(1970) 2 ILR (P&H) 397

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 980 of 1967

Shrimati Sushila Devi	APPELLANT
Vs	
Dina Nath	RESPONDENT

Date of Decision: Feb. 21, 1969

Acts Referred:

- Punjab Urban Immovable Property Tax Act, 1940 - Section 14

Citation: (1970) 2 ILR (P&H) 397

Hon'ble Judges: Mehar Singh, J

Bench: Single Bench

Advocate: D.N. Aggarwal, for the Appellant; K.C. Nayar, for the Respondent

Final Decision: Dismissed

Judgement

Mehar Singh, C.J.
The tenant is obviously not liable to ejectment on the ground of non-payment of arrears of rent if the approach of the authority below is correct that payment of property tax by him u/s 14 of the Punjab Urban Immovable Property Tax Act, 1940 (Punjab Act 17 of 1940), is to be taken into account. The question, and the only question, in this revision application, is whether payment by the tenant of the property tax in the terms of section 14 of the Act is deductible by him from the rent due from him ?

2. The relevant provision of the Act, that is section 14 reads "where the tax due from any person on account of any building or land is in arrear, it shall be lawful for the prescribed authority to serve upon any person paying rent in respect of that building or land, or any part thereof, to the person from whom arrears are due, a notice stating the amount of such arrears of tax and requiring all future payments of rent (whether the same have already accrued due or not) by the person paying the rent to be made direct to the prescribed authority until such arrears shall have been duly paid, and such notice shall operate to transfer to the prescribed authority the right to recover, receive and give a discharge for such rent." The operation of this statutory provision is, when the facts and

circumstances attract this provision, to transfer the right to recover the rent from the landlord to the prescribed authority under the provisions of the Act. When the transfer takes place then the prescribed authority has the right to receive the rent from the tenant, and to give a discharge of arrears of rent due from him. On and from the date on which such transfer of right to recover the rent passes on to the prescribed authority from the landlord, the landlord ceases to have any right to the rent. In such a contingency no rent remains due from the tenant to the landlord when such rent has become due to the prescribed authority in the form of property tax under the Act. In regard to such rent the tenant can never be said to be in arrears so far as the landlord is concerned. The landlord therefore, when he claims ejectment of the tenant on the ground of non-payment of arrears of rent, cannot include in what he claims to be arrears of rent, an amount of rent which has not been due to him from the tenant but has under the statutory provisions of section 14 of the Act become due to the prescribed authority. It is common case of the; parties that the tenant in this case has paid the property tax u/s 14 of the Act on a notice duly issued to him to do so under that section. The payment was, therefore, made of the rent by the tenant to the prescribed authority under this statutory provision, and the payment of the rent so made by him is, by that very provision, treated as payment to discharge the property tax liability of the landlord or the owner of the property. This is not a case in which the tenant pays property tax for the landlord. It is a case in which the statute compels him to pay rent to the prescribed authority and not the landlord. When he is not liable to pay rent to the landlord, apparently he cannot be in arrears with regard to any rent that he is not to pay to the landlord. What the learned counsel for the applicant-landlord contends is that while receipt, Exhibit R/3, is on the file about the tenant having paid rent for four months to the prescribed authority u/s 14 of the Act, but the prescribed authority, although it has recovered and received the rent from the tenant, has not said that it has discharged the tenant from liability for such rent. No such statement is necessary. Once the rent is transferred under the provisions of section 14 of the Act from the landlord to the prescribed authority, the tenant can never be said to be in arrears so far as the rent due to the landlord is concerned, and payment of the rent made by the tenant to the prescribed authority operates as a discharge by itself. On this consideration there is no reason at all for any interference with the orders of the authorities below dismissing the ejectment application of the landlord on the ground that no arrears remained due from the tenant, he having complied with the proviso to clause (i) of sub-section (2) of section 13 of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949).

3. Reference to sub-section (4) of section 80 of the Punjab Municipal Act, 1911 (Punjab Act 3 of 1911), and to case reported as Inderjit Singh v. Satnam Singh (1964) 65 P.L R 545, a decision under that very provision is of no assistance to either party because the provisions of section 80 of Punjab Act 3 of 1911 are not parallel to the provisions of section 14 of the Act. Besides this; what a tenant has been given right to recover under sub-section (4) of section 80 of the Punjab Act 3 of 1911 is payment of tax due from his landlord to a municipality, but it has already been pointed out that u/s 14 of the Act what

the tenant pays to the prescribed authority is not the property tax but the rent, which he otherwise would be liable to pay to the landlord and which by this statutory provision is then transferred to the prescribed authority. Similarly the case of Nashiban Bibi v. Parul Bala Dutta (1958) 62 C.W. N. 778, is not of assistance to the argument on the side of the landlord because that was a case u/s 246 of the Calcutta Municipal Act, 1951, which provision also is not parallel to section 14 of the Act and further the Corporation rates there were paid by the tenant and there was no question of the transfer of the rent, payable by a tenant to a landlord, from the latter either to the Corporation or to the authority under the Calcutta Municipal Act of 1951. These two cases are, therefore, not relevant so far as the present case is concerned.

4. In consequence, this revision application fails and is dismissed with costs, counsel''s fee being Rs. 60/-.