

return does show that the writ petition by Joginder Singh, son of Waryam Singh, (Civil Writ No. 182 of 1965) challenging orders dated 30th October, 1964 and 5th March, 1958 was dismissed *in limine*. In support of the contention that the earlier dismissal serves as a bar to the present petition, reliance has been placed on *Daryao and others v. State of U.P. (25) and Piara Singh v. The Punjab State and others (26)*. The preliminary objection is worthy of consideration, but this apart, on the merits too we are not convinced that there is any distinguishing feature which would justify a different order. Shri V. C. Mahajan, has, however, referred to some observations of Fazl Ali, J. in his separate judgment in *Keshavan Madhava Menon v. The State of Bombay (21)* from which support is sought for the submission that pending finalisation of the scheme if the Constitution is amended, the amendment can be taken advantage of but, in my opinion that observation does not support the counsel. This petition thus also fails and is dismissed but without costs.

Ajit Singh
v.
State of Punjab
and another
Inder Dev Dua,
J.

PREM CHAND PANDIT, J.—I agree.

B.R.T.

APPELLATE CIVIL.

Before S. K. Kapur, J.

JAI KISHEN,—Appellant.

versus

RAM CHANDER,—Respondent.

S.A.O. No. 44-D of 1964.

Delhi Rent Control Act (LIX of 1958)—Ss. 4 and 9—Tenant against whom decree for ejection has been passed—Whether can make an application for fixation of standard rent.

1965

October, 5th.

Held, that an application validly presented by a person, who was a tenant, does not lose its validity merely because a decree of ejection has been passed against him. Under section 4 of the Delhi Rent Control Act, 1958, every agreement for payment of rent in excess of the standard rent has to be construed as if it were an agreement for payment of the standard rent only. That being so, no tenant has any liability to pay to the landlord anything beyond the standard rent. A person, who had been a tenant, can, therefore, notwithstanding an order for ejection, go to the Court and ask for the fixation of the standard rent. A

(25) A.I.R. 1961 S.C. 1457.

(26) I.L.R. 1962 (2) Punj. 583=1962 P.L.R. 547.

person against whom an order for eviction has been passed cannot be held liable to pay more than the standard rent for the period during which he was a tenant.

Second Appeal under section 39 of Delhi Rent Control Act 1958, from the order of Shri P. S. Petter, Rent Control Tribunal, Delhi dated 4th November, 1963 affirming that of Shri B. K. Agnihotri, Ist Additional Rent Controller, Delhi, dated 30th April, 1963, dismissing the petition for fixation of standard rent.

N. D. BALI, ADVOCATE, for the Appellant.

DALIP K. KAPUR, ADVOCATE, for the Respondent.

ORDER

Kapur, J.

KAPUR, J.—This second appeal is directed against the order of the Rent Control Tribunal, Delhi, dated 4th November, 1963. Appellant Jai Kishan was a tenant under the respondent in a portion of building bearing Municipal No. 2524, situate in Gali Peepal Wali, paying Rs. 58 per mensem as rent. The tenant made an application under section 9 of the Delhi Rent Control Act, 1958, for fixation of standard rent of the premises alleging that the agreed rent was excessive and exorbitant. During the pendency of this application an order was passed on 11th April, 1963 for eviction against the tenant from the premises in question. The landlord applied to the Controller that the tenant's application for fixation of standard rent was no longer maintainable as he had ceased to be a tenant within the meaning of section 2(i) of the said Act. The Rent Controller and the Tribunal both upheld the landlord's contention. The expression 'tenant' has been defined by section 2(1) of the said Act. The definition in terms excludes persons from the purview of tenants against whom a decree or order for ejection has been passed. The definitions in section 2 are subject to the requirements of the context to the contrary. Sub-section (2) of section 4 provides that any agreement for payment of rent in excess of the standard rent shall be construed as if it were an agreement for the payment of the standard rent. Section 5 prohibits any person from claiming or receiving any rent in excess of the standard rent. Section 6 gives the meaning of 'standard rent'. Section 9 provides that the Controller shall, on an application made to him in this behalf, either by the landlord or by the tenant, fix the standard rent in respect of any premises. Under sub-section (7) of section

9 the Controller is required to specify a date from which the standard rent fixed shall be deemed to have effect. The date so specified cannot be earlier than one year prior to the date of the application for the fixation of the standard rent. Section 12 prescribes the period of limitation for making an application for fixation of standard rent. The whole question that has to be determined is whether a tenant against whom a decree for ejection has been passed can make an application for fixation of standard rent? In other words, is the tenant entitled to apply and say that "though an order for ejection has been passed against me I occupied the house for a year. Therefore fix the standard rent so that for that one year my liability is determined which, by virtue of section 4, cannot be more than the standard rent". Mr. Kapur, the learned counsel for the respondent, says that the change in the circumstances, namely, the passing of a decree can be taken into account and after a tenant ceases to be in occupation of the premises or ceases to be a tenant, he cannot continue the application. He further relies on *Skinner v. Geary* (1) and says that intention of the Legislature is to apply the provisions of law to persons in occupation of the premises and not to those who have left it with no intention to occupy it again. Mr. Bali, the learned counsel for the appellant, on the other hand, submits that an application validly presented by a person who was a tenant does not lose its validity by reason of a decree of ejection. I am in agreement with the submission of Mr. Bali. Under section 4 every agreement for payment of rent in excess of the standard rent has to be construed as if it were an agreement for payment of the standard rent only. That being so, no tenant has any liability to pay to the landlord anything beyond the standard rent. A person, who had been a tenant, can, therefore, notwithstanding an order for ejection, go to the Court and ask for the fixation of the standard rent. The provisions of the Act must be read in a reasonable manner and when so read it is difficult to hold that a person against whom an order for ejection has been passed should be held liable to pay more than the standard rent although he was a tenant for some time. In my opinion, any person can make an application for fixation of standard rent for the determination of his liability during the period he was a tenant. The result of accepting Mr. Kapur's argument would be that a person against whom a decree for ejection

Jai Kishen
v.
Ram Chander

Kapur, J.

(1) (1931) All. E.L. Rep. 302.

Jai Kishen
v.
Ram Chander
Kapur, J.

has been passed would be bound to pay more than the standard rent even with respect to the period during which he was a tenant in spite of the fact that he had made an application for fixation of the standard rent before passing of the ejection order against him. Such a tenant would not be even entitled to set up the plea of standard rent in defence to a suit filed against him for the recovery of rent because it is only the Controller who can fix the standard rent and the jurisdiction of the Civil Courts is barred by reason of section 50 of the Act. In this view it must be held that the Rent Control Tribunal was in error in dismissing the appeal. The appeal is therefore, allowed and the matter will go back to the Rent Controller for decision of the application on merits

The parties will appear before the Rent Controller on the 12th October, 1965.

B.R.T.

REVISIONAL CRIMINAL.

Before S. K. Kapur, J.

EDMUND N. SCHUSTER,—Petitioner.

versus

ASSISTANT COLLECTOR OF CUSTOM,—Respondent.

Criminal Revision 157-D of 1965.

1965
October, 6th.

Code of Criminal Procedure (V of 1898)—Ss. 499 and 513—Execution of bonds of sureties—Object of—Corporation—Whether can execute a surety bond.

Held, that the whole object of execution of bonds by the sureties is to secure the presence of a person facing trial. Responsibility is cast on the sureties to see that such a person does not escape. On accepting or rejecting a surety, the Court has to see that the sureties are persons of sufficient financial ability and of sufficient vigilance to secure the appearance and prevent the absconding of the accused. The obligation of vigilance cannot be effectively cast on an artificial person like a corporation. Moreover the sureties must be such persons as can in all cases be imprisoned in case of default. Since a corporation can never be arrested, the question of execution of a surety bond by it cannot arise. Hence surety bonds cannot be executed by artificial persons.

Petition for revision under sections 498 and 439 of the Code of Criminal Procedure of the order of Shri C. G. Suri, Additional