

(16) This judgment will also dispose of Civil Writs Nos. 448 of 1967, 2304 of 1966, 288 of 1967, 2305 of 1966, 2523 of 1966, 2144 of 1966, 2143 of 1966, 2125 of 1966, 2026 of 1966 and 2238 of 1967, as in these petitions also this very order has been challenged on the same grounds. Accordingly, these petitions are also allowed and the impugned order is quashed. In the circumstances of the case, there will be no order as to costs.

D. K. MAHAJAN, J.—I agree.

K.S.K.

REVISIONAL CIVIL

Before Mehar Singh, C.J.

HOYA RAM AND ANOTHER,—*Petitioners.*

versus

KESHO RAM GUPTA,—*Respondent.*

Civil Revision No. 85 of 1967.

October 15, 1968.

Transfer of Property Act (IV of 1882)—Section 50—Principles of—Whether applicable to Haryana State.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13—Property under tenancy auctioned—Tenant having no knowledge and paying rent to the previous owner for period subsequent to the auction—Such tenant—Whether in arrears of rent and liable to evicted.

Held, that there is no notification of either the previous Punjab State or the present Haryana State which applies Section 50 of the Transfer of Property Act to the State of Haryana, but the underlying principles of the section has always been applied in Punjab on considerations of Justice, equity and good conscience. A right has never been permitted to have been defeated because of the technical non-application of a particular provision for want of issue of a notification in that behalf. The technicalities have been ignored, and it is the substance which has been applied. Hence the principles underlying section 50 of the Act apply to the State of Haryana.

(Para 5)

Hoya Ram, etc. v. Kesho Ram Gupta (Mehar Singh, C.J.)

Held, that when a property under tenancy is auctioned, the title passes to the purchaser from the date of the auction, but the tenant can pay rent only to a known land-lord. Hence when the tenant having no knowledge of the transmission of title of the property on rent with him from the original owner to another person, pays the arrears of rent even for the period subsequent to the transfer of title to the previous owner, he cannot be said to be in arrears so far as subsequent owner is concerned up to the period for which he has paid the rent to the previous owner. He is, therefore, not liable to be ejected at the instance of the subsequent owner for non-payment of rent for the period. (Para 5)

Petition under section 15(V) of the East Punjab Urban Rent Restriction Act, 1949, for revision of the order of Shri H. D. Loomba, Appellate Authority, Gurgaon dated 21st November, 1966, affirming that of Shri C. D. Vasishtha, Rent Controller, Rewari, dated 28th May, 1965, dismissing the petition.

H. L. SARIN, SENIOR ADVOCATE, AND A. L. BAHL, ADVOCATE, WITH HIM, FOR THE PETITIONERS.

G. C. MITTAL, AND PARKASH CHAND, ADVOCATES, FOR THE RESPONDENT.

JUDGMENT

MEHAR SINGH, C.J.—The demised premises are two upper storey rooms situate in Rewari. The same were let by Piare Lal to Kesho Ram Gupta, tenant at a rental of Rs. 15.15 paise per mensem. The demised premises in Court auction were purchased by the firm Hoya Ram-Shiv Ram. The auction was held on May 26, 1961, on which date the highest bid of the applicant firm was accepted. The sale was confirmed in favour of the applicant firm on May 17, 1962. In November, 1962, the applicant firm wanted possession of the demised premises pursuant to the sale of the same in its favour at a Court auction. The respondent, Kesho Ram Gupta, tenant, resisted the attempt of the applicant firm to obtain physical possession of the demised premises on the ground that he held the same under a tenancy. In the meantime, the original owner Piare Lal on October 31, 1963, made an application for eviction of the tenant from the demised premises on the ground of non-payment of arrears of rent after Asauj 12, 2019 B.K., equivalent to November 10, 1962, upto which date he admitted that the rent had been paid to him. The tenant filed his written statement to that application on December 6, 1963, in which he took the stand that the demised premises had been sold in Court auction to the applicant firm on May 26, 1961, and the confirmation of the sale had taken place on May 17, 1962. So he took the position that the previous owner Piare Lal was no longer his landlord. The application of Piare Lal was dismissed.

(2) The facts are not quite clear but somehow not until March 19, 1964, did the applicant firm give notice to the tenant of its having purchased the demised premises and demanding rent. It was after that, on April 27, 1964, that it proceeded to make an application for **eviction of the tenant from the demised premises on various grounds of which the only one that now requires consideration is the non-payment of arrears of rent.**

(3) The applicant firm claimed arrears of rent from May 26, 1961, the date of the Court auction of the demised premises in its favour, down to the date of the eviction application of April 27, 1964. The tenant pleaded that he had paid rent to the previous owner from May 26, 1961, down to November, 1962, and the balance he paid before the Rent Controller in the terms of the proviso to clause (1) of sub-section (2) of section 13 of the East Punjab urban Rent Restriction Act, 1949 (East Punjab Act No. III of 1949). The Rent Controller as also the appellate authority have concurred in accepting this statement of fact by the tenant. They have relied on section 50 of the Transfer of Property Act to come to the conclusion that as the tenant made **payment of the rent bona fide to the previous owner of the demised premises, so there has been no default in payment of arrears of rent by him within the meaning of clause (i) of sub-section (2) of section 13 of the East Punjab Act No. III of 1949.** The result has been the dismissal of the eviction application of the applicant firm and this is a revision application by the applicant firm against the order of the appellate authority.

(4) It is contended by the learned counsel for the applicant firm relying on *Janak Raj v. Gurdial Singh and another* (1), that title to the demised premises passed to the applicant firm on May 26, 1961, the date of the auction of the same, after the confirmation of the sale in its favour on May 17, 1962. The learned counsel has pressed that the title to the demised premises having passed thus to the applicant firm on and from May 26, 1961, if the tenant has made payment of the rent to a wrong person and in spite of the opportunity to avail of the proviso to clause (i) of sub-section (2) of section 13 of the East Punjab Act No. III of 1949, he has not paid or tendered on the first date of the hearing of eviction application the arrears, such as he **wrongly paid to the previous owner Piare Lal, he must be evicted because there has not been compliance with proviso to clause (i),**

(1) A.I.R. 1967 S.C. 608.

Hoya Ram, etc. v. Kesho Ram Gupta (Mehar Singh, C.J.)

sub-section (2) of section 13 of East Punjab Act No. III of 1949. The learned counsel has contended that section 50 of the Transfer of Property Act is of no avail to the tenant because that section has not been applied in Haryana within which State now is the town of Rewari where the demised premises are situate. The reply on the side of the tenant is that the tenant made the payment of rent in good faith to the previous owner because in the meantime he had no knowledge of the transfer of the property in favour of the applicant firm and, therefore, the authorities below were right in proceeding on the basis of section 50 of the Transfer of Property Act.

(5) Although according to *Janak Raj's case* title to the demised premises may be taken to have passed to the applicant firm on and from May 26, 1961, the date of the Court auction but the tenant would only pay rent to a known landlord. There is nothing on the file that the tenant know of the auction of the demised premises in favour of the applicant firm until sometime in November, 1962. In his statement he clearly said that he came to know of the auction sale in favour of the applicant firm in November, 1962. He said that he had paid rent to the previous owner down to November 10, 1962, and then said that a few days before that the representatives of the applicant firm had come to take possession of the demised premises. So that, however, his statement is read, it leads only to one conclusion that he did not come to know that the demised premises had become the property of the applicant firm till November, 1962. His case has been that he paid arrears of rent down to November, 1962, to the previous owner Piare Lal. After that he has made due payment to the applicant firm as has already been explained. The short question that remains for consideration is whether, in the circumstances of this case, when the tenant had no knowledge of the transmission of title from the original owner to the applicant firm till November, 1962, he having paid the arrears of rent down to November, 1962, to the previous owner, he can be said to be in arrears so far as the applicant firm is concerned for the period between May 26, 1961, and November, 1962? Now, section 50 of the Transfer of Property Act says, "No person shall be chargeable with any rents or profits of any immoveable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits". Obviously, if this section applies to the present

case, there is no argument that is available to the applicant firm. The question then is does this section apply to the present case? No doubt in express terms there is no notification of either the previous Punjab State or the present Haryana State which applies section 50 to the town of Rewari but the underlying principles as a provision like section 50 of the Transfer of Property Act has always been applied in Punjab on considerations of justice, equity and good conscience. A right has never been permitted to have been defeated because of the technical non-application of a particular provision for want of issue of a notification in that behalf. No doubt when on such consideration provisions of a statute like Transfer of Property Act have been applied, the technicalities have been ignored, and it is the substance which has been applied; not the technicalities of the statute but the principle underlying the provision has been applied. In my opinion, the authorities below were right in applying the principle underlying section 50 of Transfer of Property Act to the present case. The tenant held the property from Piare Lal the previous owner and not having knowledge of the transfer of the demised premises from him to the applicant firm till November, 1962, he made payment of the arrears of rent down to November, 1962, to the previous owner. There is nothing on the record to show that he did not act in good faith. The finding of the authorities below, one of fact, is rather to the contrary that he acted in good faith. So on the principle underlying section 50 of the Transfer of Property Act, the tenant has complied with the terms of clause (i) of sub-section (2) of section 13 of East Punjab Act No. III of 1949 and the argument on the side of the applicant firm cannot be accepted.

(6) This application is, therefore, dismissed with costs. counsel's fee being Rs. 60.

R.N.M.

REVISIONAL CRIMINAL,

Before Shamsher Bahadur and S. S. Sandhwalia, JJ.

JANAK RAJ,—Petitioner.

versus

DHARAM SINGH,—Respondent.

Criminal Revision No. 241 of 1967.

October 15, 1968.

Code of Criminal Procedure (Act V of 1898)—Section 155(2)—Case registered for Commission of a Cognizable Offence—During its investigation,