

REVISIONAL CIVIL

Before I. D. Dua and P. C. Pandit,—JJ.

RULDU,—Petitioner

versus

UMAR DIN,—Respondent

Civil Revision No. 643 of 1960

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Deposit of arrears of rent with a prayer that it should not be paid to the landlord until dispute as to rate and period is decided—Whether a valid tender.

Held, that a bare reading of section 13 of the East Punjab Urban Rent Restriction Act, 1949, shows that it is the duty of the tenant either to pay or tender the rent due by him to the landlord within the time mentioned in sub-clause (i) of section 13(2) of the Act and if he fails to do so, a cause of action accrues to the landlord to evict the tenant. Thereafter, the tenant under the proviso has been given a sort of concession that if he on the first hearing of the application for ejection either pays the arrears of rent together with interest and costs of the application to the landlord or tenders the same for payment to him, the tenant shall be deemed to have duly paid or tendered the rent within the prescribed period. It is obvious that under the proviso there should be either actual payment or tender of the arrears of rent together with interest and costs of the application.

Held, that 'Tender' means an unconditional offer of money and a conditional deposit of arrears of rent, etc., in Court with a prayer that the same should not be paid to the landlord until the dispute as to the rate of rent and period for which it is payable is decided cannot amount to either actual payment or tender within the meaning of the aforesaid proviso. 'Tender' in order to be valid must be unqualified.

Petition under section 15(5) of the East Punjab Urban Rent Restriction Act for revision of order of Shri Raj Inder Singh, Appellate Authority, Barnala dated the 6th September, 1960, affirming that of Shri Surendera Nath Mahendru,

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Rent Controller, Malerkotla dated 26th July, 1960, ordering the respondent Ruldu to vacate the shop in dispute and deliver its possession to the applicant within two months from the date of order.

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

G. P. JAIN AND J. V. GUPTA, ADVOCATES, for the Respondent.

JUDGMENT

Pandit, J.

PANDIT, J.—One Umar Din filed an application under section 13 of the Rent Restriction Act for ejection of his tenant Ruldu from a shop situated in Malerkotla. He alleged that the shop in dispute had been let out on rent to Ruldu about one and a half years back at a rent of Rs. 9 per month which was to be paid quarterly in advance, that Ruldu had paid rent for only six months and rent for one year amounting to Rs. 108 was due from him.

The application was resisted by the tenant who pleaded that the rent of the shop in his possession was Rs. 3 per month. He, however, tendered the rent at the rate of Rs. 9 per month and actually deposited a sum of Rs. 175 as directed by the Court on the first day of hearing. He, however, made a prayer to the Rent Controller that the amount should not be paid to the landlord (applicant) till the dispute with regard to the rate of rent and the period for which it was due, was decided by the Rent Controller.

The applicant objected that this was not a valid tender and consequently the Rent Controller framed an issue, namely, whether the tender of the lease amount was not valid.

No evidence was led by the parties with regard to this issue and the Rent Controller, following

the Division Bench Authority of this Court reported as *Jiwana Mal v. Khushi Ram* (1), held that such a tender of the lease amount was not a valid tender of the rent and ordered that the tenant should vacate the shop in question and deliver its possession to the landlord within two months from the date of the order.

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When the matter went to the Appellate Authority on appeal by the tenant against the order of the Rent Controller, he also held that the tender was conditional and was not tender in the eye of law. The appeal was consequently dismissed *in limine*.

The tenant has come here in revision under section 15(5) of the Rent Restriction Act. The learned Judge while admitting this revision, ordered the same to be heard by a Division Bench and that is how the matter has come before us.

The relevant portion of section 13 of the East Punjab Urban Rent Restriction Act, 1949, is as under :—

“(1) * * *

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied—

(i) That the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the

(1) A.I.R. 1953 Punj. 70.

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absence of any such agreement, by the last day of the month next following that for which the rent is payable:

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.

(ii) * * * *

A bare reading of this section would show that it was the duty of the tenant either to pay or tender the rent due by him to the landlord within the time mentioned in sub-clause (i) of section 13(2) of the Act and if he fails to do so, a cause of action accrues to the landlord to evict the tenant. Thereafter, the tenant under the proviso has been given a sort of concession that if he on the first hearing of the application for ejectment either pays the arrears of rent together with interest and cost of the application to the landlord or tenders the same for payment to him, the tenant shall be deemed to have duly paid or tendered the rent within the prescribed period. It is obvious that under the proviso there should be either actual payment or tender of the arrears of rent together with interest and cost of the application. 'Tender' means an unconditional offer of money. Conditional deposit of money in Court, as has been done in the present case, in my opinion, cannot amount to either actual payment or tender within the meaning of the aforesaid proviso. 'Tender' in order to be valid must be unqualified.

This question came up for decision before a Division Bench of this Court in *Jiwana Mal v. Khushi Ram* (1), where the learned Judges relying on the provisions of section 38 of the Indian Contract Act and the Privy Council authority reported as *Narain Das v. Abinash Chander* (2), held as follows :—

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“Section 38, Contract Act, 1872, provides that offer of performance must be unconditional. Therefore where a tenant, against whom proceedings for eviction under section 13, East Punjab Urban Rent Restriction Act have been initiated, deposits in Court a sum of money, and pleads in his written statement that the amount which he was depositing under protest, should not be paid to the landlord until the final decision of the case, the deposit is one which does not satisfy the requirements of section 13(2)(1) it being not an unconditional deposit.”

This Division Bench authority has subsequently been followed in a number of unreported decisions of this Court, e.g.,—

- (1) Civil Revision No. 30 of 1958, *R. P. Aggarwal Textile Milils v. Seth Nagar Mal Ghoriwala*, decided by R. P. Khosla, J., on the 24th September, 1958.
- (2) Civil Revision No. 625 of 1957, *Sardari Lal-Satya Pal v. Madan Lal*, decided by Dulat, J., on the 14th November, 1958.
- (3) Civil Revision No. 379 of 1958, *Sant Ram v. Krishan Sarup*, decided by Dulat, J., on the 16th March, 1959.

(1) A.I.R. 1953 Punj. 70.

(2) A.I.R. 1922 P.C. 347.

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Similar view was taken in another decision in Civil Revision No. 387 of 1959, *Firm Shivji Ram-Om Parkash v. Karam Chand*, decided by G. D. Khosla, C.J., on the 7th April, 1960.

Reference was made by the learned counsel for the petitioner to a decision by Harnam Singh, J., in Civil Miscellaneous No. 141 of 1955, *Maya Ram v. Shivji Maharaj Idol Mandir Shawala*, decided on the 22nd August, 1955. The learned Judge on the facts of that case held that the tender by the tenant was unconditional and consequently it was a valid tender. That case is, therefore, no authority for the proposition that even a conditional tender would be valid. As a matter of fact the learned Judge had specifically mentioned in his judgment that the rule laid down in *Jiwana Mal v. Khushi Ram* (1), did not govern that case.

Reference was also made by the learned counsel for the tenant to a decision in Civil Miscellaneous No. 159 of 1955, *Jagdish Parshad v. Beni Parshad* (2), decided by Bhandari, C.J., on the 17th May, 1955, where it was held—

“Where in a suit for ejectment the tender by the tenant was made under section 13(2) (i) and the amount was actually deposited in Court but the tenant merely prayed that the amount tendered should not be handed over to the landlord as certain disputes had arisen between them which required to be adjudicated.

Held, that the tender could not be regarded as a conditional tender and was a valid “offer under the proviso”.

This authority was noticed by all the unreported decisions cited above and was not followed.

(1) A.I.R. 1953 Punj. 70.

(2) A.I.R.; 1955 NUC (Punj) 5396.

Moreover, the learned Judge has himself in his judgment remarked—

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“In any case, the question whether the requirements of the proviso to section 13(2) (i) of the Act have or have not been complied with is a finding on a mixed question of fact and law and it would not be proper for this Court while exercising extraordinary jurisdiction vested in it by Article 227 of the Constitution, to interfere with the finding arrived at by the learned District Judge.”

Finding as I do, that in the present case the tenant neither paid nor tendered the arrears of rent together with interest and cost of the application on the first day of hearing of the application for ejectment, there is no force in this petition which is hereby dismissed with costs. The tenant is ordered to vacate the premises within one month from today.

I. D. DUA, J.—I agree.

Dua, J.

R.S.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur,—J.

UTTAM CHAND,—*Petitioner*

versus

THE CHIEF SETTLEMENT COMMISSIONER AND

ANOTHER,—*Respondents*

Civil Writ No. 1413 of 1959

Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rule 65(1)—Whether applies where no allotment made in respect of a particular claim—Person in possession of property allotted in respect of personal claim—Whether entitled to get compensation in respect of another claim verified in the name of his father as his heir.

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Held, that the right to be paid in respect of one's net compensation is absolute and mandatory. The Rules which