

In this view of the matter, the petition fails and is hereby dismissed. In the circumstances of this case, however, I would make no order as to costs in this Court.

Aftab Ahmed
Khan
v.
The Instalment
Supply Private
Ltd. and others

B. R. T.

Pandit, J.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

UMRAO DEVI AND ANOTHER,—*Petitioners.*

versus

ISHAR SINGH AND OTHERS,—*Respondents.*

Civil Revision No. 444-D of 1959.

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Section 13(5)—Order of the Court—Whether should specify the amount of rent to be deposited.

1961

Sept. 6th

Held, that under section 13(5) of the Delhi and Ajmer Rent Control Act, 1952, the Court in its order, after hearing the parties, must specify the rate of the monthly rent and the amount of arrears of rent, which have to be deposited by the tenant. The Court is not absolved from the duty imposed by the statute of specifying the exact amount of monthly rent to be deposited by the tenant, even in those cases where there may be no dispute between the landlord and the tenant regarding the same. It will be seen that the consequences on account of the failure of the tenant to comply with that order are very drastic and, therefore, the Legislature enjoins it on the Court to make its order specific and exact. The order of the Court, therefore, should be strictly in accordance with the requirements of this sub-section, before the penalty provided therein can be imposed on the tenant.

Petition under section 35 of Act 38 of 1952, for revision of the order of Shri Diali Ram, Senior Sub-Judge, Delhi, with special appellate powers, dated the 31st August, 1959, reversing that of Shri Krishan Lal Wason, Sub-Judge, III Class, dated the 18th day of October, 1958, ordering that

the defence of the defendant as regards ejection, be struck off in accordance with law.

SULTAN SINGH, ADVOCATE, for the Petitioner.

YOGHESHWAR DAYAL, as amicus curie, for the Respondents.

JUDGMENT

Pandit, J.

PANDIT, J.—This revision petition raises the question of the propriety of an order passed by the Court under section 13(5) of the Delhi and Ajmer Rent Control Act, 1952.

The plaintiff-petitioners filed a suit on 12th December, 1957, for the ejection of the defendant-respondent from a portion of a house on the ground of personal requirement. This suit was adjourned to 20th January, 1958, for the summoning of the defendant. On 7th January, 1958, the plaintiffs filed an application under section 13(5) of the Act, praying that, since the defendant was contesting the suit, he may be directed to deposit rent at the rate of Rs. 7-12-0 per mensem in Court till the decision of the same. This application came up before the Court on 9th January, 1958, and it was ordered that it should come up on the date fixed in the case, namely, 20th January, 1958. On this date, the Court ordered that the case be adjourned to 13th February, 1958, with a direction to the defendant to file his reply, if any, to the said application. On the adjourned date, the counsel for the defendant made a statement that the rent was due from the tenant from 1st December, 1957. On this very date, the following order was passed:—

“The defendant is directed to deposit arrears and future rent in accordance with law.”

It appears that the tenant complied with this order, but, later on, committed default in the payment of the rent for the month of June, 1958, which he deposited on 18th July, 1958, instead of 15th July, 1958, as provided for in section 13(5) of the Act. Thereupon, the plaintiffs filed an application to the

Court for the striking out of the defence of the tenant under this very section. Notice of this application was given to the defendant, who filed a reply, in which he stated that he had been depositing the rent regularly and for the month of June, 1958, also, he had made an application to the Court for the necessary order for deposit, but he could not get the same within time. From 15th June, 1958 to 15th July, 1958, the Courts were closed due to summer vacation and the order of the Court for the deposit of this rent became available to him only on the opening of the Courts. Under these circumstances, two or three days' delay in the deposit of the rent should be condoned and the penalty provided in this section for the striking out of the defence should not be enforced, especially when this rent had also been paid now. The trial Judge, however, passed an order striking out the defence of the tenant and adjourned the case to 24th October, 1958, on which date two witnesses were examined on behalf of the plaintiffs and an *ex parte* decree for ejectment of the defendant was passed.

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Aggrieved by the decision of the trial Court, the defendant filed an appeal in the Court of the learned Senior Subordinate Judge. He found that the objection of the tenant against the propriety of the order, dated 13th February, 1958, of the trial Court striking out his defence could not be thrown out on the ground that no appeal was filed against this order. He further found that since opportunity for substantiating the plea taken by the defendant was not given to him, the order passed by the trial Court, striking out his defence, was improper. On these findings, he set aside the judgment and the decree passed by the trial Court and also the order striking out the defence of the tenant. The case was remanded for re-decision, after giving the tenant a suitable opportunity to substantiate his plea with respect to the default committed by him in depositing the rent for the month of June, 1958, within time. It was further held that if the trial Court was satisfied that there was sufficient reason for not depositing this rent within time, the Court was at liberty to decline to impose the penalty provided by section 13(5) of the Act. Against this decision, the present revision has been filed by the plaintiffs.

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—
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The only question that arises for decision in this revision petition is whether the order, dated 13th February, 1958, passed by the trial Judge was in accordance with the provisions of section 13 (5) of the Act or not. Section 13(5) of the Act is in the following terms:—

“If the tenant contests the suit as regards the claim for ejectment, the plaintiff-landlord may make an application at any stage of the suit for an order on the tenant-defendant to deposit month by month rent at a rate at which it was last paid and also the arrears of rent, if any, and the Court, after giving an opportunity to the parties to be heard, may make an order for the deposit of rent at such rate month by month as it thinks fit and the arrears of rent, if any, and on the failure of the tenant to deposit the arrears of rent within fifteen days of the date of the order or to deposit the rent at such rate for any month by the 15th of the next following month, the Court shall order the defence against ejectment to be struck out and the tenant to be placed in the same position as if he had not defended the claim to ejectment; and the landlord may withdraw the amount of money in deposit without prejudice to his claim to any decree or order for recovery of possession of the premises.”

A bare reading of the same will show that if the landlord wishes to take advantage of these provisions, he has to make an application to the Court, stating the rate of the monthly rent, which was last paid by the tenant, and also the arrears of rent that are due from him, and then praying that the tenant be ordered to deposit month by month rent at a rate at which it was last paid and also the arrears of rent, if any. When such an application is made by the landlord, the Court will give an opportunity to the parties of being heard and then make an order for the deposit of monthly rent at such rate as it thinks fit and the arrears of rent, if any. After this order has been passed by the

Court, if the tenant fails to deposit the arrears of rent within 15 days of the date of the order or the monthly rent for any month by the 15th of the next following month, the Court shall order his defence against ejection to be struck out and he will be placed in the same position, as if he had not defended the claim of the landlord to ejection. Thus, it will be seen that the Court in its order, after hearing the parties, must specify the rate of the monthly rent and the amount of arrears of rent, which have to be deposited by the tenant. It is only then that it can be said that the Court has complied with the statutory provisions of this sub-section. In the present case, as already mentioned above, the trial Judge had merely directed the tenant to deposit arrears and future rent in accordance with law. This order, in my opinion, does not comply with the statutory requirements of section 13(5) of the Act. It was contended by the learned counsel for the petitioners that the rate and the amount had to be specified by the Court only in those cases where there was a dispute between the landlord and the tenant regarding the same. He also urged that in those cases where there was no such dispute, the trial Court need not specify the rate and the amount in its order. In the present case, he submitted that there was no such dispute and, therefore, it was understood by both the parties as to the rate at which the monthly rent had to be deposited by the tenant. I may, however, mention that the learned counsel for the petitioners conceded before me that, in the present case, the dispute was only regarding the deposit of the monthly rent. I am, however, unable to agree with this submission. When the statute makes it quite clear that the Court, after giving an opportunity to both the parties, will make an order for the deposit of monthly rent *at such rate as it thinks fit*, then it is not absolved from the duty imposed by the statute of specifying the exact amount of monthly rent to be deposited by the tenant, even in those cases where there may be no dispute between the landlord and the tenant regarding the same. It will be seen that the consequences on account of the failure of the tenant to comply with that order are very drastic and, therefore, the Legislature enjoins it on the Court to make its order specific and exact. The order of the

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Court, therefore, should be strictly in accordance with the requirements of this sub-section, before the penalty provided therein can be imposed on the tenant. In this view of mine, I am also supported by the decision of Mehar Singh, J., in *Dr. Savitri Gupta v. Uma Kumari*, Civil Revision No. 447-D of 1957 (decided on 25th February, 1958).

Under these circumstances, I hold that the order, dated 13th February, 1958, passed by the trial Judge, was not in conformity with the provisions of section 13(5) of the Act and, therefore, non-compliance with the same cannot result in the striking out of the defence of the tenant.

No other point was argued before me.

In the result, this petition is dismissed and the case will go back to the trial Judge for proceeding with the same in the light of the observations made above. In the circumstances of this case, however, the parties shall bear their own costs in this Court as well.

B. R. T.

APPELLATE CIVIL

Before Harbans Singh, J.

BHOLU RAM AND OTHERS,—Appellants.

versus

KANHYA AND OTHERS,—Respondents.

Execution Second Appeal No. 98 of 1961.

1961

Sept, 11th

Code of Civil Procedure (V of 1908)—Order XX Rule 14—Decree requiring payment into Court by a specified date—Payment of the part of the decree made out of Court—Whether can, under any circumstances, be treated as sufficient compliance with the decree—Order XXI Rule 2—Certification by Court of payment made out of Court—Whether necessary in the Punjab.