
(1982) 07 P&H CK 0041

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1846 of 1979

Smt. Ram Devi

APPELLANT

Vs

Shri Krishan Lal and
others

RESPONDENT

Date of Decision: July 27, 1982

Acts Referred:

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

Citation: (1982) 2 RCR(Rent) 684

Hon'ble Judges: Surinder Singh, J

Bench: Single Bench

Advocate: S.K. Goyal, for the Appellant; J.S. Chawla, for the Respondent

Final Decision: Allowed

Judgement

Surinder Singh, J.

This Revision petition is directed against the judgment of the Appellate Authority under the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the Act), a per which the said Authority affirmed the decision of the Rent Controller in directing the eviction of the petitioner from the premises in dispute, which is house No 571, B.C. Bazar, Ambala Cantt.

2. Krishan Lal respondent filed a petition u/s 13 of the Act against three persons, namely, Basant Lal, Jiwan Ram and Shrimati Ram Devi, the last named person being the petitioner in this case. The ejectment of these persons was claimed on the grounds of personal necessity, default in payment of arrears of rent and sub-letting of the premises by Basant Lal in favour of the other two persons, i.e., Jiwan Ram and Shrimati Ram Devi. Basant Lal aforesaid filed a reply to the petition stating that he had no connection with the house in question and that he had never been a tenant in the same. He also averred that it was Shrimati Ram Devi who was the tenant under the previous owner of the house Shrimati Gainda Bai. Jiwan Ram merely denied the allegations in the ejectment

application. In so far as the appellant is concerned, she put in reply asserting that she was a tenant in the house for the last 30 years. The Rent Controller framed the necessary issues in this case and after recording the evidence of the parties, ordered that eviction of the petitioner, as noticed above. This decision was upheld by the Appellate Authority. Hence the present Revision Petition.

3. With a view to have a clear picture of the point in controversy, it would be necessary to notice certain crucial dates in the chronological sequence. The ejectment petition from which the present Revision arises, was admittedly filed by Krishan Lal on March 28, 1975, in which it was claimed that the tenant had failed to pay the arrears of rent for the period December 3, 1973 to March 2, 1975, at the rate of Rs. 15/- per mensem. When the petition came up for hearing on the first date, i.e., May 9, 1975, the Rent Controller assessed the arrears of rent and another charges at Rs. 20.25, calculating the rent at the rate of Rs. 15/- per mensem. The tenant was afforded an opportunity to make the deposit of this amount on the next date i.e., May 20, 1975. When the case was taken up on the said date, the petitioner claiming herself to be the tenant of the premises at the rate of Rs. 12/- per mensem tendered a sum of Rs. 223.50 on account of arrears. No tender was, however, made by Krishan Lal who was alleged by the landlord to be the tenant. The landlord refused to accept the tender made by the petitioner. The ejectment petition then proceeded for a protracted trial and practically three years later, to be precise on March 31, 1978, an application was moved by the landlord to the effect that he accepted the contention of the petitioner in her written statement that she was the tenant. The landlord further mentioned in the application that if she tendered the rent due, he would close the litigation. The application after due consideration was decided by the Rent Controller on September 15, 1978 and in the said order, the Rent Controller directed that the petitioner who had been recognised as a tenant, should deposit a sum of Rs. 223/- within fifteen days, i.e. upto September 30, 1978. It is material to note here that the above-mentioned amount which was assessed by the Rent Controller is the same amount which the appellant had tendered for payment on May 20, 1975 at the earliest stage of the litigation and which tender had been declined by the respondent landlord. It transpires that the appellant did not make any deposit in consequence of the order passed by the Rent Controller on September 15, 1978, as aforesaid, on the plea that the arrears in question were barred by time and that in any case she had already made a tender of the amount once. The Rent Controller consequently ordered the eviction of the petitioner for non-deposit of the amount. The other grounds of eviction were abandoned.

4. Mr. S.K. Goyal, learned counsel for the petitioner, has made two submissions in this case, which may now be considered. It is contended in the first instance that the claim for arrears of rent had become barred by time, the period of default being from September 3, 1973, to March 2, 1975, and the date on which the petitioner was accepted as a tenant, was March 31, 1978, when the landlord had put in an application to this effect. As such, the contention is that no claim for these arrears could have been made. The contention is, however, without force. Admittedly, the claim for arrears was made by means of the

ejection application which had been filed on March 28, 1975, and limitation is to be calculated with effect from that date, not from any subsequent date. The contention that the claim is barred is, therefore, untenable and is rejected.

5. On the second point, the learned counsel for the petitioner is on more sound footing. The submission is that by filing the application dated March 31, 1978, the landlord admitted the correctness of the original stand of the appellant that she was the tenant of the premises. Furthermore, the fact that in consequence of the said application, the Rent Controller, assessed the arrears at the same figure at which the arrears were tendered by the appellant on May 20, 1975, showed that her claim was correct. This being so, the landlord's refusal to accept the tender on May 20, 1975 creating a right in the petitioner to continue in occupation of the premises and the mere fact that she (sic) to comply with the second order of the Rent Controller passed on September 15, 1978, to deposit the arrears could not be utilised as a ground for her eviction. The argument is indeed forceful. The act which is a complete Code, does not envisage the assessment of arrears by the Rent Controller at more than one stage of litigation. In the present case particularly, it was the respondent-landlord who had taken three years to change his mind and this being so, there was no question of default in the payment of arrears on the part of the petitioner. Indeed, the landlord may have his remedy to recover such arrears if he is able to establish his claim in a proper forum, but in so far as the Act is concerned, the non-compliance of the order passed by the Rent Controller on September 15, 1978 cannot be the basis of an order of eviction, against the petitioner. It appears that both the Authorities below have not considered this matter in its proper perspective.

6. The contention raised on behalf of the respondents may also be noticed at this stage. Mr. J.S. Chawla, learned counsel has referred to the provisions of Rule 11 framed under the Act as per which, in the eventuality of the landlord not accepting the tender of rent made by the tenant, the latter is required to deposit the same in the Court of the Rent Controller. The argument is that the appellant not having done so, she cannot claim any benefit of the tender made by her. The learned counsel for the petitioner has, however, referred to *Mohinder Singh v. Siri Chand* 1981 (1) Rent L.R. 636, in which it was held by a learned Single Judge of this Court that after the refusal by the landlord to accept the tender, the tenant is under no obligation to deposit the money in Court and that the rule regarding the deposit of the amount in Court is merely directory and not mandatory, nor can ejection be ordered for non compliance of the said Rule. The contention of the learned counsel for the respondent has, therefore, no merit.

7. In view of what has been discussed above, the Revision Petition is accepted and the order of eviction passed against the petitioner is set aside. There shall, however, be no costs throughout.