

N.K.S.

*Before R. N. Mittal and M. M. Punchhi, JJ.*

AJIT KUMAR,—Petitioner.

*versus*

JAGIR CHAND,—Respondent.

Civil Revision No. 146 of 1982.

February 21, 1984.

*Haryana Urban (Control of Rent and Eviction) Act (XI of 1973)—  
Section 13(2)(i) proviso, 20 and 22—Deposit of arrears of rent, costs*

*and interest determined under the Act—Whether can be made before the Rent Controller—Tenant depositing excess rent as determined by the Rent Controller—Acceptance of excess rent—Whether makes landlord guilty under section 22.*

*Held*, that from a reading of the proviso to section 13(2) (i) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, it is clear that it does not provide to whom the tender or payment of the arrears of rent etc. is to be made. It implies that the tender or payment can be made to the landlord or his agent, or the Rent Controller for payment to the landlord. If the provision is read in that way, it will promote the purpose of the Act. The matter may be examined from another point of view. It is that the tenant has been given fifteen days time from the date of the first hearing to pay or tender the arrears of rent, interest and costs. In case the landlord and his agent are not residing at the place where the property is situated or if both of them are residing there but they deliberately conceal themselves or absent themselves for a period of 15 days or more, it will become impossible for the tenant to pay or tender the rent within the said period. Therefore, by a clever device the landlord can easily obtain ejection order and thus frustrate the purpose of the Act. That could not have been the intention of the Legislature. It is evident from the language of the proviso that if the tenant tenders the rent to the landlord he complies with its requirements and it is not necessary for him to deposit the rent. As such the deposit could be made by the tenant of the arrears of rent, costs and interest with the Rent Controller under the provisions of the Act.

(Paras 8 and 9).

*Held*, that if the landlord takes any advance amount exceeding one month's rent, he is liable to be punished under section 22 of the Act. Sub-section (3) of section 22 provides that no Court shall take cognizance of an offence under this section except upon a complaint in writing filed with the sanction of the Rent Controller, or a report in writing of such facts made by the Controller. From a reading of the section, it is clear that the cognizance of the offence can be taken either on a complaint by the Controller or on a complaint with the sanction of the Rent Controller. Therefore, before a complaint is filed, the Rent Controller has to find out whether *prima facie* there was *mens rea* on the part of the landlord to charge excess rent from the tenant. If he is of the opinion that there was no *mens rea* on the part of the landlord to charge excess rent, he will withhold such a permission. Where, therefore, the rent has been deposited after the determination made by the Rent Controller there could be no *mens rea* on the part of the landlord to charge excess rent and as such the landlord cannot be held guilty under section 22 of the Act.

(Para 15).

B. S. Gupta, Advocate, for the Petitioner.

O. P. Sharma, Advocate, for the Respondent.

## JUDGMENT

Rajendra Nath Mittal, J.

(1) This is a landlord's revision petition against the order of the Appellate Authority, Hissar, dated 28th September, 1981.

(2) Briefly, the facts are that Jagir Chand respondent took the property in dispute on rent at the rate of Rs. 40 per mensem plus house-tax from the petitioner. The landlord filed an application on 24th November, 1979, for ejection of the respondent on the ground that he had not paid the rent from 1st April, 1978, upto date. Notice of the application was given to the respondent for 24th January, 1980, on which date he appeared before the Rent Controller with a counsel. The Rent Controller assessed Rs. 30 as costs of the proceedings and Rs. 74 as interest and directed the respondent to tender or make deposit of arrears of rent etc. within the statutory period. The case was adjourned to 6th February, 1980. On that date, the written statement was not ready and the arrears of rent etc. were not paid. Therefore, the case was adjourned to 7th February, 1980.

(3) On the adjourned date, the respondent did not appear and, therefore, he was ordered to be proceeded against *ex parte*. The case was adjourned to 31st March, 1980, for recording *ex parte* evidence. On the same day, the respondent filed an application at 4.32 P.M. stating that he took that the case had been adjourned to 8th February, 1980, for tendering rent etc. He received an information from his counsel about the case, and thereafter reached the Court. He was prepared to tender the rent, interest and costs etc. as ordered by the Court. His absence from the Court was not intentional. Therefore, he prayed that the *ex parte* order passed on the same day be set aside.

(4) The Rent Controller issued notice to the counsel for the petitioner for 12th February, 1980. It may be mentioned here that ultimately the *ex parte* proceedings were ordered to be set aside on 13th March, 1980. On 8th February, 1980, the respondent moved the Rent Controller that he be allowed to deposit the amount of Rs. 984, which included rent from 1st April, 1978 to 30th November, 1979, interest Rs. 74 and costs Rs. 30. The Rent Controller allowed him to deposit the said amount in the after-noon. It is alleged that when he reached the Treasury, it had already closed and, therefore, he

could not deposit the rent on that date. 9th and 10th of February, 1980, were holidays and on 11th February, 1980, he deposited the amount.

(5) The Rent Controller held that the arrears of rent etc. were not tendered/deposited within the prescribed time. Consequently, he ordered ejection of the respondent. The respondent went up in appeal before the Appellate Authority, Hissar, which reversed the decision of the Rent Controller and held that the deposit was made within time. Consequently, the appeal was accepted and the application of the landlord for ejection was dismissed. The landlord has come up in revision to this Court.

(6) The learned Judge, at the time of motion hearing, admitted it to D.B. on a contention having been raised by the counsel that there was no procedure laid down in the Act for deposit of arrears of rent in the Government treasury. That is how the matter has been listed before us.

(7) The main question that arises for determination is as to whether the deposit could be made by the respondent of the arrears of rent, costs and interest with the Rent Controller under the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the Act). The learned counsel for the petitioner contends that there is no provision of deposit of the arrears of rent in the Haryana Act and, therefore, no amount can be deposited thereunder. However, Rule 11 of the Haryana Urban (Control of Rent and Eviction) Rules, 1976, framed under the Haryana Act, provides that rent, interest and costs assessed by the Rent Controller which are tendered by the tenant under section 13 of the Act but refused by the landlord shall be deposited by the tenant in the Court of the Rent Controller. According to him, the rule provides that the deposit of rent can be made only if the rent is tendered by the tenant and not accepted by the landlord and not otherwise.

(8) We have given due consideration to the argument but regret our inability to accept the same. In order to determine the matter, it will be relevant to refer to the proviso to section 13(2)(i) which reads as follows:—

“Provided that if tenant, within a period of fifteen days of the first hearing of the application for ejection after due service, pays or tenders the arrears of rent and interest,

to be calculated by the Controller, at eight per centum 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."

From a reading of the proviso, it is clear that it does not provide to whom the tender or payment of the arrears of rent etc. is to be made. It implies that the tender or payment can be made to the landlord or his agent, or the Rent Controller for payment to the landlord. If the provision is read in that way, it will promote the purpose of the Act. The matter may be examined from another point of view. It is that the tenant has been given fifteen days time from the date of the first hearing to pay or tender the arrears of rent, interest and costs. In case the landlord and his agent are not residing at the place where the property is situated or if both of them are residing there but they deliberately conceal themselves or absent themselves for a period of 15 days or more, it will become impossible for the tenant to pay or tender the rent within the said period. Therefore, by a clever device the landlord can easily obtain ejectment order and thus frustrate the purpose of the Act. That could not have been the intention of the Legislature. Rule 11, in our view, was not framed to circumscribe the powers of the Rent Controller, but to confer on him an additional power. It is evident from the language of the proviso that if the tenant tenders the rent to the landlord he complies with its requirements and it is not necessary for him to deposit the rent. In some cases the landlord does not accept the rent outside the Court. If the tenant, in order to save himself from litigation wants to deposit the Rent, the Rent Controller has been empowered under the rule to allow him to do so. The rule, therefore, comes into operation in a different situation..

(9) In the East Punjab Urban Rent Restriction Act, 1949, (hereinafter called the Punjab Act), there is an analogous proviso. However, under the proviso, the arrears of rent, costs and interest are required to be tendered or paid on the first date of hearing. That causes a great hardship and that is why the tenant has been given by the Haryana Act fifteen days time for that purpose. The view which we have taken above finds support from a decision of this Court in *Mukh Ram v. Siri Ram* (1). In that case, on the

(1) 1959 P.L.R. 561.

first date of hearing, it was represented by the tenant that he had not been supplied the copy of the application for ejection. Consequently, the case was adjourned for the next date. Thereafter, the tenant on the same day presented an application to the Rent Controller for permission to deposit the arrears of rent, interest and costs of the application, which was allowed by the Rent Controller subject to his own responsibility. The tenant deposited the same in the treasury on the following day. One of the arguments raised was that the amount was neither tendered nor paid to the landlord and, therefore, the deposit could not be treated to be a valid tender. The learned Chief Justice repelled the contention. The following observations may be read with advantage:—

“The law does not require that the amount of rent should be tendered to the landlord himself or to the counsel of the landlord. It declares merely that the tender should be made on the first hearing of the case. I am of the opinion that the tender would be perfectly valid in the eye of law if it is made either to the landlord or his counsel or agent, or to the Controller for payment to the landlord.”

(10) The learned counsel for the petitioner made a reference to *Shri Vidya Prachar Trust v. Basant Ram* (2). That case, however, is distinguishable. Therein, the tenant had made deposits prior to the filing of the application for ejection, under the Punjab Relief of Indebtedness Act, in the Court of the Senior Subordinate Judge. That deposit was not treated to be proper mainly for the reason that the said Act was not intended to operate between the landlords and tenants nor was the Court of the Senior Subordinate Judge, in which the amount was deposited, created into a clearing house for rent.

(11) Mr. Gupta also made a reference to *Ganpat Rai Goyal v. Vas Dev Ahuja* (3). The facts of that case are different. The tenant in pursuance of the notice of the Rent Controller appeared on 22nd March, 1976, on which date the arrears of rent, interest and costs were assessed and the case was adjourned to 5th April, 1976, for tender of the amount assessed to the landlord. The Rent Controller was on leave on 5th April, 1976. The amount assessed was

---

(2) 1969 R.C.J. 380.

(3) 1980(2) R.C.J. 509.

tendered on 20th July, 1976, when the Rent Controller joined after availing his leave. On that date, a period of three months and twenty-nine days had elapsed from the first date of hearing. In those circumstances, it was held that it was the statutory requirement that the arrears were to be paid or tendered within fifteen days after the assessment was made by the Rent Controller. As the tender was not made within time, therefore, it was illegal and the tenant was liable to eviction. In our view, Mr. Gupta cannot get any benefit from the aforesaid two cases.

(12) The Supreme Court also in *Sheo Narain v. Sher Singh*, (4) expressed the opinion that the amount of rent can be deposited before the Rent Controller. The case was under the Punjab Act. In that case, the tenant had deposited rent with interest and costs, after institution of the application for ejection but before the date of first hearing, with the permission of the Rent Controller. Fazal Ali, J., speaking for the Court, observed thus:—

“There is no magical formula or any prescribed manner in which rent can be deposited by the tenant with the landlord. The rent can be deposited by placing the money in the hands of the landlord which would amount to actual tender. *The second mode of payment is to deposit the amount in the court where a case is pending in such a manner as to make the amount available to the landlord without any hitch or hindrance whenever he wants it.*” (*Emphasis supplied by italics*).

The provisions of the Haryana Act are more beneficial for the tenant as there fifteen days time from the first date of hearing, is given to him for payment of the rent, whereas under the Punjab Act, the rent is to be paid on the first date of hearing. Accordingly, we are of the view that the deposit could be made by the respondent of the arrears of rent, costs and interest with the Rent Controller under the provisions of the Haryana Act.

(13) The next question that arises for determination is whether the arrears of rent, costs and interest were deposited within the statutory period of fifteen days. Mr. Gupta has vehemently urged that the amount was deposited after the expiry of fifteen days and, therefore, it is not covered by the proviso. We are not impressed

## Ajit Kumar v. Jagir Chand (R. N. Mittal, J).

with this submission as well. The respondent submitted the challan to the Rent Controller for obtaining his permission to deposit the amount in the treasury on 8th February, 1980, that is, on the fifteenth day from the date of first hearing. The challan was returned to him with due permission in the afternoon on the same day. When he went to the treasury for depositing the amount it was already closed. Thereafter, he could deposit the amount at the earliest on 11th February, 1980, as 9th and 10th of February, 1980, were holidays. It is evident that he was delayed in depositing the amount for no fault of his. It is common knowledge that the Rent Controllers do take some time in granting such permission. Without the permission of the Rent Controller, the amount could not be deposited by him. A liberal interpretation should be given to the provisions of the Act. Therefore, we are of the view that the rent, interest and costs will be deemed to have been deposited within the statutory period of fifteen days. In the above view, we are fortified by the observations of the learned Chief Justice in *Mukh Ram's case* (supra). In that case too, the rent could not be deposited on the first date of hearing, though the tenant had obtained the permission of the Court for doing so, for the reason that the treasury had closed. The amount was deposited the following day. The learned Chief Justice held that a liberal construction ought to be given to the proviso so as not to invalidate a payment made in substantial compliance therewith.

(14) Before parting with the judgment, another point which has been raised by Mr. Gupta may be noticed. It is that the rent due on the first date of hearing was Rs. 800 but the landlord deposited an amount of Rs. 880 on account of rent. He submits that under the provisions of the Haryana Act, the landlord cannot accept advance rent in excess of one month. Thus, according to him, the tender was not proper.

(15) We have duly considered the argument but do not find substance in it. It is true that in the Haryana Act, it is provided that the landlord cannot take any advance amount exceeding one month's rent and in case he does so, he is liable to be punished under section 22 of the said Act. Sub-section (3) of section 22 provides that no Court shall take cognizance of an offence under this section except upon a complaint in writing filed with the sanction of the Rent Controller, or a report in writing of such facts made by the Controller. From a reading of the section, it is clear that the cognizance of the offence can be taken either on a complaint by the Controller or on a

complaint with the sanction of the Rent Controller. Therefore, before a complaint is filed, the Rent Controller has to find out whether *prima facie* there was *mens rea* on the part of the landlord to charge excess rent, from the tenant. If he is of the opinion that there was no *mens rea* on the part of the landlord to charge excess rent, he will withhold such a permission. As already stated above, the money in the present case was deposited with the permission of the Rent Controller. Therefore, it cannot be held that there was *mens rea* on the part of the landlord to charge excess rent and he is guilty under section 22.

(16) The matter may be looked into from another point of view. The rent was deposited on 7th/11th February, 1980. On that date, the rent for the month of December, 1979, had also become due. Thus, the total period for which the rent had become due was 21 months. According to the contract between the parties, the tenant was liable to pay rent at the rate of Rs. 40 per month plus house-tax. The tenant is always apprehensive while depositing the rent that if he deposits a little less rent, he may be liable to ejection. Therefore, the tenant might have deemed it proper to deposit a little more rent so that the deposit could cover the house-tax. It is also evident from the above facts, that only one month's rent was in excess. So, looking the matter from any point of view, it cannot be held that respondent contravened the provisions of Section 22 in depositing the aforesaid amount. Mr. Gupta made a reference to the observations of Hidayatullah, C.J., in *Vidya Prachar Trust's case* (supra). The deposit in the case was not only of rent due but, also of future rent. It was observed by the learned Chief Justice that under section 19 read with section 6 of the Punjab Act, a landlord was liable to be sent to jail if he recovered advance rent beyond one month and, therefore, the deposit made by the tenant was not proper. We have already observed above that the amount in that case was not deposited under the Punjab Act but under a different statute. In this situation, the above observations are of no assistance to Mr. Gupta. Therefore, we reject his submission.

(17) For the aforesaid reasons, we do not find any merit in the revision petition and dismiss the same with costs. Counsel fees Rs. 300.