

(1982) 02 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Revision No. 186 of 1982

Mohan Singh

APPELLANT

Vs

Dina Nath

RESPONDENT

Date of Decision: Feb. 10, 1982**Acts Referred:**

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 13(2)

Citation: AIR 1984 P&H 18 : (1982) 1 RCR(Rent) 343**Hon'ble Judges:** Gokal Chand Mital, J**Bench:** Single Bench

Judgement

1. Dina Nath filed an application for ejectment of" Mohan Singh, tenant on the ground of non-payment of rent. On that petition, the Rent Controller issued notice to the tenant for 23-4-1980. On 23-4-1980. the tenant put in appearance and the case was adjourned to 9-5-1980 for tendering the rent. On 9-5-1980, the Rent Controller did not hold court as he had gone to another station to give evidence and, therefore, the case was to be put. up on 12-5-1980, under the note of the Reader. On 12-5-1980, the counsel for the parties appeared and the learned Rent Controller passed the following order:

"I have asked the respondent"s counsel that he can tender rent, costs and interest, if he so wants. He says case be fixed for tomorrow as his client has not turned up. Adjournment is given at his own risk. To come up on 13-5-1980.

2. On 13-5-1980. the arrears of rent were tendered and the Court also assessed costs and interest which were also tendered. The landlord stated that the tender was invalid and, therefore, accepted the same under protest. After trial; the Rent Controller found that the tender was not valid as 23-4-1980 was the first date of hearing and the tender of arrears of rent had to be made within 15 days thereof, i.e., up to 9-5-1980, and since the tender was not made in accordance with law, he ordered eviction. The appeal filed by the tenant met with the same fate. This

is tenant's revision in this court.

3 The learned counsel for the tenant has urged that a reading of first proviso of section 13 (2) (i) of the Haryana I Urban (Control of Rent and Eviction) Act, 1973, would show that it is the ! duty of the Rent Controller to calculate the arrears of rent, interest and costs and till the calculation is made, the 1 tenant cannot be held liable to eviction. It is urged that since the calculation was made on 13-5-1980 and tender having been made on that date, the proviso was duly complied with and as such the Courts below were in error in ordering ejectment. The aforesaid argument of the learned counsel is refuted by Shri; H. L. Sarin, appearing for the landlord, and it is urged that the correct reading of the proviso is that it is the duty of the tenant to pay or tender arrear of rent within 15 days of the first date of hearing and it is the interest which has to be calculated by the Rent Controller at 8 per cent per annum on such arrears, and the costs have also to be fixed by; the Rent Controller. In order to appreciate the argument, it will be useful to reproduce the proviso hereunder.

"Provided that if the tenant, within a period of fifteen days of the first hearing of the application for ejectment after due service, pays or tenders the arrears of rent and interest, to be calculated by the Controller, at eight percent per annum on such arrears together with: such costs of the application, if any, as may be allowed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid."

4. A reading of the aforesaid proviso clearly shows that arrears of rent have to be calculated by the tenant and he is to pay or tender the same within fifteen days of the first date of hearing of his application for ejectment after due service. It is the interest alone which is to be calculated by the Rent Controller at 8 per cent per annum besides fixing the costs of the application. It deserves to be recalled that under the East Punjab Urban Rent Restriction Act, 1949, the proviso provided that the arrears of rent along with interest had to be tendered or paid by-the-tenant s the first date of hearing. Numerous cases arose where there was mistake in calculation of the interest and under that mistaken calculation by the tenant, short tender was made with the result that he was ordered to be ejected. While framing the Haryana Act 2 the Legislature Provided that the interest would be calculated by the Re Controller, therefore, it is amply clear that it was the tenant who is to Pay or tender the arrears of rent within 15 days of the first date of hearing of the application after due service and rest o the matter is for the Rent Controller to calculate and decide. If the tenant pays the arrears of rent within 15 days of the first date of hearing and the Rent Controller does not calculate the interest costs within that period, the tenant cannot be held liable for eviction. The tenant in these circumstances will be entitled to deposit the interest and cost as and when assessed by the Rent Controller and that would be compliance of the proviso. This view of mine is supported from the two decisions of this Court in Virender v. Kanwar Sain (1980) 2 RCR 92 and Rubber House v. Excelsior Needles Industries Pvt. Ltd. (1980) 88

5. On the aforesaid facts, the ten was bound to Pay or tender the arrear of rent within 15 days of 23-4-1980. which is admittedly the first date hearing of the ejectment application after due service. Since he did not pa or tender the arrears of rent within 15 days, the protection given to him by t first proviso will not be available to him and the order of ejectment will have be passed. Assuming for the sake argument (not laying down as a rule) that it was the Rent Controller who fixed 9-5-1980 for paying or tendering the arrears of rent and since he did not hold Court on that date, on the adjourned hearing when he held the Court, would be treated as the date for paying or tendering the arrears of rent. The case was adjourned to 12-5-1980 on which date the learned Rent Controller held the Court and asked the tenant"s counsel to tender the arrears of rent: The learned counsel for the tenant stated that his client had not turned up and, therefore, adjournment was granted at the risk of the tenant. Therefore, viewing the case from any angle, since payment of tender was not made even on 12-5-1980, no indulgence whatsoever, in view of the peculiar facts of the case, can be granted in favour of the tenant. On the aforesaid facts, the order of ejectment passed by-both the Courts below is well based and is hereby upheld,

6.. First proviso to section 13 (2) (i) of the Haryana Act neither suggests fix empowers the Rent controller or fix 15th day next date of hearing for paying or tendering the arrears of rent interest and costs after the tenant appears on the first hearing of the application after due service. On the other hand, the tent has been allowed 15 days" time within which he can pay or tender the arrears of rent and if he wants to deposit the interest and costs, he will have to move the Rent Controller to calculate the interest and assess the costs to that the same be paid along with the arrears of rent within 15 days of the first hearing of the application. Therefore, no rent controller should adjourn the cases on the first date of hearing for a date on which the tenant can be directed to pay or tender the arrears of rent, interest or costs. this is likely to cause confusion in the mind of the tenant because he may consider that that is the date on which is required to pay or tender the arrears of rent etc., which is not true and correct reading of the proviso. Therefore the Rent controllers should always make it clear which adjourning the case on the first hearing of the application that within 15 days of the same, the tenant can apply for paying or tendering the arrears of rent and for calculation of interest and fixation of costs and the moment the tenant moves in this behalf, the Court will have to calculate the interest and assess costs of the application and the tenant himself will have to calculate the arrears of rent which he will be entitled to pay or so calculated by the Rent Controller and the costs fixed by him. After saying in the order that the tenant can apply for paying or tendering the arrears of rent and for calculation of interest and assessment of costs within 15 days of that hearing the case should normally he adjourned for filing of written statement by the tenant.

7. For the reasons recorded above, this revision petition is dismissed:

8. Petition dismissed.