

## I. L. R. Punjab and Haryana

comes to Rs. 558.50 Paise. Arguments were not addressed on any other issue.

As a result, the appeal is accepted and the decree passed by the trial Court is set aside. The plaintiff is, however, granted a decree for Rs. 558.50 Paise only. His suit is dismissed in all other respects. In the circumstances, there will be no order as to costs.

HARBANS SINGH, J.—I agree.

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K.S.K.

## REVISIONAL CIVIL

Before Mehar Singh, C.J.

DIAL CHAND,—Petitioner

versus

MAHANT KAPUR CHAND,—Respondent.

Civil Revision No. 253 of 1966

December 20, 1966

*East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(2)(i)—Application for ejectment of the tenant on the ground of non-payment of rent—Defences open to the tenant—Dispute with regard to rate of rent—Non-compliance with the proviso to section 13(2)(i)—Effect of—Courses open to the tenant in such a case stated.*

*Held*, that it is open to the tenant, in defence to an application for ejectment on the basis of non-payment of rent, to prove that in fact rent has actually been paid and nothing is due. If he succeeds in proving that, then the application for ejectment by landlord fails. If there is a dispute as to the quantum of rent, the landlord claiming rent at a higher rate than the tenant alleging to have paid it, and if the latter proves that the rate of rent was at which he made the payment, obviously he succeeds in his defence:

*Held*, that if the tenant raises a dispute with regard to the rate of rent and thus makes a mistake in complying with the proviso to section 13(2)(i) of the East Punjab Urban Rent Restriction Act, he does so at his own risk. The proviso being for the benefit of the tenant, if he wishes to take advantage of it, he has to comply with it strictly and can take one of the three courses in case of dispute as to the rate of rent, viz.

- (i) He can under protest make payment or tender arrears at the rate claimed by the landlord in the ejectment application, and if the rate is found subsequently to be less, he can hope for adjustment of the excess payment.

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- (ii) He can come forward with a straight statement of what is the true rate of rent and on that proceed to comply with the proviso in which case he has the benefit of the proviso, if the finding is that the rate stated by him is the rate of rent for the tenancy.
- (iii) Lastly, he can enter into a dispute with the landlord, and insist upon his lower rate of rent and then take the consequence of having an order of ejectment passed against him if he is not able to prove that that is the actual rent.

*Petition under section 15 of the East Punjab Urban Rent Restriction Act, 1949, for revision of the order of Shri Murari Lal, Appellate Authority, Ludhiana dated 25th February, 1966, affirming that of Shri R. K. Saini, Rent Controller, Ludhiana, dated 27th October, 1965, passing an order of ejectment against the respondent and directing him to put the petitioner in possession of the property in dispute within one month from 27th October, 1965.*

Y. P. GANDHI, ADVOCATE, for the Petitioner.

P. C. JAIN, ADVOCATE, for the Respondent.

#### JUDGMENT

MEHAR SINGH, J.—The Rent Controller and the Appellate Authority have concurrently found that the rent of the premises in dispute is Rs. 5 per mensem. The landlord said in his application for ejectment of the tenant that the rent was Rs. 8 per mensem, and in his reply the tenant said that it was Rs. 1.50 Paise per mensem. The landlord sought ejectment of the tenant on the sole ground of arrears of rent.

The tenant paid arrears of rent at the rate of Rs. 1.50 Paise per mensem with interest and costs of the application according to proviso to clause (i) of sub-section (2) of section 13 of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949), and this was on the first date of hearing of the ejectment application. So the tender or payment of arrears fell short at the rate of Rs. 3.50 Paise per mensem. The authorities below have, in the circumstances, reached the conclusion that the tenant has failed to comply with the said proviso and, therefore, he cannot have the benefit of the same and escape ejectment. His ejectment was ordered by the Rent Controller and has been affirmed in appeal by the Appellate Authority.

At this stage there is only one argument on the side of the tenant in this revision application by him and that is that where

the landlord and the tenant dispute the figure of the rent payable by the tenant, it is not possible for the tenant to make a proper tender according to the proviso to clause (i) of sub-section (2) of section 13 of the Act and so the ejection of the tenant cannot be ordered. The learned counsel for the tenant in this respect first refers to *Romesh Chandra Majumdar v. Sobodhbala Dasi*, in which the matter in dispute was the rent to be deposited by the tenant, and it was held that the deposit could not be insisted upon until the dispute about the amount to be deposited was determined. The case does not deal with a proviso of the type as with clause (i) of sub-section (2) of section 13 of the Act, and thus is of no assistance. The second case to which the learned counsel for the tenant refers is *Rameshwar Dayal v. Sri Kishan* (3), but in that case the dispute between the parties was as to the amount of the basic rent on which the landlord could and, in fact, did claim statutory increase. The learned Judge found the figure of the basic rent as originally claimed by the landlord and not a higher amount subsequently claimed by him and then found that on the amount of the basic rent, with the statutory increase, a proper tender had been made by the tenant according to a parallel provision to the proviso to clause (i) of sub-section (2) of section 13 of the Act. It follows that even this case does not help in the decision of the question in the present case. On the side of the landlord the case relied upon to support the orders of the authorities below is *Jagan Nath v. Krishan Kumar*, Civil Revision No. 416 of 1961, decided on March 9, 1962, in which the tenant had not taken advantage of the proviso to clause (i) of sub-section (2) of section 13 of the Act on the ground that he had previously sent the rent due to the landlord by money-order, but the landlord had refused to accept the same. The plea of the tenant was that in fact on account of such refusal by the landlord there were no arrears. It was found that, in spite of such tender of rent and refusal of the landlord to accept the same, at the time of the ejection application there were arrears of rent, and the tenant not having made payment or tender in accordance with the said proviso, his ejection was ordered. There is an observation by Dua, J., in the judgment that such refusal of the landlord to accept rent offered by the tenant, before the ejection application was filed, would not justify the tenant not to comply with the terms of the said

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(2) A.I.R. 1952 Cal. 198.

(3) A.I.R. 1952 Punj. 359.

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proviso and not pay or tender the arrears on the first date of hearing of the ejection application. This observation supports the case of the landlord and the orders of the authorities below.

The ground of ejection in clause (i) of sub-section (2) of section 13 of the Act is non-payment or tender of the rent due. It is open to the tenant, in defence, to prove that in fact rent has actually been paid and nothing is due. If he succeeds in proving that, then the application for ejection by the landlord fails. If there is a dispute as to the quantum of rent, the landlord claiming rent at a higher rate than the tenant alleging to have paid it, and if the latter proves that the rate of rent was at which he made the payment, obviously he succeeds in his defence, with the result of dismissal of the landlord's application for ejection. To clause (i) of sub-section (2) of section 13 of the Act the proviso has been added for the benefit of the tenant even where he has not paid or tendered the rent due and is obviously liable to ejection under clause (i) of sub-section (2) of section 13 of the Act as by complying with the proviso the tenant can even in such a case escape ejection. If the tenant makes a mistake in complying with the proviso, he does so at his own risk. If he raises a dispute with the landlord about the rate of rent and is sure of his own ground, and according to that ground he proceeds to act under the proviso, but if he fails to establish that ground, obviously he fails to have advantage of the proviso. It is conceivable that a landlord may make an unreasonable claim with regard to the rate of rent in arrears, may be with the dishonest intention of placing the tenant in such a position that he may not be able to take advantage of the proviso, but even in such a case the tenant ought to know the truth, that is to say, the actual rent that he has been paying all along and the rent that has been agreed to by him with his landlord, and if he holds to the actual rent and succeeds in proving that figure, the exaggerated claim by the landlord would come to nothing. In such a case if the tenant complies with the proviso according to the rate which he says is the true rate and proves that to be so, he has the benefit of the proviso and escapes ejection. This is an aspect of the provision with regard to ejection for arrears of rent which does give the landlord a certain advantage to harass the tenant by making an unfounded claim of arrears at a higher rate of rent than the actual rent and for this there is not even a provision in the Act for any penal action against the landlord. In spite of this, the proviso being for the benefit of the tenant, if he wishes to take advantage of it, he has to comply with it strictly, and in a case like the present he can take one of the three courses. He can under protest make payment or tender of the arrears at the

rate claimed by the landlord in the ejection application, and if the rate is found subsequently, to be less, he can hope for adjustment of the excess payment. He can come forward with a straight statement of what is the true rate of rent and on that proceed to comply with the proviso, in which case he has the benefit of the proviso, if the finding is that the rate stated by him is the rate of rent for the tenancy. Lastly, he can enter into a dispute with the landlord, as in this case, and insist upon his lower rate of rent and then take the consequence if he is not able to prove that that is the actual rent. So, in the present case, the tenant was admittedly in arrears on the date of the application for his ejection and he was, therefore, liable to ejection under clause (i) of sub-section (2) of section 13 of the Act and he does not escape ejection because he has not complied with the proviso to that clause. He did make payment of the arrears but at a rate less than the rate of rent that has been found by the authorities below. There has been thus no compliance with the proviso. He cannot have the benefit, of it, and the result has been that he has become liable to ejection under clause (i) of sub-section (2) of section 13 of the Act. There is no reason for interference with the orders of the authorities below.

In consequence this revision application fails and is dismissed, but, in the circumstances of the case, there is no order in regard to costs. The tenant is given two months from today to vacate the premises.

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R.N.M.

CRIMINAL REVISION

*Before Jindra Lal, J.*

BIRU RAM,—*Petitioner*

*versus*

ISHER SINGH AND OTHERS,—*Respondents*

**Criminal Revision No. 954 of 1965**

December 20, 1966

*Code of Criminal Procedure (Act V of 1898)—Ss. 202, 203 and 253—Scope of—Report obtained under section 202 and accused summoned—Such report—Whether can be taken into consideration at the trial of the accused.*