

Before S. C. Mital, J.

MADHU SUDAN LAL AND OTHERS,—Petitioners.

versus

SADHU RAM AND OTHERS,—Respondents.

Civil Revision No. 1897 of 1978

September 21, 1983.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 15(5)—Limitation Act (XXXVI of 1963)—Section 29(2)—Rent Act not specifying period of limitation for filing revision petition in the High Court—Revision petition filed after expiry of 90 days from the date of order of the Appellate Authority—Such petition—Whether could be dismissed as time barred—Section 29(2)—Whether applicable to revision petitions under the Rent Act.

Held, that section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 or any other section of the Act does not prescribe any period of limitation for filing a revision petition in the High Court and as such section 29(2) of the Limitation Act, 1963 which provides for two essential ingredients i.e. (i) the special or local law should prescribe a period of limitation and (ii) the said period of limitation should be different from the period prescribed by the Schedule, is not applicable. Unless the Rent Act prescribes limitation for filing a revision petition, for the applicability of section 29(2) of the Limitation Act, it cannot be said that the period of limitation prescribed is different from the period prescribed by the Schedule to the said Act. The Rent Act, though prescribing limitation for filing an appeal against the order of the Rent Controller, does not prescribe any period of limitation for filing the revision petition and, therefore, such a petition filed beyond the period of 90 days could not be dismissed as barred by limitation.

(Para 2)

Petition under Section 15(5) of the Rent Restriction Act for revision of the Order of the Court of Shri J. S. Chatha, Appellate Authority, Jullundur dated 8th May, 1978 reversing that of the Order of the Court of Sh. M. L. Malhotra, Rent Controller, Nawanshar dated 21st March, 1977 accepting the appeal and setting aside the order of the learned Rent Controller and dismissing the petition with costs.

H. L. Sarin, Sr. Advocate, M. L. Sarin and M. M. S. Bedi, Advocates, for the Petitioner.

G. S. Sachdeva, Advocate, (Munishwar Puri, Advocate with him), for the Respondent.

JUDGMENT

S. C. Mittal, J.

(1) This petition is directed against the order of the Appellate Authority, accepting the appeal of Sadhu Ram tenant, and setting aside the order of eviction passed by the Rent Controller.

(2) Learned Counsel for Sarvshri Sadhu Ram and Faqir Chand (hereinafter referred to as the tenants) raised a preliminary objection that the revision petition under section 15(5) of the East Punjab Urban Rent Restriction Act (for short the Act) filed against the order of the Appellate Authority after 93 days, was barred by limitation. Admittedly the Act, though prescribing limitation for filing an appeal against the order of the Rent Controller, does not prescribe any period of limitation for filing the revision petition. As such learned counsel for Sarvshri Madhu Sudan Lal, Baikunth Nath and Ish Kumar (for short the landlords) placed reliance on a Single Bench decision of this Court in *Rajinder Kumar vs. Dr. Rajwant Rai Sood* (1), to the effect that since no period of limitation is provided for filing revision petition in the High Court, the question of condonation of any delay under sections 5 and 14 of the Limitation Act does not arise. Nevertheless, learned counsel for the tenants referred to Section 3 of the Limitation Act laying down that subject to the provisions contained in Sections 4 to 24 (inclusive) every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Reliance was then placed on sub-section (2) of Section 29 of the Limitation Act which is in the following terms:—

“29. Savings. (1) * * *

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent

(1) 1983(1) Rent Control Journal 40.

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to which, they are not expressly excluded by such special or local law.”

Of the above quoted section 29(2) the two essential ingredients are: (i) the special or local law prescribes a period of limitation and (ii) the said period of limitation is different from the period prescribed by the Schedule. As said above, admittedly, section 15(5) or any other section of the Act does not prescribe any period of limitation for revision petition. Besides, learned counsel for the tenants was unable to specify any Article of the Schedule prescribing period of limitation for revision petition against the order, passed under the Act, by an Appellate Authority. All the same learned counsel for the tenants made a vain attempt by referring to Article 131 of the Limitation Act prescribing limitation of 90 days for revision petition under the Code of Civil Procedure or the Code of Criminal Procedure. The learned counsel conceded that the present petition did not fall within the ambit of Article 131. He then had recourse to Article 137 prescribing three years limitation for “any other application for which no period of limitation is provided elsewhere in the Division.” Assuming that Article 137 is applicable, one fails to see how the present petition filed within the three years can be held to be barred by time. The other important aspect of the matter is that unless the Act prescribes limitation for filing a revision petition, for the applicability of section 29(2) of the Limitation Act, it cannot be said that period of limitation prescribed is different from the period prescribed by the Schedule. For the foregoing reasons, I find no merit in the preliminary objection raised by the learned counsel for the tenants, it is, therefore, rejected.

(3) Adverting now to the merits, the salient facts are that the landlords applied for the eviction of the tenants on several grounds, *inter alia*, non-payment of rent. The arrears of rent having been paid, the eviction was sought on the surviving grounds. The Rent Controller ordered the eviction on the grounds of subletting, change of purpose for which the property was let out, impairing the value and utility thereof and raising unauthorised construction.

(4) Before proceeding further it is significant to point out that the landlords let out the property on 23rd January, 1956,—*vide* rent deed exhibit A.1. On 17th October, 1970, they instituted an

eviction application on identical grounds against the tenants and Bakhshish Ram to whom half of the property had been allegedly sublet. During the pendency of those proceedings, which were not contested by Bakhshish Ram, the landlords entered into an agreement with him, and he was inducted as a tenant at the rate of Rs. 300 per month, in respect of half of the property. The eviction application against the tenants was not prosecuted on the surviving grounds; instead on 6th October, 1972 it was withdrawn with permission to file another. Thereafter on 21st March, 1974, the present application was filed by the landlords seeking eviction not only of the tenants but also of Bakhshish Ram. However, in the course of proceedings, the landlords did not press for the eviction of Bakhshish Ram.

(5) Before the Appellate Authority it was urged at the outset that by reason of the creation of tenancy, by the landlords, in favour of Bakhshish Ram, the original tenancy stood automatically terminated. The argument was reinforced by the following material facts that the property in occupation of the tenants was reduced to half, though at the original rent of Rs. 175 per annum. In the present proceedings the arrears of rents were accepted by the landlords at the said rate and for the said half of the property. The learned counsel for the landlords did not challenge the finding of the Appellate Authority that one of the landlords admitted in his cross-examination that the present application was not in respect of the portion let out to Bakhshish Ram. Thus, the eviction of tenants has been sought from the remaining half of the property. Now it deserves mention that the relevant part of the definition of 'lease' in Section 105 of the Transfer of Property Act is that lease of immovable property is a transfer of the right to enjoy such property for certain time in consideration of money. Thus, the creation of tenancy in favour of Bakhshish Ram by the landlords resulted in splitting up of the original tenancy into two. This view was accepted by the Appellate Authority. Nothing meaningful was urged before me by their learned counsel to persuade me to differ from the Appellate Authority.

(6) Of course, the learned counsel for the landlords contended that the tenants could not escape the consequence of eviction for subletting the property to Bakhshish Ram, without the written consent of the landlords, and for using it for purposes other than that for which it was let out. It is no gain-saying that the contention could have been of some avail to the landlords if they

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had not split the original tenancy. As pointed out already, the previous application for eviction had been filed on identical grounds. If there was any merit in the contention under consideration the landlords, instead of withdrawing it, should have prosecuted the application against the tenants. But it seems that after inducting Bakhshish Ram as tenant for half of the property the landlords felt that the change in the situation was not favourable to them. The permission to file the present application, which has been held to be *mala fide* by the Appellate Authority, does not in any way improve matters for the landlords.

(7) Admittedly, the grounds on which the Rent Controller ordered eviction existed before the filing of the previous application. By reasons of the creation of new tenancy in favour of the tenants and Bakhshish Ram, the grounds of eviction are of no avail to the landlords. Besides, the findings of fact in paragraphs 4, 5 and 6 of the order of the Appellate Authority against the landlords were not agitated before me.

(8) In the result, this petition fails and the same is hereby dismissed with costs.

N.K.S.

Before J. V. Gupta, J.

BALDEV SINGH AND OTHERS,—Appellants.

versus

KISHAN SINGH AND OTHERS,—Respondents.

Regular First Appeal No. 289 of 1975.

September 22, 1983.

Code of Civil Procedure (V of 1908)—Section 148 and Order 34 Rule 8—Suit for redemption of mortgage—Preliminary decree passed in favour of the plaintiff—Passing of the final decree stayed by the Appellate Court—Appeal subsequently dismissed—Trial Court extending time for plaintiff to deposit the decretal amount—Plaintiff depositing the amount within the extended period and