

(1989) 01 P&H CK 0096

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2487 of 1986

M/s Kishori Lal Prem
Nath

APPELLANT

Vs

Kanwar Lal and others

RESPONDENT

Date of Decision: Jan. 31, 1989

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: R.L. Sarin, for the Appellant; Puran Chand, for the Respondent

Final Decision: Dismissed

Judgement

J.V. Gupta, J.

This is tenant's petition against whom eviction order has been passed by both the authorities below. The landlord Kanwar Lal and others sought the ejectment of their tenant M/s. Kishori Lal Prem Nath from the shop in dispute situated in Grain Market, Moga Mandi on the ground that the tenant was in arrears of rent since 1.10.1974. The ejectment application was filed on 29.11.1978. In the ejectment application, the landlord did not mention the rate of rent which according to him the tenant was in arrears thereof. The stand taken was that the tenant has misused the property and impaired its utility and thus it has become unsafe for human habitation On 19.11.1979 which was the first date of hearing, the tenant tendered arrears of rent for the period 1.10.1974 to 31.1.1979 @ Rs. 11.40 per month along with interest and cost. The tenant also made a statement at that time that he was tendering the rent in the light of High Court order dated 22.12.1978 whereby operation of the order of the appellate authority fixing the fair rent @ Rs 567/- per annum was stayed. The landlord received the tender under protest as it was not valid.

2. It is a long standing dispute between the parties. Earlier the tenant moved an application for fixing of fair rent but the learned Rent Controller allowed this application vide order dated 6.11.1974, copy Exhibit A.4, fixing the fair rent @ of Rs. 11.40 per month which was to be paid from the date of the order that is 6.11.1974.

Earlier the agreed rent between the parties was Rs 850/- per annum. In appeal, the appellate authority enhanced the fair rent to Rs. 567/- per annum but the operation of the said order was stayed by the High Court, as stated earlier. The High Court, later on, vacated the said ex-parte order on 22.3.1979, 23.3.1979 happened to be a holiday. Thus, on 24.3.1979, the tenant had tendered the rent of Rs. 3661/-. The said rent was for the period from 1.10.1974 to 31.1.1979. Rent @ Rs 850/- per annum was agreed between the parties in the High Court. The learned Rent Controller found that the rent for the period from 1.10.1974 to 5.11.1974 was to be paid @ Rs 850/- per annum and since the tenant had tendered the rent for the said period @ Rs. 11.40 per month, the tender was short. On this ground eviction order was passed. However, the other ground taken by the tenant was negatived. In appeal, the learned appellate authority maintained the said finding of the Rent Controller and thus maintained the eviction order.

3. The learned Counsel for the Petitioner submitted that of course the tenant had earlier paid the rent from 1.10.1974 @ Rs. 11.40 per month as determined by the Rent Controller in view of the stay order granted by the High Court but when the stay order was vacated, he paid the rent @ Rs. 850/- per annum from 1.10.1974 on 24.3.1979. According to the learned Counsel the issues were not framed as yet which according to the learned Counsel were framed on 8.1.1980. Thus, he contended that in view of the judgment of Supreme Court in [Mohd. Salimuddin Vs. Misri Lal and Another](#), . and Sham Lal v. Atma Nand Jain Sabha (Regd) (1987) 91 P.L.R. 1 (S.C) the first date of hearing would be when the Court applied its mind at the time of framing of the issues. Thus, according to the learned Counsel, the tender made on 24.3.1979 @ Rs. 850/- per annum was valid. The view taken by the authorities below in this behalf was wholly wrong and illegal

4. On the other hand, the learned Counsel for the landlord submitted that the first date of hearing was 19.1.1979. On that date arrears of rent were tendered @ Rs. 11.40 per month with effect from 1.10.1974. According to the learned Counsel, from 1.10.1974 to 5-11-1974 the rent was to be paid @ Rs. 850/- per annum and not @ Rs. 11.40 per month. Thus according to the learned Counsel, the tender made on that date was short and the subsequent tender made on 24.3.1979 @ Rs. 850/- per annum was of no consequence.

5. After hearing the learned Counsel for the parties and going through the relevant record, I find merit in this petition. Admittedly, it could not be disputed that on 24.3.1979, the tenant tendered a sum of Rs. 3,661/- in addition to the amount of Rs. 706/- already paid by him on 19.1.1979 which included the interest and cost as well. Thus, the total amount tendered by him comes to Rs. 4,367/-. This amount was paid @ Rs. 850/- per annum. Since the amount was paid on 24.3.1979 when even the issues were not framed in the petition, the tender on that date could not be said to be invalid in any manner in view of the above said Supreme Court judgment. The issues were framed on 18.1.1980. That being so the approach of the courts below in

this behalf was wholly wrong and illegal. In that situation even the rent for the period from 1.10.1974 to 5.11.1974 was paid @ Rs. 850/-per annum.

6. In these circumstances, (his petition succeeds, the impugned order is set aside and the ejectment application is dismissed with no-order as to costs.