Dwarka Devi and Others Vs Hans Raj

Civil Revision No. 527 of 1962

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 19, 1963

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 9 Rule 7#East Punjab Urban Rent Restriction Act, 1949 â€" Section 16

Citation: (1963) 2 ILR (P&H) 458 : (1963) 65 PLR 705

Hon'ble Judges: Harbans Singh, J

Bench: Single Bench

Advocate: H.L. Sarin and K.K. Cucurria, for the Appellant; S.L. Ahluwalia, for the Respondent

Final Decision: Dismissed

Judgement

Harbans Singh, J.
The Petitioner-landlord brought an application for ejectment of the tenant-Respondent Hans Raj. A number of grounds

were taken in the application but the only ground pressed was that of non-payment of rent. Notice was issued to the tenant with which he was

served on 11th of March, 1960. The date for the appearance was 15th of March, 1960. The tenant did not appear on that day and proceedings

were taken ex-parte against him and the case was adjourned for ex-parte evidence of the landlord. Before the next date, however, the tenant

appeared and made an application for setting aside of the ex-parte proceedings. The ground taken was that on 15th of March, 1960, he was lying

ill and that he sent a medical certificate of a qualified doctor together with Rs. 200 through one Jagdish Lal with the direction that he may produce

the medical certificate before the Court and deposit the money towards the arrears of rent and interest, etc. According to Jagdish Lal, when he

appeared in Court, he was told that his presence could not be recorded and that he should engage a counsel. After taking evidence, the Rent

Controller by his order dated 16th of June, 1961, came to the conclusion that there was good cause for the tenant"s absence on 15th of March,

1960, and consequently, set aside the ex-parte proceedings. On that very day, the tenant tendered not only the arrears, as they were due up to the

date of application, but all arrears, amounting to Rs. 473 up to 6th of June, 1961. In addition, he deposited Rs. 26 towards interest and Rs. 25 as

costs assessed by the Rent Controller. As the landlord refused to accept this tender the Rent Controller tried the issue whether the tender was

valid or not. In view of the provisions of Order 9, Rule 7, Code of Civil Procedure, it was held that the payment on the date when the ex-parte

proceedings were set aside would be treated as if the same had been made on the date fixed for his appearance, and that, consequently, the tender

was valid and the application of the landlord was dismissed. This order was upheld by the Appellate Authority, and the landlord has come up in

revision.

2. The short question for decision in this case is, if the Court concerned finds that there was good cause for the absence of the tenant on the first

date of hearing and, consequently, sets aside the ex-parte order, what is the effect thereof? Order 9, Rule 7, Code of Civil Procedure, is as

follows:

where the Court has adjourned the hearing of the suit ex-parte, and the Defendant, at or before such hearing, appears and assigns good cause for

his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit (in this case,

the application) as if he had appeared on the day fixed for his appearance.

Now on the first day of his appearance, he could be heared in answer to the application by being permitted to deposit the arrears etc. Thus, the

deposit by him on the day on which the ex-parte order was set aside, must be treated as if the deposit was made on the day fixed for his

appearance. In coming to this conclusion the Courts below relied upon the observations of Manohar Lal Vs. Bal Raj Arora, . In that case the first

date of hearing was 4th of September, 1951, and on 5th of September, an application, put in by the tenant-Defendant for setting aside of the ex-

parte order against him, was heared and decided in his favour on payment of Rs. 15/- as costs. The learned Judge gives the effect of this order in

the following words:

The result of this order according to the provisions of Rule 7, is that the Court permitted the Defendant to appear as if he had appeared on the day

fixed for his appearance. If the Defendant had appeared on the day fixed for his appearance which was the 4th of September and had put in the

arrears of rent, then so far as the provision of Law concerning the deposit of the money on the first day of hearing is concerned it was satisfied

when the money had actually been brought on the 4th though it was ordered to be deposited by the Court on the 5th.

3. This case certainly was under the Delhi Rent Control Act, and it was urged by the learned Counsel that, according to the provisions contained in

that Act, the Court had the option to extend the time. However, the case was not decided on such a provision in the Law and, consequently, the

general observations are applicable. Later on, in the judgment it was further stated as follows:

As I have said before, so far as the payment of the arrears of rent on the first day of hearing was concerned, the matter is concluded by the

provisions of Rule 7 of Order 9. If the Court sets aside the ex-parte proceedings, it means that the Court accepts the Defendant''s excuse for not

being able to be present at the hearing. The result of the Court''s acceptance is that the Defendant is put in the same position as if he had actually

appeared on the first day of hearing and on the first day of hearing he did bring the money. But even if he did not, if his excuse is accepted that he

was misled by the Plaintiff and therefore was not able to come, his tender of money to the Court immediatly is a proper tender on the first day of

hearing.

4. The learned Counsel for the Appellant urged that the view taken by Soni J. is not correct. Djiter alia,, he urged that the provisions of the CPC

apply only in certain respects, not including the question of setting aside the ex-parte orders, as provided in Section 16 of the Urban Rent

Restriction Act. Section 16 provides that for the purposes of this Act, the Courts under the Act shall have the same powers of summoning and

enforcing the attendance of witnesses and compelling the production of evidence as are vested in a Court under the Code of Civil Procedure. I am,

however, of the view that notwithstanding the fact that no specific powers in this respect are given to the Court, the inherent powers of the Courts

under the Act to promote justice cannot be said to have been taken away. One may take the extreme case where the tenant-Defendant has been

duly served and he starts from his house with the intention of attending the Court taking with him the arrears but is knocked down in the way and is

unable to reach the Court. It will be really perpetrating injustice to hold that in such a case the payment made by him subsequently, when the ex-

parte order against him has been set aside, would not be the proper payment within the meaning of the Act. In any case, I feel that, in view of the

provisions of Order 9, Rule 7, and the decision of Soni, J., in the above-mentioned case, the order of the Courts below is well based and there is

ho force in this revision and the same is hereby dismissed. No order as to costs.