

(1999) 08 P&H CK 0030

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 869 of 1983

Mehar Chand

APPELLANT

Vs

Ramesh Chand and Others

RESPONDENT

Date of Decision: Aug. 20, 1999

Acts Referred:

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 13(2)(1), 15(5)

Citation: (1999) 123 PLR 669 : (1999) 2 RCR(Rent) 269

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

Bench: Single Bench

Advocate: Ashok Aggarwal and Alok Jain, for the Appellant; Akshay Bhan, for the Respondent

Final Decision: Dismissed

Judgement

R.L. Anand, J.

This is a tenant's revision and has been directed against the judgment dated 20.1.1983 passed by Appellate Authority, Annual, who affirmed the order of the learned Rent Controller dated 25.7.1981, vide which the ejectment of the petitioner was ordered on the ground of invalid tender.

2. In this case the dates are very material, which I will try to give in the subsequent portion of this judgment.

3. The facts of the case are that the respondent-landlord are the successor-in-interest of one Siri Chand Aggarwal, who was the owner and landlord of the demised premises consisting of a commercial shop bearing property No. B-5-IS-132 situated within the municipal limits of Narnaul, as detailed in the head-note of the petition. The shop was in occupation of appellant Maher Chand as a tenant under the aforesaid Siri Chand on a monthly rent of Rs. 10/-, which was enhanced to Rs. 25/- per month w.e.f. 11.7.1974 under the appropriate orders dated 11.1.1977 passed by the Appellate Authority. However, the appellant-tenant did not

feel happy about the order and he went in revision before the Financial Commissioner, Haryana, who vide order dated 8.2.1977 suspended the operation pending decision of the revision. Meanwhile, on 13.1.1977, the landlord filed a petition u/s 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as "the Act") on the ground of non-payment of rent and claimed rent from 11.7.1974 to 10.1.1977 @ Rs. 25/- per month. In the ensuing proceedings, the tenant appeared before the Rent Controller on 28.1.1977 and moved a written application seeking adjournment on the ground that he had not been able to obtain a certified copy of the order of the Appellate Authority till then, enhancing the rent from Rs. 10/- to Rs. 25/- per month. The learned Rent Controller adjourned the case for 3.2.1977 and on that day assessed an amount of Rs. 618/- including Rs. 55/- as interest and Rs. 30/- as costs of the proceedings, which were required to be paid by the tenant. But no money was tendered on that day and the proceedings were adjourned to 17.2.1977 for filing of written statement.

4. It appears that by the next date of hearing i.e. 17.2.1977, the above mentioned order dated 8.2.1977 passed by the Financial Commissioner, who was then the revisional authority under the statute, had been received and thus after awaiting his decision on a few hearings the learned Rent Controller adjourned the proceedings sine-die and consigned the records under this order dated 6.5.1977 with a liberty to the parties that they could, if so desired, seek the restoration thereof after the decision of the revision.

5. On 5.1.1978 the above noted revision of the tenant was dismissed by the learned Financial Commissioner and in the light thereof on 9.1.1978 the landlord moved an application before the Rent Controller seeking the restoration of the proceedings. Notice of the application was given to the tenant for 23.1.1978 and after hearing him, the restoration was allowed on the same day and the case was posted for 6.2.1978 for filing of written statement. Unfortunately on that day the concerned Presiding Officer was on tour and his Reader adjourned the proceedings for 15.2.1978 when both the parties along with their counsel appeared before him. On that day the landlord moved another application seeking ejectment of the tenant on the ground that the tenant has not made any valid tender so far. The application was adjourned to 10.3.1978 and meanwhile the tenant was called Upon to file his reply which he ultimately did on 19.4.1978 with the averment that the tender was quite valid and within time. All the same on 15.2.1978 itself he filed a receipt issued by the landlord for an amount of Rs. 526.50 towards the arrears of rent w.e.f. 11.7.1974 to 10.1.1977.

6. On 17.2.1977, the appellant-tenant also moved an application seeking fresh assessment of the arrears of rent and interest etc. with the submission that he had already paid the rent on the previously applicable rate of Rs. 10/- per month for the period upto 30.4.1976 and was willing to pay the upto date rent on the latest rate along with the deficiency for the period upto 30.4.1976. On the same day, the

landlord filed his reply opposing the application on the ground that it was a device to wriggle out of the implications of the tenant's failure to tender the arrears of rent in time. The Rent Controller vide order dated 25.7.1981 ultimately allowed the ejectment petition of the landlord and ordered for the eviction of the tenant from the demised premises.

7. The tenant filed an appeal before the Appellate Authority, who affirmed the order of the Rent Controller for the reasons given in the judgment and aggrieved by the judgment of the Appellate Authority, the present revision by the tenant.

8. I have heard Mr. Ashok Aggarwal, Senior Advocate, assisted by Mr. Alok Jain, on behalf of the petitioner, Mr. Akshay Bhan, Advocate, on behalf of the respondents and with their assistance I have gone through the records of the case.

The first contention raised by the counsel for the petitioner is that the order dated 3.2.1977 has since been disturbed by the Appellate Authority, Narnaul, on 20.1.1988, when it came to the conclusion that the rent and interest which was assessed by the Rent Controller on 3.2.1977 was not correct, therefore, the tenant could tender the arrears of rent along with interest and costs as calculated by the appellate authority within 15 clear days after 20.1.1983 and since no opportunity has been granted to the petitioner, therefore, the order dated 20.1.1983 passed by the appellate-authority is wrong.

The second contention of the counsel for the petitioner is that the first day of hearing in his case would be any date after 5.1.1978 when the Rent Controller fixed the rent, interest and costs payable by the petitioner.

The third submission of the counsel for the petitioner is that if all odds are taken against the petitioner, still the petitioner could deposit the rent on or before 6.2.1978 and in this case he had deposited the amount, rather in excess to the rent claimed by the landlord, and without any protest, therefore, the order cannot be sustained.

The fourth contention of the counsel for the petitioner is that on 6.2.1978, the proceedings were fixed before the Rent Controller. He was not there. The case was adjourned to 15.2.1978 by the Reader of the Court for proper orders and, thereafter, it was adjourned to 10.3.1978. On 15.2.1978, the landlord moved an application before the Rent Controller praying for the ejectment of the petitioner on the ground of short tender and the Rent Controller did not frame proper issue on 15.2.1978 and straight-away adjourned the matter to 10.3.1978. Thereafter, the tenant filed the reply to the application dated 15.2.1978 on 19.4.1978. Still no issue was framed by the Rent Controller with regard to the tender of rent, costs and interest as to whether it was valid or otherwise, the Rent Controller committed a patent illegality in discharging his obligation.

The fifth contention of the counsel for the petitioner is that no cause of action had arisen to the landlord upto 5.1.1978.

9. I am not convinced with any of the submissions raised by the counsel for the petitioner. In this case the landlord filed the ejectment petition on 13.1.1977 claiming rent at the rate of Rs. 25/- as fixed by the Rent Controller from 11.7.1974. On that date, the rent due to the landlord was upto 10.12.1976. It comes to Rs. 700/-. The case of the tenant is that out of this amount of Rs. 700/-, he had already paid a sum of Rs. 217/- and, in these circumstances, the rent actually due to the landlord was Rs. 483/-. The first date of hearing in this case came on 3.2.1977 when the parties appeared before the Rent Controller after due service. On that date, the Rent Controller assessed Rs. 30/- as costs and Rs. 15/- as interest, besides it also determined the liability of the tenant at Rs. 533/-. Nothing was tendered on 3.2.1977. If the tenant was to challenge the assessment made by the Rent Controller, he could only challenge the same within 15 days. Starting from 3.2.1977, fortunately for the tenant and unfortunately for the landlord, the proceedings of the Rent Controller were stayed by the appellate authority on 8.2.1977. These proceedings remained stayed upto 5.1.1978. If all the concession is granted to the tenant by taking the proceedings dated 3.2.1977 as nullity, even then, the first date of hearing cannot stretch beyond 5.1.1978. Rather, the moment the proceedings before the Financial Commissioner concluded on 5.1.1978, the period of 15 days started. Even from this date, the tenant could save himself if he wanted to make the payment of the rent as claimed by the landlord or as due as per the estimation of the tenant. He has paid the rent only on 6.2.1978 by which date much water had flown. The submission of the counsel for the petitioner that since the assessment made by the Rent Controller amounting to Rs. 618/- has been disturbed by the appellate authority who made his own assessment by calculating the amount as Rs. 591/- (Rs. 580/- as rent, Rs. 53/- as interest and Rs. 30/- as costs) on 20.1.1983, therefore, the tenant could tender the amount 15 days after the first date of hearing when the parties were supposed to appear before the Rent Controller.

10. The argument, in the opinion of this Court, would create a very anomalous position. The intention of the Act is to give 15 days to the tenant so that he may be able to save his ejectment. The moment the limitation starts, 15 days have to be counted from the first date of hearing. Further, in the opinion of this Court, limitation started w.e.f. 3.2.1977, which was only temporarily stayed because of the order of the Financial Commissioner. The moment the order of stay was lifted on 5.1.1978, the petitioner could only avail 10 days from 5.1.1978. Even if, 15 days are clubbed or added w.e.f. 5.1.1978, the tenant could make the tender upto 20.1.1978. In these circumstances, the excess payment made by the tenant would not save him from ejectment because of the rigors of the Act. He had paid or tendered the rent after 15 clear days and, in these circumstances, he could not save his eviction. The argument of the counsel for the petitioner that the landlord had accepted the rent without any protest will not save him from eviction also because a perusal of the

receipt does not indicate that the landlord had given up his grounds for non payment of rent.

11. In support of his contentions, the learned counsel for the petitioner has placed reliance on Abnash Chander and Anr. v. Mulakh Raj and Anr. 1977 H.R.R. 352, Mukhi Tapoobhai Keshavji v. Gondal Municipality AIR 1983 Guj 47, [Ved Prakash Wadhwa Vs. Vishwa Mohan](#), , Sham Lal v. Atam Nand Jain Sabha (Regd.), Dal Bazar, (1987)89 P.L.R. 1 (S.C.), Lachhman Dass v. Santokh Singh (1995)111 P.L.R. 276 (S.C.), Jagar Ram Hamir Chand v. Shanti Sarup AIR 1965 Pun&H75 and [Padma Charan Mohapatra Vs. Superintendent of Police, cum Taxing authority of Phulbani](#), .

12. The case law cited by the counsel for the petitioner will not come to the rescue of the tenant due to the factual position. The material point for determination is when the first date of hearing after due service arises. The due date had already arisen on 3.2.1977. 15 days were supposed to be counted from that day. It could not be counted because of the stay working against the landlord. The said order was lifted on 5.1.1978, therefore, it could be said that the first date of hearing had stretched upto 5.1.1978 by excluding 5 days or 15 days could be counted afresh from 5.1.1978. From both the angles, the tenant has not been able to honour his liability under the Act, the rigours of which are very strict.

13. I do not see any merit in this petition and the same is hereby dismissed. However, the tenant is granted six months time to vacate the demised premises.