

The Jullundur
Transport Co-
operative So-
ciety, Jullundur
v.
The
Punjab State
and others.

in the Punjab Co-operative Societies Act, which would exclude the operation of the former Act.

The result is that the writ petition fails and is dismissed with costs. Cost Rs 50 to each respondent.

Dua, J.

It is regrettable that the proceedings before the Tribunal should have remained stayed all this time. It is in the public interest that industrial disputes should be settled as expeditiously as possible, speedy adjudication of such disputes is of the utmost importance to the cause of industrial peace and progress. The papers may, therefore, be sent back to the Industrial Tribunal without any avoidable delay so that the proceedings may continue without any further obstruction.

Falshaw, J.

FALSHAW, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Falshaw and Dua, JJ.

BABU RAM SHARMA,—*Judgment-debtor (Appellant)*

versus

B. BAL SINGH,—*Respondent*

Execution Second Appeal No. 1036 of 1956.

1958

Sept. 11th

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Application under, for eviction of the tenant on ground of non-payment of rent—Landlord and tenant entering into compromise for payment of arrears of rent by instalments with a default clause—Rent Controller—Whether can pass a decree in terms of such a compromise—Default in payment of instalments occurring—Civil Court—Whether can execute the decree.

Held, that according to section 13 of East Punjab Urban Rent Restriction Act, a landlord is entitled to seek eviction

of his tenant on certain grounds and the Rent Controller, after giving notice to the tenant, is empowered to give his own finding and then to pass the necessary order. When the ground on which the landlord seeks eviction is non-payment of rent, it is for the Rent Controller to determine whether the allegation of the landlord is correct. But when the tenant admits that he has not paid the rent as alleged by the landlord, it is not necessary for the controller to hold any further inquiry. If the landlord is willing to accommodate the tenant by granting him time to pay the arrears of rent by instalments; there is no prohibition in the Statute against such accommodation being given. Nor can such accommodation be deemed to have been prohibited on grounds of public policy or on the ground of being opposed to the object and purpose of the Act, for the concession shown by the landlord is obviously to the advantage of the tenant for whose benefit principally, the above Statute has been enacted. It is within the jurisdiction of the Rent Controller to give the concession to the tenant to which the landlord has agreed and to order him to pay the arrears by instalments failing which alone he would be ejected.

Held further, that if the compromise decree is based on the grounds on which the landlord could claim a decree for eviction under section 13 of the East Punjab Urban Rent Restriction Act, then it is within the jurisdiction and competence of the Rent Controller to pass such a decree with a default clause; it is similarly competent for the civil court to execute such a decree when default has occurred. The proviso to subsection 2 of section 13 of the Act is not attracted in such circumstances as no question of extending time granted to the tenant for putting the landlord in possession arises.

Gurupadappa v. Akbar Sayad (1), *Jagjivan Singh v. Sitaram* (2) *Yosuf Begum v. Waheeda Banu* (3) and *K. Punneh v. P. Kurup* (4) distinguished.

Case referred by Hon'ble Mr. Justice Gurnam Singh, on 11th March, 1957, to a larger Bench for decision on the legal point involved in the case and later on decided by a Division Bench consisting of Hon'ble Mr Justice D. Falshaw and Hon'ble Mr. Justice I. D. Dua, on 11th September, 1958.

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- (1) A.I.R. 1950 Bom. 252
 - (2) A.I.R. 1954 Raj. 43
 - (3) A.I.R. 1957 Hyderabad 6
 - (4) A.I.R. 1956 T.C. 1

Execution Second appeal from the order of Shri Pitam Singh Jain, District Judge, Ludhiana, dated the 26th November, 1956, affirming that of Shri A. N. Bhanot, Senior Sub-Judge, Ludhiana, dated the 23rd October, 1956, dismissing the application of Judgment-debtor, dated the 6th August, 1956, under Section 47 Civil Procedure Code.

ROOP CHAND, for Appellant.

DALJIT SINGH, for Respondent.

JUDGMENT

Dua, J.

DUA, J.—This case originally came up for hearing before Gurnam Singh, J., who by his referring order, dated the 11th March, 1957, referred the following two questions for decision by a larger Bench on account of conflict of authority:—

- (1) Whether on an application for ejectment for non-payment of rent the Rent Controller is competent to pass a compromise decree for payment of the rent by instalments with a default clause; and
- (2) Whether on default occurring the civil Court is competent to execute that decree.

The learned Single Judge has also observed that, if considered necessary, the case as a whole may be decided by the Division Bench.

The facts leading up to the present execution second appeal are that on the 20th December, 1953, the landlord, who is respondent in this appeal, applied to the Rent Controller for ejectment of the tenant (appellant) on the ground of non-payment of rent. The tenant appeared before the Rent Controller and denied the allegations made by the landlord in his application. On the 21st of May, 1954, however, the parties entered into a compromise whereby the tenant undertook to pay Rs. 800 as arrears of rent by instalments, the first

instalment of Rs. 200 being payable on the 15th August, 1954, the second instalment of Rs. 300 on the 31st October, 1954, and the last instalment for the same amount on the 31st January, 1955. In default of payment of any one of the instalments the tenant was liable to be ejected. It appears that the tenant did not care to pay any instalment, with the result that on the 18th October, 1954, the landlord sued out execution for ejection against the tenant. A notice was issued to the appellant but he refused to accept service as a result of which *ex parte* proceedings were taken against him and on the 16th December, 1954, warrants for possession of the property were issued. In the meantime, however, on the 12th November, 1954, the judgment-debtor appeared in Court and pleaded that he had already paid a sum of Rs. 450 to the landlord in full satisfaction of the decree passed against him. This plea was disallowed by the Court. It appears that this plea was unsuccessfully agitated by the judgment-debtor right up to the High Court.

On the 30th January, 1956, the judgment-debtor filed another application under sections 47 and 151, read with Order XXI rule 2 of the Code of Civil Procedure asserting another settlement between him and the landlord; this plea was also disallowed by the Senior Subordinate Judge as well as by the District Judge in appeal. Not discouraged by these reverses, on 6th August, 1956, the tenant judgment-debtor presented further objections under section 47 of the Code of Civil Procedure against the execution taken out by the landlord. This time the principal objection raised was that the Court had no jurisdiction to execute the order passed on compromise because such an order did not in terms fall within the ambit of section 17 of the East Punjab Urban Rent Restriction Act of 1949. It was pleaded that the order dated the 21st

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May, 1954, was illegal and *ultra vires* as there was no provision in the aforesaid Act which permitted the Rent Controller to decide the disputes between landlords and tenants on the basis of compromises. These objections were also overruled by the learned Senior Subordinate Judge, Ludhiana, and an appeal before the learned District Judge met with the same fate. I may mention at this stage that the decree-holder had also resisted the objection petition of the judgment-debtor on the ground that, as the judgment-debtor had not raised the present objection in the previous execution petitions which were fought right up to the High Court, he was now estopped in law from doing so by his conduct and acquiescence. The learned Senior Subordinate Judge, disallowing the objections of the tenant on the merits, gave his decision on this plea against the landlord, and in favour of the tenant, but on appeal, the learned District Judge upheld this plea of the landlord and observed that, since the objection now raised had not been raised in the earlier execution proceedings, it was not open to the judgment-debtor at this stage to resist the execution petition on this ground.

It appears that no attempt was made by the appellant to challenge before the learned Single Judge the finding given by the learned District Judge on the question of estoppel. I am, however, of the view that this appeal can be disposed of on the short ground that the judgment-debtor having not raised the question of the decree being illegal and inexecutable in the earlier proceedings, the principle of constructive *res judicata* is clearly attracted and the judgment-debtor cannot be permitted to raise this question at this stage; (see *Sha Shivraj Gopalji v. Edappakath Ayissa Bi and others* (1) and *Harnath Rai Brijraj*

(1) A I.R. 1949 P.C. 302

and another v. Hirdal Narain Kumar and others
(1). But as the two questions have been referred to this Bench for decision, I propose to decide those questions as well.

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Mr. Roop Chand for the appellant submits that the power of the Rent Controller to pass orders is contained in section 13 of the East Punjab Urban Rent Restriction Act and that he cannot travel beyond the terms of this section. According to the learned Counsel, this section does not contemplate a decision on the basis of compromise with the result that an order which is passed on the basis of a compromise is wholly without jurisdiction and is a nullity. Such an order, the counsel concludes, is incapable of execution. I regret I cannot agree with this contention. Section 13 reads as follows:—

“13. *Eviction of tenants.* (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section .

(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

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fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the 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) that the tenant has after the commencement of this Act without the written consent of the landlord—

(a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof;

(b) used the building or rented land for a purpose other than that for which it was leased, or

(iii) that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land, or

(iv) that the tenant has been guilty of such acts and conduct as are a nuisance to the occupiers of buildings in the neighbourhood, or

(v) that where the building is situated in a place other than a hill station the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause,

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the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.

- (3) (a) A landlord may apply to the Controller for an order directing tenant to put the landlord in possession—
- (i) in the case of a residential or a scheduled building if—
- (a) he requires it for his own occupation;
- (b) he is not occupying another residential or a scheduled building, as the case may be, in the urban area concerned; and
- (c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;

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(ii) in the case of a non-residential building or rented land, if—

(a) he requires it for his own use;

(b) he is not occupying in the urban area concerned for the purpose of his business any other such building or rented land, as the case may be; and

(c) he has not vacated such a building or rented land without sufficient cause after the commencement of this Act, in the urban area concerned;

(iii) in the case of any building, if he requires it for the re-erection of that building, or for its replacement by another building or for the erection of other buildings;

(iv) in the case of any building, if he requires it for use as an office or consulting room by his son who intends to start practice as a lawyer or as a "registered practitioner" within the meaning of that expression as used in the Punjab Medical Registration Act, 1916 (II of 1916) or for the residence of his son who is married, if—

(a) his son as aforesaid is not occupying in the urban area concerned any other building for use as office, consulting room or residence as the case may be; and

(b) his son as aforesaid has not vacated such a building without sufficient

cause after the commencement of this Act, in the urban area concerned:

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Provided that where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply under this subsection before the expiry of such period:

Provided further that where that landlord has obtained possession of a residential, a scheduled or non-residential building or rented land under the provisions of sub-paragraph (i) or sub-paragraph (ii) he shall not be entitled to apply again under the said sub-paragraphs for the possession of any other building for the same class or rented land:

Provided further that where a landlord has obtained possession of any building under the provisions of sub-paragraph (iv) he shall not be entitled to apply again under the said sub-paragraph for the possession of any other building for the use of or, as the case may be, for the residence of the same son.

(b) the Controller shall, if he is satisfied that the claim of the landlord is *bona fide*, make an order directing the tenant to put the

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landlord in possession of the building or rented land on such date as may be specified by the Controller, and if the Controller is not so satisfied, he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.

- (4) Where a landlord who has obtained possession of a building, or rented land in pursuance of an order under sub-paragraph (i) or sub-paragraph (ii) of paragraph (a) of sub-section (3) does not himself occupy it or, if possession was obtained by him on behalf or his son in pursuance of an order under sub-paragraph (iv) of paragraph (a) of sub-section (3), his son does not occupy it for the purpose for which possession was obtained, for a continuous period of twelve months from the date of obtaining the possession or where a landlord who has obtained possession of a building under sub-paragraph (iii) of the aforesaid paragraph (a) puts that building to any use or lets it out to any tenant other than the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of such building or rented land and the Controller shall make an order accordingly.

- (5) Where the Controller is satisfied that any application made by a landlord for the eviction of a tenant is frivolous or vexatious, the Controller may direct that compensation not exceeding one hundred rupees be paid by such landlord to the tenant."

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Dua, J.

According to this section the landlord is entitled to seek eviction of his tenant on certain grounds, and the Rent Controller, after giving notice to the tenant, is empowered to give his own finding and then to pass the necessary order. In the present case the ground on which the landlord had sought eviction was non-payment of rent. Such a ground is within the express language of section 13 of the aforesaid Act. It was, therefore, open to the Rent Controller to determine whether or not the allegation of the landlord that the tenant had not paid the rent was correct. It appears that the tenant admitted that he had not paid the rent as alleged by the landlord. In this view of things I do not understand how it was necessary for the Controller to hold any further enquiry. The landlord was willing to accommodate the tenant by granting him time to pay the arrears of rent by instalments. There is no prohibition in the statute against such accommodation being given by the landlord to the tenant. Nor can such accommodation be deemed to have been prohibited on grounds of public policy or on the ground of being opposed to the object and purpose of the East Punjab Urban Rent Restriction Act, for the concession shown by the landlord is obviously to the advantage of the tenant for whose benefit principally the above statute has been enacted. It was, in my opinion, within the jurisdiction of the Rent Controller in these circumstances to give the concession to the tenant to which the landlord had agreed and to order him to pay the arrears by

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instalments failing which alone he would be ejected. Mr. Roop Chand cited some authorities to support his contention. (Some of the cases cited are *Gurupadappa v. Akbar Sayad* (1), *Jagjivan Singh v. Sitaram* (2); *Yosuf Begum v. Waheeda Banu* (3) and *K. Punnen v. P. Kurup* (4), but each one to them dealt with wholly different set of facts which have hardly any resemblance with the facts of the present case. Most of the cases cited dealt with the circumstances on which the landlord could not, under the law in force, have sought eviction. No decided case dealing with facts similar to those which are before us has been brought to our notice by the learned counsel.

After fully considering the matter I am definitely of the opinion that if the compromise decree is based on the grounds on which the landlord could claim a decree for eviction under section 13 of the East Punjab Urban Rent Restriction Act, then it is within the jurisdiction and competence of the Rent Controller to pass such a decree with a default clause; it is similarly competent for the civil Court to execute such a decree when default has occurred. The proviso to sub-section 2 of section 13 of the Act is not attracted in such circumstances as no question of extending time granted to the tenant for putting the landlord in possession arises. In the result, my answer to the two questions referred would be in the affirmative.

In view of what has been stated above the appeal fails and is dismissed with costs.

Falshaw, J.

FALSHAW, J.—I agree.

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- (1) A.I.R. 1950 Bom. 252
 (2) A.I.R. 1954 Raj. 43
 (3) A.I.R. 1957 Hyderabad 6
 (4) A.I.R. 1956 T.C. 1