

(1999) 08 P&H CK 0022

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 815 of 1983

Jagdish Lal

APPELLANT

Vs

Krishan Lal

RESPONDENT

Date of Decision: Aug. 4, 1999

Acts Referred:

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 13(1), 15(6)

Citation: (1999) 123 PLR 545 : (1999) 2 RCR(Rent) 492

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Hemant Sarin, for the Appellant;

Final Decision: Allowed

Judgement

R.L. Anand, J.

This is a civil revision and has been directed against the judgment dated 8.2.1983 passed by the appellate authority, Ambala, under the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter called "the Act"), who set aside the order of the Rent Controller, Jagadhri, dated 23.8.1982, who allowed the application of the landlord "Jagdish Lal u/s 13 of the Act.

2. The brief facts of the case are that Jagdish Lal, petitioner, filed an ejectment petition u/s 13 of the Act against Krishan Lal alleging that he was the owner of the shop marked A, B, C, D shown red in the site plan attached bearing Municipal No. 1059 bounded as, in the North-property of the petitioner, south-property of the petitioner under the tenancy of Ram Chander and house of Lal Jai Parkash, west-property of Lala Ram Sarup, and east-Gali Press Wali. It is alleged by the landlord that the respondent Krishan Lal was a tenant under the petitioner in the shop in question for the last 7 years on a monthly rental of Rs. 40/- exclusive of House Tax. The shop in question was purchased by the petitioner from Om Parkash son of Peeru Mal vide sale deed dated 25.3.1976. The respondent is a tenant under

the petitioner since 25.3.1976, i.e., the date of purchase of the property. It was next pleaded that the respondent is liable to be ejected from the shop in question on the ground that he had neither paid the rent and house tax nor tendered the arrears of rent and house tax of the above shop w.e.f. 1.6.1976 to 30.11.1979, i.e. Rs. 1,640-00 besides house tax and interest despite several requests; the respondent has impaired materially the value and utility of the shop by breaking the floor and walls etc. and the respondent has created nuisance in the neighbourhood of the said building by using acid etc. The respondent was called upon several times to vacate the demised premises, but to no effect. Hence the petition.

3. Notice of this petition was given to the tenant who contested the same and filed a written statement. According to the tenant, he was never informed that the shop in question has been purchased by the petitioner from the previous landlord. The respondent was a tenant under Om Parkash on a monthly rental of Rs. 11/-, inclusive of House Tax. The respondent is a tenant under the petitioner in respect of the shop in question after its purchase on the same terms and conditions. It was also pleaded by the respondent that he had paid rent to the previous landlord upto 23.3.1976 against the valid receipt. The petitioner could not charge the rent w.e.f. 21.6.1976 and the rent beyond three years on the date of filing of the application, cannot be claimed by the petitioner.

4. The respondent also tendered Rs. 396-00 as arrears of rent of three years upto the date of filing of the above application by the petitioner. He also tendered Rs. 49.50 as House Tax alongwith assessed interest and costs.

5. A rejoinder was filed by the petitioner, controverting the allegations of the written statement by reiterating those made in the petition and on the above pleadings of the parties, the learned Rent Controller framed the following issues for the disposal of the proceedings:-

"1. Whether the respondent has impaired materially the value and utility of the shop in dispute as alleged. OPA

2. Whether the respondent has created nuisance in the neighbourhood of premises in dispute by using acids etc., as alleged? OPA

3. Whether the tender made is valid? OPR

4. Relief."

6. The parties led oral and documentary evidence in support of their case and on the conclusion of the proceedings, issue No. 1 and 2 were decided against the landlord and in favour of the tenant. Issue No. 3 was, however, decided against the tenant and in favour of the landlord and under Issue No. 4, the ejectment order of the tenant was passed by the learned Rent Controller.

7. Aggrieved by the order of the Rent Controller, the tenant filed the appeal u/s 15 of the Act in the Court of the appellant authority at Ambala, who reversed the findings of the Rent Controller on issues No. 3 and dismissed the application and this time the landlord was aggrieved, who filed the present revision.

8. Notice of this revision was given to the respondent. Earlier, Mr. Ashok Aggarwal, Advocate, represented the respondent. He has not given the appearance on behalf of the respondent today. In these circumstances, the respondent is proceeded ex-parte.

9. I have heard Mr. Hemant Sarin, Advocate, on behalf of the petitioner and with his assistance have gone through the record of this case.

10. Let us first see the proved facts. The rent petition was filed in the Court of the Rent Controller on 9.1.1980. The landlord claimed rent w.e.f. 1.6.1976 to 30.11.1979. The disputed facts are that the landlord claimed rent at the rate of Rs. 40/- per month whereas the stand of the tenant was that the demised premises was taken on rent at the rate of Rs. 11/- per month. The findings of the Rent Controller are that the demised premises were let out to the tenant at the rate of Rs. 11/- per month as claimed by the tenant and not at the rate of Rs. 40/- as claimed by the landlord.

11. According to Section 13 of the Act a landlord who seeks to evict his tenant shall apply to the Controller, for direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied that the tenant has not paid or tendered the rent due from 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 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, 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 percentum 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; further provided that the landlord shall not be entitled to claim arrears of rent for a period exceeding three years immediately preceding the date of application under the provisions of this Act, the Controller may make an order directing the tenant to pay 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.

12. In this case, as I have stated above, the petition was filed on 9.1.1980. As on that date, the landlord was entitled to claim rent for a period of three years, meaning thereby that he could claim rent for three years starting from 1.11.1976 to 30.11.1979. At one stage, the Rent Controller assessed the interest at Rs. 21/- on the claimed amount of Rs. 1,640/-. Apart from that, the tenant was liable to pay House

Tax amounting to Rs. 211.30. The costs were assessed at Rs. 25/-. This calculation was not acceptable to the tenant because he was claiming that he was in possession of the demised premises at the rate of Rs. 11/- per month.

13. Now, it is to be seen what was supposed to be tendered by the tenant and upto which date.

14. As I have stated above, the landlord could claim the rent for a period of three years only, i.e. 36 months at the rate of Rs. 11/- per month, which comes to Rs. 396/-. On this amount, the House Tax which was payable by the tenant comes to Rs. 49.50. Rs. 25/- were assessed as costs. Apart from that the tenant tendered Rs. 50/- by way of interest; totaling Rs. 520.50.

15. The learned counsel for the petitioner submits that even this tender, which was made on 7.4.1980 is not valid because the tenant has not paid the interest upto 7.4.1980 on the amount of rent due to the landlord. The learned counsel for the petitioner submits that as on 7.4.1980, a sum of Rs. 58.50 was due by way of interest to the landlord whereas the tenant has only paid a sum of Rs. 50/- as interest and, in this manner, the tender was short by Rs. 8.50.

16. I find merit in the contention of the counsel for the petitioner. As per the provisions of Section 13 of the Act, the tenant is supposed to tender the rent upto the date when he actually tenders the amount in Court, irrespective of the fact that the rent which can be claimed by the landlord is only for three years as per the provisions of the Act. Rs. 396/- were due to the landlord by way of rent on the date of the filing of the petition, Rs. 25/- were assessed as costs and Rs. 49.50 were tendered by way of House Tax. The learned counsel for the petitioner has also placed on record how the interest has been calculated on the rent due, payable at the rate of Rs. 11/- per month. I have not been able to find out any discrepancy in the calculation and as per the calculations of the petitioner as well as the court, a sum of Rs. 58.50 were due to the landlord by way of interest as on 7.4.1980 against which a sum of Rs. 50/- have been tendered by way of interest. In these circumstances, the tender which was made by the tenant was short by Rs. 8.50. No excess payment of rent has been made to the landlord which could be adjusted towards the shortfall of Rs. 8.50.

17. In this view of the matter, the findings of the learned Appellate Authority on issue No. 3 cannot be sustained and this issue No. 3 is decided in favour of the landlord and against the tenant. As the tender was short, the consequences are very fatal.

18. Resultantly, this revision is allowed, the impugned judgment of the learned appellant-authority is hereby set aside, the order passed by the learned Rent Controller is hereby restored and the petition u/s 13 of the Act filed by the landlord is hereby allowed calling upon the tenant to vacate the demised premises and put the landlord in actual possession of the demised premises within three months from

today. There will be with no order as to costs.