

(12) Under article 227 of the Constitution, the Parliament did not, while amending article 227 want to take away the jurisdiction of the High Courts over the pending matters, for if it had done so, it would have denied justice to the petitioners whose matters were pending before the High Courts, as unlike the litigant, whose writ petitions were pending in the High Courts and which had been made to abate by the provisions of section 58 of the Constitution (Forty-second Amendment) Act, 1976, and who could look for justice from the High Court again after exhausting the alternative remedy provided by the statute, the petitioners under article 227 had nowhere to go if their pending petitions had been made to abate.

(13) For the reasons aforesaid, we hold that the provisions of clause (1) of article 227 and consequently the provisions of clause (5) of article 227 of the Constitution of India were never intended to operate retrospectively and therefore, they are held to be prospective in nature.

(14) The petition can now be set down for hearing before the learned Single Judge for decision on merit.

H.S.B.

Before M. R. Sharma, J.

NASIB SINGH—Petitioner.

versus

OM PARKASH and another,—Respondents.

Civil Revision No. 1464 of 1975.

October 23, 1978.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2) (i)—Proviso—Dispute regarding quantum of rent—Tenant depositing without protest rent at the rate claimed by the landlord—Such tenant—Whether debarred from claiming trial of the issue relating to quantum of rent.

Held, that the proviso to section 13(2) (i) of the East Punjab Urban Rent Restriction Act, 1949 nowhere mentions that a tenant

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while making a tender of the rent should do so under protest. All that is required is that the tenant should pay the arrears of rent, interest and costs etc. on the first date of hearing of the application. This implies that even when there is a genuine dispute about the quantum of rent it is open to the tenant to make tender at the rate claimed by the landlord, but that tender does not debar him from claiming a trial of the issue relating to the quantum of rent. In any event, whether the rent was being tendered under protest or not can be determined by the Rent Controller by taking into consideration the facts and circumstances of each case and if the tenant claims that the rent had been fixed at lower rate by raising the necessary plea in the written statement it should be presumed that he was making a tender of the rent at the higher rate under protest or only provisionally so that if the decision of the issue regarding the quantum of rent ultimately goes against him he may not be deprived of the benefit of proviso (i) to subsection (2) to section 13 of the Act. This precautionary measure adopted by him does not debar him from insisting upon the determinations by the Rent Controller of the rate of rent fixed by the parties by mutual consent. (Paras 4 and 8).

Petition under section 15(5) of East Punjab Urban Rent Restriction Act and Section 115 of C.P.C. for the revision of the order of Shri R. S. Sharma, PCS, Chief Judicial Magistrate, Jullundur, exercising the powers of Rent Controller, Jullundur dated 2nd September, 1975, deleting issue No. 1 and making order as to costs.

Sarwan Singh, Advocate, for the petitioner.

M. K. Mahajan, Advocate, for the respondent.

JUDGMENT

M. R. Sharma, J. (Oral).

(1) The respondent No. 1 filed a petition for the ejectment of the petitioner on the grounds *inter alia* of non-payment of rent. He claimed that the rent of the premises in dispute had been fixed at Rs. 40 per month. The petitioner submitted a written statement in which he asserted that the premises in dispute carried a monthly rent of Rs. 22 per month. However, in order to save his interest, the petitioner tendered rent alongwith costs and interest etc. at the rate of Rs. 40 per month. Thereafter, the respondent made a petition before the learned Rent Controller, wherein he submitted that the issue regarding the quantum of rent be struck off because he had already received the arrears of rent. The learned Rent Controller

acceded to this prayer and struck off the relevant issue. While doing so he purported to rely upon a Single Bench decision of the Delhi High Court in case *Behari Lal versus Ajudhia Dass* (1).

(2) In this petition, it has been argued on behalf of the petitioner that the petitioner had asserted that the rent fixed was at the rate of Rs. 22 per month and he could not have been forced to pay rent at the rate of Rs. 40 per month without its being determined at that figure. On behalf of the respondent, it has been argued that since the petitioner did not tender rent at the rate of Rs. 40 per month under protest, it was not open to him to claim a decision on the issue relating to the quantum of rent.

(3) The provision to section 13 (2) (i) of the East Punjab Urban Rent Restriction Act reads as under:—

“Provided, that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest, at six per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the “rent within the time aforesaid.”

(4) This proviso nowhere mentions that a tenant while making a tender of the rent should do so under protest. All that is required is that the tenant should pay the arrears of rent, interest and costs etc. on the first hearing of the application. This implies that even when there is a genuine dispute about the quantum of rent it is open to the tenant to make tender at the rate claimed by the landlord, but that tender does not debar him from claiming a trial of the issue relating to the quantum of rent. Had it not been so, an unscrupulous landlord would claim rent at a rate higher than at which it had been fixed, pocket the same when tendered on the first date of hearing, and then leave the tenant helpless.

(5) The Rent Control Legislation has been brought on the statute book with the avowed object of ameliorating the lot of tenants by affording them remedies against undue raises in rents demanded by the landlords. Almost all the Rent Control Statutes

(1) 1970 All India Rent Control Journal 671.

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lay down that the tenants should not be forced to pay anything beyond what is commonly known as the standard rent. Courts of law while interpreting such statutes have to adopt an interpretation which advances, their object instead of frustrating it. Any interpretation of the afore-mentioned proviso contrary to the one suggested by me would lead to the same result.

(6) *Behari Lal's* case (supra) relied upon by the learned Appellate Authority, does lay down that it is not open to the Rent Controller to hold an enquiry after the rent claimed by the landlord is tendered on the first date of hearing. The learned Judge who decided that case observed as under :—

“In such a situation after the Rent Controller had found as to what the arrears were, has the Rent Controller now to force the landlord to accept the additional amount and has the tenant now to be non-suited on the ground that he has not paid the rent due. Faced with this situation, the learned counsel for the petitioner had to admit that in such a situation the tenant could not be non-suited because he could be only ejected if the amount paid by him turned out to be less than the rent due as demanded by the landlord. He, however, submitted that in the instant case the payment by the tenant was conditional and so it was the duty of the Rent Controller to go into the question as to what amount of rent was due from the tenant, irrespective of the fact that the landlord accepted the payment unconditionally and gave up this ground for ejection. I asked him that supposing the Rent Controller, on holding an enquiry came to the conclusion that rent paid by the tenant was not in excess of the amount demanded by the landlord, would the Rent Controller be justified in non-suiting the tenant and ordering his ejection. I also asked him if the Rent Controller came to the conclusion that, in fact, excess amount has been paid, would he be justified in directing the landlord to pay back the excessive amount. The learned counsel for the landlord-petitioner had to admit that in the former case the Rent Controller could not order the ejection of the tenant while in the latter case he could order the repayment to the tenant but the case would not be affected. Holding an enquiry in such circumstances would be a sheer waste of time.”

(7) It appears that in that case ejection was sought only on the ground of non-payment of rent and the landlord accepted the payment unconditionally and gave up his ground of ejection. That case is, therefore, clearly distinguishable.

(8) In *Dial Chand versus Mahant Kapoor Chand* (2), a learned Judge of this Court has laid down that proviso to Clause (i) sub-section (2) of section 13 of the East Punjab Urban Rent Restriction Act was for the benefit of the tenant, who could adopt any of the three courses namely, (i) he could under protest make tender of the arrears of the rent (ii) if the rate is subsequently found to be less he can hope for the adjustment of the excess payment, and (iii) he can enter into a dispute with the landlord and insist upon his lower rate of rent and then take the consequences if he has not been able to prove that the rent agreed upon between the parties was at the figure mentioned by him. The learned Judge while deciding this case did not lay down as a matter of law that before the tenant tenders rent at the higher rate he must under all circumstances make a statement that he was making tender of the rent at the higher rate under protest. In any event, whether the rent was being tendered under protest or not can be determined by the learned Rent Controller by taking into consideration the facts and circumstances of each case and if the tenant claims that the rent had been fixed at lower rate by raising the necessary plea in the written statement it should be presumed that he was making a tender of the rent at the higher rate under protest or only provisionally so that if the decision of the issue regarding the quantum of rent ultimately goes against him he may not be deprived of the benefit of the proviso (i) to sub-section (2) to section 13 of the East Punjab Urban Rent Restriction Act. This precautionary measure adopted by him does not debar him from insisting upon the determinations by the Rent Controller of the rate of rent fixed by the parties by mutual consent.

(9) By striking off the issue relating to the quantum of rent which had earlier been framed by the learned Rent Controller he has denied the petitioner of a very valuable right and in so doing he has acted with material irregularity in exercise of his jurisdiction. I, therefore, allow this petition, set aside the impugned order and direct

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the learned Rent Controller to decide the issue regarding the quantum of rent and then to proceed in accordance with law. The parties through their counsel are directed to appear before the Rent Controller on November 9, 1978.

H. S. B.

Before D. S. Tewatia and A. S. Bains, JJ.

COMMISSIONER OF INCOME TAX—*Applicant.*

versus

HARDIT SINGH PAL CHAND—*Respondent.*

Income Tax Reference No. 4 of 1974.

October 26, 1978.

Income Tax Act (LXIII of 1961)—Sections 184 and 185—Punjab Excise Act (I of 1914)—Sections 26 and 58—Punjab Liquor License Rules 1956—Rules 3, 6, 7 and 37(26)—Liquor License granted to individuals under the provisions of Excise Act and Rules—Such individuals entering into partnership with strangers—Names of the strangers not endorsed on the license—Such partnership—Whether entitled to registration under the Income Tax Act.

Held, that the sum and substance of the Punjab Excise Act 1914 and the rules framed thereunder is that no person shall possess beyond permissible quantity of intoxicant i.e. liquor for consumption, or sell without license. If the licensee is a firm, it is prohibited from taking new partners without the approval of the concerned authorities. The rules also prohibit anybody to sell on behalf of the licensee unless the name of such a person is approved and endorsed on the license. By virtue of the conditions in the license to the effect that the license is granted subject to the provisions of the rules, the aforesaid provisions stand incorporated as conditions in the license. If the names of the strangers with whom the licensee had entered into partnership were not endorsed on the license, it is a violation of sub-rule 26 of rule 37. In such a situation he may have complied with all the requisites under the Partnership Act or the provisions of the Contract Act for the purposes of entering into a valid contract of partnership, but the same was not entitled to be registered for the purpose of Income Tax under sections 184 and 185 of the Income Act 1961 as it carried on the business of