claimable before the authority under that Act under sub-section (3) of section 15. So whether his claim is merely for over-time work or for over-time work and interest on the amount due; in either case the claim is within the jurisdiction of the authority under Act 4 of 1936. In regard to such a claim; the jurisdiction of the civil Court is barred under section 22 of that Act.

(7) In the circumstances, the order of the trial Court is reversed and the respondent, if so advised, may take back his plaint and present it to the authority under Act 4 of 1936. There is, however, no order in regard to costs in this revision application.

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*K. S. K.*

REVISIONAL CIVIL

*Before Mehar Singh, C.J., and R. S. Sarkaria, J.*

MANGAT RAI,—*Petitioner.*

*versus*

VED PARKASH,—*Respondent.*

**Civil Revision No. 29 of 1967**

January 31, 1969.

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2) (i) Proviso—"First hearing"—Pre-requisites for determination of—Stated—Tenant being duly served in ejectment proceedings appearing before Rent Controller—Rent Controller suspending such proceedings on misconstruction of a stay order of the High Court—"First hearing" in the proceedings—Whether the date when tenant first appears before the Rent Controller—Proviso to the section 13(2)(i)—Whether casts unilateral duty on the tenant.*

*Held*, that the expression "first hearing" has not been defined in the East Punjab Urban Rent Restriction Act. In order to constitute "first hearing" within the meaning of Section 13(2)(i), Proviso, the following pre-requisites must co-exist:—

(i) There should be a 'hearing' which presupposes the existence of an occasion enabling the parties to be *heard* and the Court to hear them in respect of the *cause.*

(ii) Such hearing should be the *first* in point of time after *due service* of the summons/notice on the tenant.

Both these essentials are positive, and, in the absence of either of them, there can be no 'first hearing'. **(Para 17)**

*Held* that if a Rent Controller purporting to act in compliance with a stay order issued by the High Court keeps the proceedings in the application for ejectment suspended under the mistaken belief that his jurisdiction to proceed with the case has been suspended under the order of the High Court, in principle, for the purpose of determining the date of first hearing, there can be no difference between a case where the proceedings have been rightly suspended by the Rent Controller in compliance with a stay order issued by the High Court, and a case where he does so due to a misconstruction or misunderstanding of an order issued by the High Court, because in either case there is no Court functioning for the purpose of the cause, and, therefore, no hearing. Hence where a tenant being duly served appears before the Rent Controller in ejectment proceedings and the later suspends the proceedings on misconstruction of a stay order of the High Court, the 'first hearing' in the proceedings will not be the date when the tenant first appears, but it will be the date when the Rent Controller resumes the proceedings. (Para 20)

*Held*, that it is wrong to say that Section 13(2)(i) Proviso of the Act casts only a unilateral duty on the tenant, without there being any corresponding duty and discretion vesting in the Rent Controller in connection therewith. There are reciprocal obligations created by the Proviso. So far as the calculation of arrears of rent and interest is concerned, that is the sole responsibility of the tenant. But so far as the assessment of the costs is concerned, the Proviso assigns that functions to the Controller.

(Para 24)

*Case referred by Hon'ble the Chief Justice Mr. Mehar Singh, on 23rd August, 1968, to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble the Chief Justice Mr. Mehar Singh and the Hon'ble Mr. Justice Ranjit Singh Sarkaria, decided the case finally on 31st of January, 1969.*

*Petition under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949, for revision of the order of Shri Pritam Singh Pattar, Appellate Authority, Sangrur, (District Judge), dated 5th December, 1966, affirming that of Shri Harish Chandra Gaur, Rent Controller, Barnala, dated 6th May, 1966, dismissing the application.*

D. C. GUPTA, J. V. GUPTA, AND JASWANT JAIN, ADVOCATES, for the Petitioner.

R. L. SHARMA, AND HARBHAGWAN SINGH, ADVOCATES, for the Respondent.

## JUDGMENT

SARKARIA, J.—This Civil Revision 29 of 1967 by the landlord is directed against an order, dated December 5, 1966, of the Appellate Authority, Sangrur. It arises out of the following circumstances:—

(2) Mangat Rai, revision-petitioner, leased out his shop, situated at Barnala, on an yearly rent of Rs. 800 by a rent-note, dated February

19, 1959, for a period of one year to Ved Parkash respondent. The tenant made an application under Section 4 of the East Punjab Urban Rent Restriction Act, III of 1949 (hereinafter referred to as 'the Act') to the Rent Controller for fixation of fair rent. The Rent Controller by his order, dated November 30, 1963, fixed the fair rent of the shop at Rs. 137.50 per annum. Against that order, the landlord preferred an appeal to the Appellate Authority, which accepted the appeal on May 25, 1965, set aside the order of the Rent Controller and fixed the fair rent of the shop at Rs. 800 per annum. Against that order of the Appellate Authority, the tenant went in revision to the High Court. The revision-petition (No. 547 of 1965) first came up for hearing before the learned Vacation Judge (Narula, J.) on June 21, 1965, who passed the following order:—

> "Operation of the order fixing Rs. 800 per mensem as fair rent stayed pending hearing of C. R. by the Motion Bench."

(3) Prior to the making of this order, dated June 21, 1965, the landlord made a petition under Section 13 of the Act for ejectment of the tenant on the ground that he had failed to pay rent for the period September 18, 1962 to May 31, 1965, at the rate of Rs. 800 per annum. Summons was issued in that case to the tenant for appearance before the Rent Controller on July 2, 1965. The summons was duly served on the tenant. On July 2, 1965, the tenant appeared in person. In the meantime, copy of the stay order, dated June 21, 1965, of the High Court, together with a copy of the Civil Miscellaneous Application No. 2258 of 1965 made by the tenant in the High Court for stay of the ejectment proceeding before the Rent Controller, was sent under covering letter No. 16411/Misc., dated June 21, 1965, of the High Court to the Rent Controller. Consequently, the Controller, on July 2, 1965, made this order:—

> "Proceedings are stayed by the High Court and in view of the High Court circular No. 164, dated 17th May, 1965, received in this Court on 24th June, 1965, no proceedings are to take place, so the case is adjourned to 7th August, 1965."

On August 7, 1965, the Rent Controller recorded this order:—

> "Present : Counsel for the petitioner and Ved Parkash respondent in person.
>
> Proceedings are stayed by the High Court. The learned counsel for the petitioner has stated that the proceedings

are not stayed. He should apply to the High Court. Ved Parkash is also ordered to produce the order of the High Court as the stay order is regarding case No. 191. To come up on 14th September, 1965."

(4) Then, on subsequent dates, namely, September 14, 1965, and September 30, 1965, tre Rent Controller did not take any proceedings. He simply said that the respondent shall comply with the order, dated September 8, 1965, of the High Court. The case was first adjourned to October 11, 1965, and then to November 30, 1965. On these dates also, no proceedings were taken in the application for eviction made by the landlord. The case was then adjourned to December 13, 1965.

(5) In the meantime, the High Court dismissed the revision petition of the tenant-respondent on December 6, 1965, and maintained the order of the Appellate Authority, fixing the fair rent at Rs. 800 per annum.

(6) Coming back to the Court of the Rent Controller, it may be mentioned that the tenant had on August 7, 1965, submitted his written statement, dated July 2, 1965, and further made an application that he wanted to deposit the arrears of rent at the rate of Rs. 137.50 per annum, amounting to Rs. 383 plus Rs. 39 as interest, and requested the Controller to assess the costs. This application was not decided by the Controller. It was simply ordered that notice thereof be given to the landlord for September 14, 1965. On that date, no order was made by the Rent Controller on the tenant's application.

(7) On December 10, 1965, the tenant deposited Rs. 2,234 (in addition to the sum of Rs. 406 that he had already deposited) towards the arrears of rent due calculated at the rate of Rs. 800 per annum plus interest. An objection was taken on behalf of the landlord before the Controller, that the tenant had not deposited the arrears of rent on the first hearing and had thus failed to comply with the mandatory porvisions of the proviso to Section 13(2)(i) of the Act. The Controller, however, overruled this objection on the ground that the proceedings in the case had remained suspended and were revived only after the dismissal of the revision-petition by the High Court on December 6, 1965, and that the first date of hearing was December 13, 1965. In the result, he dismissed the landlord's

petition. On landlord's appeal, the Appellate Authority has affirmed the decision of the Controller. Hence this revision-petition.

(8) The short but the novel question that falls to be determined in this revision, is, which was the *'first hearing' of the application for ejectment* within the contemplation of the proviso to Section 13(2)(i) of the Act, in the peculiar circumstances of the case?

(9) Mr. D. C. Gupta, learned counsel for the petitioner, contends that July 2, 1965 was the date of the first hearing for the purpose of the proviso in this case, because the tenant had been duly served with the summons, and had, in response to the summons actually appeared before the Controller, in person, on the aforesaid date. Emphasis is laid on the fact that on July 2, 1965, the tenant did not invite the attention of the Controller to assess the costs; nor did he actually tender the arrears of rent together with interest. There is nothing on the record, says Mr. Gupta, to show that the Controller did not allow the tenant to deposit or pay any amount tendered by him on that date. So far as the arrears of rent due and interest thereon was concerned, it is urged, the tenant had to calculate the same himself as all the facts and figures were known to him. No order of the Rent Controller was required to determine the amount of arrears and interest. Their calculation and tender was the unilateral responsibility of the tenant. Consequently, even if the Controller had failed to proceed further with the application for eviction, there was no impediment in the way of the tenant in making the tender or payment in compliance with the aforesaid proviso. Mr. D. C. Gupta has further pointed out that in Civil Miscellaneous No. 2258 of 1965, the High Court never passed an order staying proceedings in the landlord's application for eviction. The only thing stayed by the High Court was the operation of the order of the Appellate Authority, enhancing the fair rent from Rs. 137.50 to Rs. 800 per mensem. On September 21, 1965, the tenant applied to the High Court seeking clarification of its stay order, dated 8th September, 1965. The High Court by its order, dated September 24, 1965, clarified its previous order, whereby the operation of the Appellate Authority's order, dated May 25, 1965, was stayed subject to the condition that the tenant should deposit the arrears of rent due upto August 31, 1965, by October 5, 1965, at the rate of Rs. 137.50 per annum.

(10) Thus, the tenant fully knew, it is argued by Mr. Gupta, that the proceedings in the ejectment application had never been stayed by the High Court, and that the orders passed by the Rent Controller,

whereby he kept the proceedings suspended for the period, July 2, 1965 to December 13, 1965, were manifestly wrong. In these circumstances, the tenant could not, by failing to invite the Rent Controller to assess the costs on July 2, 1965, take advantage of his own fault. At any rate, the patently wrong construction placed by the Controller on the stay order of the High Court, could not have the effect of changing the date of the first hearing of the application for ejectment, from July 2, 1965 to December 13, 1965. In short, Mr. Gupta's contention is that the first hearing of the application is always the first date in point of time when the tenant-respondent, after due service of the notice on him, appears before the Controller, In this connection, Mr. Gupta has referred to *Ram Chand* v. *Mathra Dass* (1) *Jang Singh* v. *Brij Lal and others* (2); *Mela Ram and others* v. *Kundan Lal* (3); *Jagat Ram* v. *Shanti Sarup* (4); *Jagat Dhish Bhargava* v. *Jawahar Lal Bhargava and others* (5); and *Gulshan Rai and others* v. *Devi Dayal* (6).

(11) In reply, Mr. Harbhagwan, learned counsel for the tenant-respondent, maintains that it is wrong to say that the payment or tender of arrears of rent, etc., by the tenant is a function which could be unilaterally performed by the tenant without any assistance of order from the Court. It is emphasised that to enable the tenant to comply fully with the terms of the Proviso to Section 13(2)(i) of the Act, the statute had cast a duty on the Controller to assess the costs. In this case, the Controller taking a wrong view of the stay order of the High Court, instead of performing that statutory duty, kept all proceedings in the ejectment application suspended from July 2, 1965 to December 13, 1965, in spite of the fact that on July 2, 1965, the tenant was ready with an application which he actually presented on August 7, 1965, requesting the Rent Controller to assess the costs. The first hearing, it is argued, could only be the first date of hearing, viz., December 13, 1965, fixed after the vacation of the stay and the revival of the proceedings by the Controller. The tenant could not be made to suffer for any wrong order of the Court.

(12) The expression 'first hearing' has not been defined either in the Act or in the General Clauses Act. This occurs frequently in

(1) I.L.R. 1955 Patiala 388.
(2) 1963 P.L.R. 884 (S.C.).
(3) 1962 P.L.R. 451
(4) I.L.R. (1965) 1 Pb. 516=1965 P.L.R. 45.
(5) A.I.R. 1961 S.C. 832.
(6) 1966 P.L.R. 668.

Orders 8, 9, 10, 13, 17 and 35 of the Code of Civil Procedure. The term has been the subject of judicial interpretation. The first case on the point referred to at the bar, *Ram Chand's case* (1), reported as ILR 1955, Patiala 388, wherein the Pepsu High Court considered the meaning of the term 'first hearing' occurring in the Proviso to sub-section 2(i) of Section 13 of the Pepsu Urban Rent Restriction Ordinance,—a provision which was analogous to the Proviso to Section 13(2)(i) of the Act. It was argued in that case, as has been argued before us by Mr. Gupta, that the expression 'first hearing' as used in the relevant Proviso of the Ordinance was unqualified and, consequently, when the tenant appears before the Rent Controller for the first time, that date is the 'first hearing' in the case. Since Section 17 of the Pepsu Ordinance expressly made the provisions of the Civil Procedure Code with regard to the summoning and enforcing the attendance of parties and witnesses applicable to the proceedings before the Rent Controller, it was held that the term 'first hearing' in Section 13(2)(i) Proviso of the Ordinance has to be assigned the same sense in which it is used in Rules 3 and 8 of Order 9, Civil Procedure Code. Consequently, if the copy of the application is not sent with the summons served on the tenant, and, on the date fixed, the tenant appears and demands a copy of the application, the date of his appearance would not be a 'first hearing. This view was taken by Mehar Singh, J., (as my Lord then was) in *Ram Chand's case* (1), was dissented from by G. D. Khosla, C.J., in *Mela Ram's case* (3) wherein it was held that the first day of hearing is the date upon which the defendant or the respondent appears to answer the case, and whether he is able to answer it or not, that is the first date of hearing. It makes no difference whether he has been supplied with a copy of the application or not. The *ratio* of *Mela Ram's case* (3) was overruled by a Division Bench of this Court (consisting of Dua and D. K. Mahajan, JJ.), in *Jagat Ram's case* (4) and it was held :—

> "The words 'due service', in the context of the proviso to Section 13(2)(i) of the East Punjab Urban Rent Restriction Act (3 of 1949) must mean 'service along with the copy of the application'. Any hearing after this service would be a first hearing. Mere service of summonses will not make the hearing a first hearing; unless the summonses have been served with a copy of the application, the appearance of the tenant in response to them will not make the hearing a first hearing."

(13) It was also laid down that where an *ex-parte* order is set aside in the proceedings under Section 13(2)(i) of the Act, its effect would be that the first hearing when the *ex-parte* order was passed, would not be treated as a hearing at all. It was added that the first hearing in such a situation is when the *ex-parte* order is set aside and the tenant is entitled to participate in the proceedings.

(14) There is a long array of judicial authorities in support of the proposition that the 'first hearing commences when the Court looks into the pleadings in order to formulate the points in controversy between the parties. However, in cases where no issues are to be settled, the first hearing will be the day on which the Court applies its mind to the case for the purpose of the trial. (See *Chidambaram Chettiar* v. *Parvathi Achi* (7); *Abdul Rahman* v. *Shib Lal Sahu* (8) and *Kalloo* v. *Mst. Imaman* (9).

(15) In Civil Revision *D. H. M. Framjee* v. *Vijay Kumar* (10), decided by K. L. Gosain, J., the case was set down for hearing after the service of summons on the tenant for August 25, 1960, but the Rent Controller did nothing else except to adjourn the case. The learned Judge held that this could not be the 'first hearing' within the meaning of the Proviso to Section 13(2)(i) of the Act, and made these observations: —

> "I fail to see how this could be deemed to be the first hearing of the application. It may be the first date fixed for hearing of the application, but if the hearing of the application had actually not been made on that date, it could not possibly be deemed to be the first hearing of the application. There is evidently a distinction between the two phrases— i.e., "the first date fixed for hearing of the application" and "the first hearing of the application". There may be a date fixed for hearing of the application and on that date there may actually be no hearing, on account of the Court closing suddenly or on account of an adjournment being granted by the Court for the hearing of the case. The date of the first hearing of the application will only be

(7) A.I.R. 1926 Mad. 347.
(8) A.I.R. 1922 Patna 252.
(9) A.I.R. 1949 All. 445.
(10) C.R. 570 of 1960 decided on 7th April, 1961.

the date when the application is heard for the first time. This obviously means the date when the Court applies its mind to the application, for example, by going into the pleadings of the parties and framing issues, etc."

(16) It is submitted, with due deference, that if it was intended to lay it down that in every case where the tenant, after due service, appears before the Controller on the fixed date, but the Controller, though having the necessary capacity and discretion to function and take up the case on that date or occasion, adjourns it at his sweet-will, then there will be no hearing on that date within the contemplation of the aforesaid Proviso, such a wide statement of the law on the point tending to render otiose the word 'first', advisedly used by the Legislature immediately preceding the term 'hearing' in the Proviso would, in my opinion, be open to considerable doubt. However, we do not propose to lay down as a general proposition that the Controller can simply, by not taking up the case on the date specified after due service. of the tenant, and adjourning the same either *suo motu* or at the request of the tenant, shift the 'first hearing' of the case to the adjourned date. Indeed, it is not necessary for us to pronounce on this question, which is wider than the short, precise point for decision before us. I will, therefore, confine myself to saying that only in that situation where the case is not taken up (on the date on which the tenant appears after due service) owing to circumstances beyond the control of the Controller, such as the receipt of an order from a superior Court staying the proceedings, or on account of the Court being closed or incapable of functioning due to the sudden illness of the Judge or other physical or legal disability suddenly supervening, there will be no 'hearing' of the case within the meaning of Section 13(2)(i) Proviso.

(17) The principles that can be deduced from the plethora of case law on the point, including the authorities referred to above, are consistent with the literal meaning of the word 'hearing', which in its Dictionary sense, means 'the listening of evidence and pleading in a Court of law; the trial of a cause'. It seems to be abundantly clear that in order to constitute 'first hearing' within the meaning of Section 13(2)(i) Proviso, the following pre-requisites must co-exist :—

(i) There should be a 'hearing' which presupposes the existence of an occasion enabling the parties to be *heard* and the Court to hear them in respect of the *cause*.

(ii) Such hearing should be the *first* in point of time after *due service* of the summons/notice on the tenant.

Both these essentials are positive, and, in the absence of either of them, there can be no 'first hearing'. In the present case, pre-requisite (ii) exists. There is no dispute that the summons was duly served on the tenant for appearance on July 2, 1965, and in response to the summons he actually appeared on the date fixed before the Controller. Controversy, however, centres around postulate number (i) Mr. D. C. Gupta's contention is twofold:—

(a) That there was no order of the High Court suspending the jurisdiction of the Controller to hear and proceed with the case on July 2, 1965.

(b) That even the refusal of the Controller to proceed with the case owing to a misconstruction of the High Court Order, did not *ipso facto* prevent or debar the tenant from making payment or tender in compliance with the Proviso to Section 13(2)(i) of the Act.

(18) The fallacy in the argument can be demonstrated by taking two hypothetical illustrations, which we have actually put to the learned counsel and invited his comments. Let us assume, as the first illustration, that the High Court had, in reality, passed an order staying further proceedings in the application for ejectment before the Rent Controller, pending disposal of Civil Revision 547 of 1965, and that the Rent Controller, in compliance with that order, correctly kept further proceedings in the ejectment application before him suspended from July 2, 1965 to December 13, 1965. Can it be said that in that situation, July 2, 1965—and not the first date of hearing fixed before the Rent Controller, viz., December 18, 1965; after the vacation of the stay order—will be the first hearing for the purposes of the Proviso. Mr. Gupta had to concede that in such a situation, July 2, 1965 may not be the first date of hearing, because the effect of the stay order issued by the High Court would be to suspend the jurisdiction of the Rent Controller to take further proceedings in the ejectment application, from the date of the communication, if not the issue of the stay order.

(19) The second example with which we confronted the learned counsel is of a case in which the Rent Controller, on account of sudden illness or otherwise, is on leave on July 2, 1965, and when

the parties appear they find that there is no Presiding Officer of the Court to take up the case and conduct the proceedings; but the Reader of the Court informs the parties that they should appear on December 13, 1965. For purposes of this example it is assumed that no stay order, whatever, had been issued by the High Court. Would in such a situation, also, the date July 2, 1965, be the first hearing? Quickly came the reply of Mr. Gupta that in such a case there was no Court functioning on July 2, 1965, which consequently could not be the 'first hearing'.

(20) If in the aforesaid illustrations, July 2, 1965, would not be deemed as the 'first hearing', we cannot see any good reason why in the analogous situation of the instant case, a different conclusion should be drawn. The point of substance is that the Rent Controller, purporting to act in compliance with a stay order issued by the High Court, kept the proceedings in the application for ejectment suspended from July 2, 1965 to December 13, 1965, under the mistaken belief that his jurisdiction to proceed with the case had been suspended under an order of the High Court, in principle, for the purpose of determining the date of first hearing, there can be no difference between a case where the proceedings have been rightly suspended by the Rent Controller in compliance with a stay order issued by the High Court and a case where he does due to a misconstruction or misunderstanding of an order issued by the High Court, because in either case there is no Court functioning *for the purpose of the cause,* and hence no hearing.

(21) The Controller never applied his mind to the pleadings in the cause, nor heard the parties in respect thereof, on July 2, 1965, as he thought, though wrongly, that his power or jurisdiction to do so had been put in abeyance by an order of the High Court. Thus, prerequisite (i) was lacking in this case so far as the interlocutory dates fixed by the Controller, during the period, June 21, 1965 to December 5, 1965, are concerned.

(22) The matter may be viewed from another stand-point, also. The tenant was not to be blamed for the wrong suspension of the proceedings by the Controller. It is nobody's case that the suspension of the proceedings by the Controller was the result of any fraud or misrepresentation proceeding from the tenant. The mistake was purely due to some misconstruction or misunderstanding arising in the mind of the Presiding Officer of the Court. Perhaps, the Controller

was misled by the circumstances that while transmitting a copy of the stay order, dated June 21, 1965, passed by Narula, J., the High Court office has also sent a copy of Civil Misc. Application 2258 of 1965, wherein the tenant-applicant had expressly prayed for stay of the proceedings in the judgment proceedings.

(23) It is a fundamental canon of jurisprudence that the mistakes of the Court or its officers cannot be allowed to work injury to the litigants. "There is", observed by Mr. Justice Hidayatullah (as he then was) in *Jang Singh's case* (2), "no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim: *Actus curiae neminem gravabit*."

(24) It is wrong to say that Section 13(2)(i) Proviso casts only a unilateral duty on the tenant, without there being any corresponding duty and discretion vesting in the Court in connection therewith. There are reciprocal obligations created by the Proviso. So far as the calculation of arrears of rent and interest is concerned, that is the sole responsibility of the tenant. But so far as the assessment of the costs is concerned, the Proviso assigns that function to the Controller. If accepted, this argument of the petitioner would be tantamount to saying that for the purposes of making the payment as indicated in the Proviso, it is not necessary that there should be a 'hearing' of the case by the Controller. Such an argument is obviously a contradiction in terms and must be repelled.

(25) Thus, from whatever angle the matter may be looked at, December 13, 1965 and not July 2, 1965, was the 'first hearing of the application for ejectment' within the contemplation of the Proviso to Section 13(2)(i) of the Act. The arrears of rent, together with interest, and also some additional amount to cover the costs were deposited by the tenant on December 10, 1965. He had thus fully complied with the aforesaid Proviso.

(26) For the foregoing reasons, the revision-petition fails and is dismissed. In view of the law point involved, we would leave the parties to their own costs.

MEHAR SINGH, C.J.—I agree.

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*K.S.K.*