

the order of the prescribed authority in holding the petitioner was entitled to contest the election as he was a trespasser. No such disqualification is imposed by section 6(5) of the Act. The ground on which his election has been challenged was that he was a tenant of the Panchayat but the prescribed authority did not find that it was so and declared his election invalid only on the ground that he was a trespasser. The trend of the order is that it was not desirable to allow such a person to hold any of these offices. The learned Deputy Advocate-General was prepared to justify the present order which admittedly is outside the ambit of section 6(5) of the Act and in which there is no question of any violation of the rules by showing that since the petitioner has been found to be a trespasser he could not be regarded to be a suitable person to perform the functions of a member of a Panchayat. This demonstrates the extent to which the prescribed authority can have the licence to misdirect itself by applying its own idea of what is meant by failure of justice.

In the result, it must be held that section 8(2)(a) of the Act is void and unconstitutional and that the order made by the prescribed authority was without jurisdiction. There was also an error apparent in the impugned order of the nature pointed out above. Consequently the petition succeeds and the order of the prescribed authority is hereby quashed. In view of the nature of the points involved, there will be no order as to costs.

D. Falshaw, C.J.—I agree.

Falshaw, C. J.

B.R.T.

REVISIONAL CIVIL

Before S. S. Dulat and J. S. Bedi, JJ.

CHHOTAY LAL AND OTHERS,—Petitioners.

versus

PARBATI DEVI AND ANOTHER,—Respondents.

Civil Revision No. 252-D of 1961

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Section 35—Petition for revision under—Courtfee 1961 December, 26th.

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payable thereon—Whether the same as on other petitions filed in the High Court as provided in Schedule II, Article 1 of the Court Fees Act (VII of 1870) or ad valorem on the value of the suit.

Held, that a petition for revision made under section 35 of the Delhi and Ajmer Rent Control Act, 1952, has not to bear *ad valorem* courtfee on the value of the subject-matter of the suit. The proper courtfee payable on such petitions would be the same as is payable on other petitions made to the High Court mentioned in Schedule II, Article 1, Court-fees Act, 1870 and they need bear only a courtfee of Rs. 2.65 nP.

Petition under Section 35 of Act 38 of 1952, for revision of the order of Shri Udham Singh, Senior Sub-Judge, Delhi, dated the 29th November, 1960, affirming that of Shri Shiv Das Tyagi, Sub-Judge, 1st Class, Delhi, dated the 5th June, 1959, granting decree for ejectment from the premises in dispute as well as decree for Rs. 578-14-0 on account of arrears of rent against the defendants.

R. S. NARULA, ADVOCATE, for the Petitioner.

JUDGMENT

Dulat, J.

DULAT, J.—Three petitions (Civil Revisions Nos. 252-D, 253-D and 254-D of 1961) filed under section 35 of the Delhi and Ajmer Rent Control Act, 1952, have been held up by the office on the ground that they perhaps do not bear proper court-fee stamp. Each of these petitions is stamped with court-fee of Rs. 5.25 nP., and we understand from several counsel appearing in these cases that the practice since the coming into force of this Act has been to file such revision petitions bearing court-fee worth Rs. 5.25 nP. The question raised by the office is whether such petitions ought not to bear *ad valorem* court-fee on the value of the suit out of which the petitions arise, for, if so, then the present petitions would have to bear court-fee on the value of the suit. The petitions have, of course, arisen out of suits filed under the Delhi and Ajmer Rent Control Act, 1952, but the contention is that the petitions do not by that reason become suits, and that the office suggestion that such

applications ought to be treated on the same footing as applications made to this Court for the exercise of its jurisdiction under section 44 of the Punjab Courts Act or section 115 of the Code of Civil Procedure is untenable because these petitions are under section 35 of the Delhi and Ajmer Rent Control Act by virtue of an express provision in that Act, and the scope of such petitions is mentioned in that Act and has nothing to do with nor have much resemblance to a petition under section 44 of the Punjab Courts Act. To settle this matter, it is necessary to consider the provisions of the Delhi and Ajmer Rent Control Act as well as the Court-fees Act, apart from the rules framed by the Central Government under the Delhi and Ajmer Rent Control Act. Chapter V of the Rent Act provides for appeals and revisions and reviews and makes provision for the valuing of suits out of which such appeals or revisions or reviews may arise. The value of a suit for recovery of possession of premises is determined by the amount of the rent payable for a period of twelve months, and, of course in respect of such a suit court-fee has to be paid on the value. The same applies to appeals provided by section 34 of the Act. Then comes the provision for revisions which runs thus—

“35. (1) The High Court may, at any time, call for the record of any case under this Act for the purpose of satisfying itself that a decision made therein is according to law and may pass such order in relation thereto as it thinks fit”.

The rules framed by the Central Government under section 45 of the Act provide for levy of court-fees. Rule 7 provides that the court-fee leviable on an application to the Court under the Act shall be one rupee and on the memorandum of an appeal against an order passed on such an application five rupees. This, however, does not really concern suits under the Act and they are separately provided for by sub-rule (2) of rule 7 which says—

“7. (2) In any suit, appeal or other proceeding not covered by sub-rule (1) the

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court-fee shall be the same as is chargeable under the Court-fees Act, 1870, and the provisions of that Act shall apply to the recovery of such court-fee."

It is thus clear that suits under the Delhi and Ajmer Rent Control Act and appeals from decisions in such suits and similarly revision petitions arising out of those suits are left to be governed by the ordinary provisions of the Court-fees Act. The general provision in respect of petitions filed in the High Court is contained in Schedule II, article 1, Court-fee Act, and that requires an application to the High Court to bear a stamp of Rs. 2.65 nP. It is under this provision that writ petitions under Article 226 of the Constitution are filed in this Court with a court-fee stamp of Rs. 2.65 nP. Also under the same provision an application for the revision of the decision of a Small Cause Court is filed with a court-fee stamp of Rs. 2.65 nP., on the ground that such revision applications are expressly provided for under the Small Cause Courts Act. As I have said already, the long-standing practice in this Court had been to file revision petitions under section 35 of the Delhi and Ajmer Rent Control Act with a court-fee of Rs. 5, but it is now contended before us that this was an error submitted to by petitioners as it did not involve much expense, and that strictly speaking the court-fee payable is Rs. 2.65 nP. One thing is clear that the office had never objected nor anybody else, that anything more than Rs. 5, at any rate, was payable on such petitions. This question arose somewhat indirectly in a revision petition filed by Mitter Sain against the National Transport (Civil Revision 175-D of 1956). In that case, in the first instance, a second appeal was filed bearing *ad valorem* court-fee on the value of the suit. Later, it was realised that a second appeal was not competent under the Delhi and Ajmer Rent Control Act and the second appeal was, therefore, asked to be treated as a revision petition. At the same time, an application was made for refund of excess court-fee. The matter was placed before Dua, J. sitting alone, and he declined the prayer

for refund mentioning two grounds—(1) that the court-fee, even if paid in excess, was not necessarily refundable, and (2) that proper court-fee had been paid on the value of the suit. It appears from the order of the learned Judge that the only argument raised at that time was that the petition for revision was a petition under section 44 of the Punjab Courts Act or under section 115 of the Code of Civil Procedure and was as such not liable to the payment of *ad valorem* court-fee. The contention was negatived by the learned Judge, and it is now admitted that to that extent, of course, the decision was perfectly correct because proper court-fee payable on any application to the High Court for exercise of jurisdiction under section 44 of the Punjab Courts Act, which in terms is the same as section 115 of the Code of Civil Procedure, has to bear *ad valorem* court-fee if the subject-matter in dispute exceeds Rs. 25 in value. It was this decision of Dua, J. which induced the office to raise this question in the present cases. It is, however, clear that what we have been asked to consider is a somewhat different matter, as no suggestion is made that the present petitions, if they fell under section 44 of the Punjab Courts Act or section 115 of the Code of Civil Procedure, would not be liable to *ad valorem* court-fee. The contention, on the other hand, is that the present petitions are in no sense petitions for the exercise of jurisdiction either under section 44 of the Punjab Courts Act or section 115 of the Code of Civil Procedure. This contention is perfectly sound, and it is clear that no one is asking this Court in the present cases to exercise its jurisdiction either under section 115 of the Code of Civil Procedure or section 44 of the Punjab Courts Act. The revision petitions, on the other hand, seek the exercise of this Court's jurisdiction under section 35 of the Delhi and Ajmer Rent Control Act, and even the scope of this Court's power under section 35 of that Act is vastly different from the power of this Court under section 115 of the Code of Civil Procedure or section 44 of the Punjab Courts Act. If it resembles anything, it does resemble this Court's power

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under the Small Cause Courts Act, and it is admitted that for revision petitions under the Small Cause Courts Act the court-fee leviable is only Rs. 2.65 nP. Under these circumstances, it appears to me that the decision of Dua J. in Civil Revision 175-D of 1956 did not decide the question that is being raised in the present cases, and that, so far as the present petitions are concerned, they do not have to bear *ad valorem* court-fee on the value of the subject-matter of the suits. The proper court-fee payable on such petitions would be the same as payable on other petitions to this Court mentioned in Schedule II, Article 1, Court-fees Act and they need bear only a court-fee of Rs. 2.65 nP.

Bedi, J.

J. S. BEDI, J.—I agree.

B.R.T.

REVISIONAL CIVIL

Before Tek Chand, J.

GUGAN MAL AND OTHERS,—*Petitioners.*

versus

M/s MOTI LAL-CHAND MAL AND OTHERS,—*Respondents.*

Civil Revision No. 513-D of 1958.

1961
December, 29th.

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Section 13 (1)(b)(i)—Assignee of a lessor—Whether can sue for ejection of tenant on the basis of breaches committed before the assignment—Plea of licence not taken in the written statement—Whether can be allowed to be taken at the trial—Lease and licence—Difference between, stated.

Held, that the rights of an assignee from a lessor like his liabilities commence from the date of the assignment. He cannot sue for ejection of a tenant on the basis of breaches committed before the assignment. The words "the landlord" in sub-section (1) of section 13 of the Delhi and Ajmer Rent Control Act, 1952, refer clearly to the