

The Indian Law Reports

REVISIONAL CIVIL

Before Tek Chand, J.

O. P. KATHPALIA,—Petitioner

versus

LAKHMIR SINGH AND OTHERS,—Respondents

Civil Revision No. 335-D of 1961

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)
—S. 11—Person coming on premises as sub-tenant of the tenant and later becoming tenant under the landlord—Terminus-a-quo for making application for fixation of standard rent by him—Whether the date on which he became sub-tenant or the date on which he became tenant.

1962

Dec., 17th

Held, that the law of limitation is *qua* the remedy sought and not *qua* the party sued. A tenant can thus claim the right to apply for fixation of standard rent within six months of his entry on the premises as tenant regardless of change in the landlords. Under section 11 of the Delhi and Ajmer Rent Control Act, 1952, what is matter of moment is the quantum of standard rent of the premises and not the party, to whom it is payable or from whom it is chargeable. Whenever a tenant enters on the premises he is given by the law a right to get his rent, which he may be actually paying reduced, to the standard rent, provided he makes such an application within the period allowed. Every time there is change in ownership, a right to get the standard rent fixed does not occur and recur. If a tenant feels satisfied with the contractual rent and allows the period of limitation to expire, he is deemed to be satisfied with what he is paying and the amount cannot be reduced at his instance. There seems to be no reason why the law should have permitted such a tenant another period of limitation on the change of the landlord.

Petition under Section 35 of the Delhi and Ajmer Rent Control Act XXXVIII of 1952, for revision of the order of Shri Hans Raj Khanna, District Judge, dated 16th March, 1961, reversing that of Shri O. P. Singla, Sub-Judge, Ist Class, Delhi, dated 4th August, 1960, accepting the appeal and setting aside the order of the lower Court and dismissing the application of Shri O. P. Kathpalia and leaving the parties to bear their own costs throughout.

R. L. AGGARWAL, ADVOCATE, for the Petitioner.

R. S. NARULA AND AJIT SINGH, ADVOCATES, for the Respondents.

JUDGMENT

Tek Chand, J. **TEK CHAND, J.**—This is a petition of revision under section 35 of the Delhi and Ajmer Rent Control Act (XXXVIII of 1952) preferred on behalf of the tenant. The brief facts of this case are that the premises in question situate at No. 1, Hailey Road, New Delhi, were taken on rent from one E.B. Brook by the petitioner, O. P. Kathpalia. Brook was tenant of the respondent landlord. Brook had sublet a portion of the property in his occupation to the present petitioner on 1st of September, 1954. Brook vacated the premises in his occupation and called upon the petitioner to vacate his portion. This was on 30th of April, 1955. The petitioner, however, did not do so. The petitioner on 22nd of June, 1955 came to a direct arrangement with the landlord agreeing to become his tenant from 1st of May, 1955, at a monthly rent of Rs. 272/8/-. By his latter, Exhibits, P. 2, dated the 26th of June, 1955 addressed to the landlord, the petitioner said that he had cleared his accounts with Mr. Brook, up till the 30th of April, 1955 and had enclosed a cheque for Rs. 539/- as the rent for the months of May and June, 1955 and promised to pay the rent in future every month regularly. On 19th of October,

1955, the petitioner filed an application under section 11 of the Delhi and Ajmer Rent Control Act (XXXVIII of 1952) for fixation of standard rent. Section 11 is in the following words :—

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“Any landlord or tenant may file an application to the Court for fixing the standard rent of the premises or for determining the lawful increase of such rent—

- (a) in the case of any premises which were let, or in which the cause of action for lawful increase of rent arose, before the commencement of this Act, within six months from the date on which it is so let;
- (b) in the case of any premises let after the commencement of this Act, within six months from the date on which it is so let; and
- (c) in the case of any premises in which the cause of action for lawful increase of rent arises after the commencement of this Act, within six months from that date:

Provided that the Court may entertain the application after the expiry of the said period of six months if it is satisfied that the applicant was prevented by sufficient cause from filing the application in time.”

This application was resisted by the landlord who contended that the period of limitation, i.e., six months as prescribed by section 11 had since expired and the application had become time-barred. I am not referring to the other averments of the parties as they have no bearing for purposes of the

O. P. Kathpalia decision of the dispute now before me. The following issues were framed :—
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1. Whether the application is time-barred?
2. What is the standard rent of the premises under section 8 of the Delhi and Ajmer Rent Control Act, 1952 ?

We are concerned only with the first issue. It was argued by Mr. Radhe Lal Aggarwal, learned counsel for the petitioner, that the period of limitation commenced on 1st of May, 1956 when petitioner became for the first time the tenant of Shri Lakhmir Singh landlord and on the expiration of the tenancy which had previously existed between Brook and the petitioner. The application had been made admittedly within 6 months from 1st of May, 1956. The contention of the respondent-landlord, however, is that the limitation started running after the petitioner's entry on the premises in 1954, when he had become tenant of Brook. According to the respondent-landlord the *terminus-a-quo* dates when the tenant for the first time enters on the particular premises.

The question before me relates to the construction of the words of the section and to legislative intent. To my mind the more reasonable construction is the one which has been contended on behalf of the landlord. What is matter of moment is the quantum of standard rent of the premises and not the party, to whom it is payable or from whom it is chargeable. Whenever a tenant enters on the premises he is given by the law a right to get his rent, which he may be actually paying reduced, to the standard rent, provided he makes such an application within the period allowed. Every time there is change of ownership, a

right to get the standard rent fixed does not occur and recur. If a tenant feels satisfied with the contractual rent and allows the period of limitation to expire, he is deemed to be satisfied with what he is paying and the amount cannot be reduced at his instance. There seems to be no reason why the law should have permitted such a tenant another period of limitation on the change of the landlord. The relevant words are "within 6 months from the date on which it is so let". In order to accept the contention of the learned counsel for the tenant the words ought to read "within 6 months from the date on which it is so let *by the respondent-landlord*". There is no reference whatsoever to the landlord but only to the premises. The statute does not contemplate periodic resuscitation of the period of limitation with every change in the landlord. The learned counsel for the landlord drew my attention to *Mst. Bhagwati v. Sant Lal* (1). There the word contained in Article 181 "When the right to apply accrues" were being construed and it was held that they meant "when the right to apply first accrues". *Hari Mohan Dalal and another v. Parameshwar Shau and others* (2), is to the same effect. It has also to be remembered that the law of limitation is *qua* the remedy sought and not *qua* the party sued. A tenant can thus claim the right to apply for fixation of standard rent within six months of his entry on the premises as tenant regardless of change in the landlords.

In a case like the present what is of utmost significance is the fixation of standard rent, at the instance of the tenant, of the premises. It is a matter of no significance as to who the landlord is. If a tenant feels that he is being subjected to an excessive rent under the agreement, the law gives

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(1) A.I.R. 1946 All. 360.

(2) A.I.R. 1928 Cal. 646.

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him an opportunity to get the rent reduced by making an application for fixation of standard rent within six months from the date on which the premises are let. If he fails to avail himself of this opportunity allowed to him under section 11 and permits the period of limitation to expire, a right for making a similar application is not revived merely because the ownership changes hands. It is open to the defendant in such cases to oppose a time-barred application by telling the tenant that he has been occupying the premises for over 6 months and as he has not applied for fixation of standard rent, he is no longer entitled to it; and it does not matter that the premises had been under different landlords to whom the tenant had been attorning in turn. The above construction to my mind is in accord with the legislative intent. It is the spirit of law of limitation that it is intended for the repose of a party who has been vigilant and the remedy provided is available if invoked during the period prescribed and unless there is something specific in the section the remedy once lost is incapable of resuscitation. As I read section 11, I cannot construe it in any other manner. I therefore agree with the conclusion of the learned District Judge that remedy available under section 11 has been lost by efflux of time as the premises in question were let to the petitioner by Mr. Brook, his former landlord in 1954, and there was nothing to prevent the tenant from claiming fixation of standard rent within the first 6 months of his tenancy under Brook. The result therefore is that the petitioner cannot succeed on the first issue and the petition of the petitioner deserves to fail as the application under section 11 of the Delhi and Ajmer Rent Control Act (XXXVIII of 1952) was barred by time. The petition is therefore dismissed with cost.

B.R.T.