh Wadhawan's case (Supra)**. The operative part of order dated 12th August, 2003 passed by the Rent Controller reads as under :—

“I have perused the evidence on record and the contentions raised by ld. counsel for the petitioner Shri K.D. Malhotra has appeared as PW1. He provided on record the power of attorney Ex.P.1, lease deted Ex. P.2, site plan Ex. P.3, order and judgment Ex. P.4 and electricity bills Ex. P.5. He has proved on record that from April, 2000 to March 2003, the respondent is to pay rent of Rs. 4,28,750 and house tax of Rs. 64,312. the interest on this amount is Rs. 17,724. Thus, the respondents are liable to pay an

amount of Rs. 5,10,786 to the petitioner. As per the judgment Ex. P.4, passed by Shri D.R. Arora, ld. Appellate Authority, the petitioner has to refund of Rs. 20,223 to the respondents. The respondent has to pay the remaining amount of Rs. 4,90,563.50 to the petitioner. The respondents have not paid the rent despite order passed by my ld. predecessor on 31st May, 2003. So, the defence of the respondents has already been struck off by this Court on 24th July, 2003. Hon'ble Apex Court of India has held in **Rakesh Wadhawan versus Jagdamba Industrial** 2002(370) PLR (SC) that on failure of the tenant to pay the arrears of rent, as per the assessment order passed by the Controller, nothing remains to be done. An order for eviction of the respondent shall follow. Therefore, the petition for ejection of the respondents from the demised premises is accepted with costs. The respondents are directed to vacate and deliver the vacant possession of the demised premises within two months from today onwards. Memo of costs be prepared accordingly. File be consigned to the record room."

(4) The tenant-petitioners filed an application for setting aside the order dated 12th August, 2003 whereby the defence was struck off by attaching two medical certificates dated 22nd July, 2003 and 15th August, 2003. The application was styled as "for setting aside the *ex parte* proceedings and *ex parte* order dated 12th August, 2003". However, it was factually an application for setting aside the order dated 12th August, 2003 on the various grounds which by no stretch of imagination was an *ex parte* order. The Rent Controller noticed that *ex-parte* proceeding against the tenant-petitioner was already set aside on 16th May, 2003 subject to payment of costs of Rs. 200 and thereafter on 31st May, 2003 the provisional assessment order of rent plus interest plus costs was passed. The Rent Controller also noticed the other facts, to which reference has already been made. It was pointed out that the tenant-petitioner was categorically warned on 10th June, 2003 that in case they did not pay the arrears of rent before 24th July, 2003 then it was to strike off their defence by passing appropriate orders. On 24th July, 2003, the tenant-petitioners "Made mockery of the order passed on 10th June, 2003 and did not come forward for payment

of rent as per the order dated 31st May, 2003” which led to the passing of the order striking off the defence of the tenant-petitioners on 24th July, 2003. Holding that there was no *ex parte* proceedings, the learned Rent Controller passed the impugned order dated 14th June, 2004, the operative part of which reads as under :—

“An application under Order 9 rule 13 CPC for setting aside the *ex parte* is only maintainable, if in case, the aggrieved party has been proceeded against *ex parte*, but in the instant case, the defence of the applicants, i.e. M/s Nihal Singh Motors and others has been struck off by this Court for non complying with the orders passed by it. The applicants have concealed this most relevant material facts from the notice of this Court, especially, only with an intention, to mislead this Court in the instant case. The respondents were not proceeded against *ex parte* within the meaning of under Order 9 Rule 8 CPC, rather their defence was struck off for non compliance of order passed by this court. Moreover, the ejectment petition in the instant case has been filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949. So, the provisions of CPC are not strictly applicable to the proposition in hand. So far as the maintainability of the present application is concerned, the Hon’ble Apex Court of India has held in **P. Kiran Kumar versus A.S. Khadar and others**. 2003(1) Apex Court Judgements 100 (SC), that after disposal of appeal on any ground other than withdrawal of appeal application under order 9 rule 13 CPC is not maintainable. So, after withdrawal of appeal the application under order 9 rule 13 CPC is maintainable. So, the case of **Madan Lal versus Sumita Devi** 2002(1) CCC 204 (P&H) is not relevant to the case in hand. Moreover, the judgements in these cases have been given pertaining to the matter under order 9 rule 13 CPC. As order 9 rule 13 CPC is not applicable to the proposition in hand, so the law laid down in these cases is not applicable. The applicants have not alleged that the decree is nullity, so they cannot challenge the validity of the ejectment order dated 12th August, 2003, before this executing Court.

On this point, the case of **Collector, Cuttack versus Indramani Sahoo and anr.** 1996(2) CCC 198 (Orissa), is fully applicable to the case in hand. The subject matter in this case is not covered under order 9 rule 13 CPC. So, there is no need of framing any issue in this case. Ultimately, I have arrived at the conclusion, that there is no merit in the application. Resultantly, the same is dismissed.”

(5) It is pertinent to mention that the tenant-petitioners filed an appeal against the order dated 12th August, 2003 before the Appellate Authority on 29th September, 2003. However, a prayer was made for dismissal of the appeal as withdrawn. Accordingly on 18th November, 2003 the Appellate Authority, Ludhiana passed an order dismissing the appeal as withdrawn.

Facts concerning determination of fair rent at the instance of the tenant-petitioner.

(6) The second set of facts which are necessary for deciding the controversy raised in these petitions are that the tenant-petitioner filed an application under Section 4 of the Act which was registered as RA No. 87 instituted on 11th June, 1997. After detailed examination on 22nd May, 2002, the Rent Controller, Ludhiana fixed the fair rent of the demised shop. The operative part of the order passed by the Rent Controller reads as under :—

“From above discussion on various issues the petition filed by petitioners stand disposed of by fixing fair rent of premises in dispute at Rs. 15,625 p.m. from the date of application and it is to be enhanced as per the terms and conditions mentioned in lease deed Ex.R1/A. There is no order as to costs. Memo of costs be prepared. File be consigned to record room.”

(7) The afore-mentioned order was challenged by the tenant-petitioners before the learned Appellate Authority with a prayer for setting aside the same. However, the learned Appellate Authority partially modified the order by holding that the increase envisaged in the rent note Ex.R1/A was not applicable and the fair

rent of the demised shop was Rs. 15,625. The observations of learned Appellate Authority in its order dated 10th September, 2003 reads as under :

“In view of the abovesaid facts, I am constrained to hold that the findings of the Rent Controller on issue No. 6, so far it relates to the enhancement of the rent in future in accordance with the terms and conditions mentioned in the rent note Ex.R1/A-is concerned, the same are beyond jurisdiction and unwarranted. Therefore, the same cannot sustain and as such are liable to be set aside. Accordingly, the findings on this issue are modified and the conclusion regarding the fixing of the fair rent of the demised shop as Rs. 15,625 on the basis of rent note Ex. R1/A is upheld, while the remaining observation is set aside.”

(8) It is pertinent to mention that the Appellate Authority allowed the land-lady-respondent to get the controversy with regard to the enhancement of future rent determined in accordance with law as is evident from para 14 of the order of the Appellate Authority which reads as under :

“While parting with the judgment, I feel it necessary to mention that since the fair rent in this case has not been fixed by the Rent Controller in accordance with the provisions of Section 4(2)(a) & (b) of the Act and rather it is based upon the case law cited in 1984 CIJ (Civil and Criminal) 79, 1981 (2) RCR 614 and 1988(2) RCR 263 (*supra*), the provisions of Section 5 of the Act will not be applicable and the parties will be at liberty to get the controversy, regarding enhancement of future rent, determined in accordance with law.”

(9) When the land-lady respondent filed an application for execution of the order dated 12th August, 2003 for the ejectment of the tenant-petitioners, the tenant-petitioners raised various objections. The objections filed by the tenant-petitioners were rejected by the Rent Controller on 14th June, 2004 by recording a separate order. The operative part of the order reads as under :

“On critical examination of contentions raised by the ld. counsel for the parties, I have found that my predecessor passed order on 31st May, 2003 assessing fair/provisional

rent that was to be paid by the applicant. This court provided due opportunity to the applicants/JDs/objectors to comply with said orders and deposit the arrears of rent but they declined to comply with the orders passed by this Court. Ultimately, defence of the JDs was struck off,—*vide* order on 24th July, 2003. Consequently, ejection order was passed on 12th August, 2003 against the objector in light of law laid down by the Apex Court of India in **Rakesh Wadhawan versus Jagdamba Industrial** 2002(370) PLR SC. So there is no point on which issues are to be framed calling for evidence of objectors/DH. The Jds. have not paid the rent as per assessment orders. Now they have come forward with false and frivolous objections that the execution of the ejection order dated 12th August, 2003 should be stayed. Our own Hon'ble High Court has held in **Chain Singh versus Mohan Singh** 2000(1) CCC 651 (P&H) that the Court can summarily reject the frivolous objections raised with an intention to delay the execution proceedings. This Court cannot go behind the decree, so it is to be executed as it is. On this point, the case of **Vasudev Dhanjibhai Modi versus Rajhbhai Abdul Rehman and others** AIR 1970 SC and 2001(2) RCR (civil) page 763 are fully applicable. Therefore, I have arrived at the conclusion that the objections have been raised only with an ulterior motive to delay the execution proceedings. Resultantly, objections are dismissed.”

(10) Shri J.S. Chaudhary, learned Senior Counsel for the petitioners has argued that the order of the Rent Controller dated 31st May, 2003 fixing the rate of rent at Rs. 42,875 p.m. *plus* house tax *plus* interest and costs has become unsustainable in law after the fair rent was fixed by the Id. Appellate Authority in its order dated 10th September, 2003. According to the learned counsel, the provisional order of rent, dated 31st May, 2003 should be deemed to be have been appropriately modified or a fresh order should have been passed for depositing the rent in accordance with the order dated 10th September, 2003 of the Id. Appellate Authority determining the fair rent. The learned counsel has maintained that it is well settled that no order could be passed fixing the rate of rent over and above the rent fixed

by the Rent Controller/Appellate Authority in accordance with the provisions of Section 4 of the Act. The learned counsel has maintained that the tenant-petitioner has in its hand even today a bank draft of Rs. 4,37,000 which is the rent payable to the tenant-petitioner in accordance with the fair rent fixed by the Appellate Authority,—*vide* order, dated 10th September, 2003. In support of his submission, the learned counsel has placed reliance on a Division Bench judgment of this Court in the case of **Harbhilas Rai Bansal versus State of Punjab and another (2)**. The learned counsel has also argued that the provisions of the Act should be construed to the benefit of the tenant rather than the landlord as the basic object of the provisions is to protect the interests of the tenant.

(11) Shri Rohit Malhotra, learned counsel for the land-lady respondent has argued that the tenant-petitioners have adopted delaying tactics for depositing the rent in accordance with the provisional order of assessment, dated 31st May, 2003 passed by the Rent Controller. Learned counsel has maintained that the order, dated 31st May, 2003 was passed by keeping in view order concerning fair rent passed under Section 4 of the Act by the Rent Controller dated 22nd May, 2002 as it existed on 31st May, 2003. According to the learned counsel, the Rent Controller has shows indulgence to the tenant-petitioners as 10th June, 2003 date fixed for making payment of rent in accordance with the provisional order of assesment of rent, dated 31st May, 2003. On the request of the tenant-petitioners, the case was still adjourned and they were granted about one and half months time to deposit the rent, and the case was fixed for 24th July, 2003. He has also relied upon the judgment of the Supreme Court in **Rakesh Wadhawan's case** (supra) to argue that if the tenant-petitioner was aggrieved by the order of provisional assessment of rent dated 31st May, 2003 passed by the Rent Controller then the only course open to him was to deposit the rent and then contest the proceedings before the Rent Controller. The learned counsel has emphasised that he could not have defied the order and waited for the decision of his appeal before the Appellate Authority which was eventually decided on 10th September, 2003 much after the passing of the provisional order of assessment dated 31st May, 2003. The learned counsel has also pointed

out that the tenant-petitioner has not paid even a single penny either in accordance with the order dated 31st May, 2003 or in accordance with the order, dated 11th September, 2003 passed by the Appellate Authority fixing the fair rent as per the provisions of Section 4 of the Act. On the contrary the stand of the tenant-petitioners before the Rent Controller was that the managing partner Surinder Singh was unwell and on that account it was unable to attend to the hearing for payment of the rent. According to the learned counsel the provisional order of assessment of rent, dated 31st May, 2003 has already merged in the order dated 12th August, 2003 evicting the tenant-petitioners from the demised shop and it has attained finality as it has not been successfully challenged at any forum. The order dated 14th June, 2003 has been passed by the Rent Controller on the application by the tenant-petitioners on which prayer was made for setting aside the order dated 12th August, 2003 which has been styled as an application for "setting aside *ex parte* proceedings and *ex parte* order, dated 12th August, 2003".

(12) After hearing the learned counsel for the parties at length, I am of the considered view that this petition does not merit admission and is liable to be dismissed. According to Section 13(2)(i) of the Act non payment of rent is a ground for ejection of a tenant. The afore-mentioned provision was interpreted by the Supreme Court in **Rakesh Wadhawan's case** (*supra*) and it has been held by their Lordships that the Rent Controller is under an obligation to make an assessment of arrears of rent, interest on such arrears and the cost of the application. It has to then quantify by way of an interim order the amount which the tenant must pay or tender. The Rent Controller is further under an obligation to fix a date for payment of arrears after the passing of provisional order determining the arrears of rent. If the tenant fails to comply with the order then nothing more is required to be done and ejection of the tenant must follow. The Supreme Court in **Rakesh Wadhawan's case** (*supra*) after detailed examination of the case law has laid down the following principles :—

"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 proceedings 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 Rent 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 or assessment by the Controller so as to satisfy the requirement of the proviso.
- (3) Of necessity, the date of first hearing of the application would mean the date falling after the date of such order by Controller.
- (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.
- (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 deficient amount/failing which alone he shall be liable to be evicted. Compliance shall save him from eviction.

-
- (6) While exercising discretion for affording the tenant an opportunity of making good the deficient, 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.

The view of the law so taken by us advances the object sought to be achieved by the legislation, serves best the interests of landlord and tenant both, removes uncertainty in litigation and obscurity in drafting of the provision and also accords with the principles of justice and equity. Even if, it is an innovation, it is in the field of procedural law, without affecting the substantive rights and obligations of the landlord and the tenant and such innovation is permissible on the basis of authority and supported by principles of justice, good sense and reason. We have not touched the substantive rights of landlord and tenant and are feeling satisfied with a do little in the field of procedure so as to effectuate the purpose of enactment”.

(13) It is further appropriate to mention that the judgment in **Rakesh Wadhawan's case** (*supra*) was re-considered by a Three-Judge Bench in the case of **Vinod Kumar versus Prem Lata** (3) and the view taken by the Supreme Court in **Rakesh Wadhawan's case** (*supra*) has been reiterated. The contrary view taken in **Rubber House versus Excelsior Needle Industries (P)** (4) and **Rajinder Kumar Joshi versus Veena Rani** (5), has been over-ruled.

(14) When the facts of the present case are examined in the light of the principles laid down in **Rakesh Wadhawan's case** (*supra*) then it becomes evident that the Rent Controller had drawn a provisional order of assessment of rent on 31st May, 2003. Thereafter the case was posted for 10th June, 2003 for depositing the rent by the tenant-petitioner in accordance with the order dated 31st May, 2003. On 10th June, 2003, a request was made for grant of further time and the case was posted for depositing the arrears of rent for 24th July, 2003. The tenant-petitioner failed to appear before the Rent

(3) 2003 (11) S.C.C. 397

(4) (1989) 2 S.C.C. 413

(5) (1990) 4 S.C.C. 526

Controller on that date and then their defence was struck off. As a result the ejection of the tenant-petitioner was ordered on 12th August, 2003. The Rent Controller has minutely followed the schedule and principles laid down by the Supreme Court in **Rakesh Wadhawan's case** (*supra*). In fact when the tenant-petitioner has requested for further time on 10th June, 2003 there was no necessity to grant any time till 24th July, 2003 because the judgment in **Rakesh Wadhawan's case** in para 30(4) (*supra*) states that on the failure of the tenant to comply with the provisional order of assessment of rent nothing remains to be done and an order for eviction must follow. The Rent Controller has even granted time by adjourning the case from 10th June, 2003 to 24th July, 2003. Therefore, there is no illegality committed by the Court below in passing the order dated 12th August, 2003.

(15) In view of the above, the impugned order dated 14th June, 2003 passed by the Rent Controller dismissing the application of the tenant-petitioner for setting aside the order dated 12th August, 2003 does not suffer from any illegality because firstly no application under Order IX Rule 13 of the Code was maintainable as the tenant-petitioners were not proceeded against *ex parte*. Moreover, it has been rightly observed by the Rent Controller that the order dated 12th August, 2003 cannot be challenged by the tenant-petitioner before the Executing Court. The view taken by the Rent Controller is absolutely consistent with the principles laid down by the Supreme Court in **Rakesh Wadhawan's case** (*supra*) and **Vinod Kumar's case** (*supra*).

(16) The other order passed by the executing Court also deserves to be upheld as the same has been passed in accordance with the view taken by the Supreme Court in the afore-mentioned two judgements in the cases of **Rakesh Wadhawan's and Vinod Kumar's case** (*supra*).

(17) It has been argued by Mr. J.S. Chaudhary, the learned counsel for the tenant-petitioner that the order dated 31st May, 2003 fixing the rate of rent and the arrears of rent, house tax, interest and costs became illegal because the fair rent under Section 4 of the Act was fixed by the Appellate Authority by partially modifying the order dated 22nd May, 2002. The afore-mentioned argument cannot be accepted because the order dated 31st May, 2003 clearly shows that fair rent order passed by the Rent Controller on 22nd May, 2002 under Section 4 of the Act was taken into consideration when the order

dated 31st May, 2003 was passed. It is pertinent to mention that the tenant-petitioner has not tendered any rent before the Rent Controller by contesting the order dated 31st May, 2003. Infact he filed an appeal against the order dated 12th August, 2003 which was withdrawn on 18th November, 2003. Therefore, the tenant-petitioner was under an obligation to comply with the order dated 31st May, 2003 and should have contested the claim made by the land-lady respondent if after final adjudication any amount in excess deposited by them was at variance with the provisional or interim order then according to the principles laid down in para 30(5) of **Rakesh Wadhawan's case** (supra), the Rent Controller **might** have directed the refund of the amount. If the amount deposited by them is found to be short or deficient then the Rent Controller might have passed a contitional order directing them to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficient amount failing which alonn he was liable to be evicted. The compliance of the order would have saved them from eviction. Such being clear position in law subsequent variation in determination of the fair rent by the Appellate Authority on 10th September, 2003 would not result into affording another opportunity to the tenant-petitioners for depositing the rent enabling them to save their eviction. The Division Bench of this Court in **Harbilas Bansal's case** (supra) on which reliance has been placed by the learned counsel does not come to the rescue of the tenant-petitioner because it does not lay down that the provisional order of assessment passed by the Rent Controller could be violated and still the tenant-petitioners could continue to enjoy the possession of a tenanted premises. The readiness and willingness to pay the rent now in accordance with the fair rent determined by the Appellate Authority in its order dated 10th September, 2003 can also not be accepted because already two opportunities have been granted by the Rent Controller on 10th June, 2003 and 24th July, 2003. The tenant-petitioners have failed to deposit the arrears of rent in accordance with the provisional order of assessment dated 31st May, 2003. Therefore, there is no merit in the argument raised by the learned counsel for the tenant-petitioners.

(18) For the reasons stated above, both these petitions fail and are dismissed.

R.N.R.