

Duli Chand

Vs

Maman Chand (Dead) By Lrs.

Civil Appeal No. 1744 of 1969

(R. S. Sarkaria, P. S. Kailasam, O. Chinnappa Reddy JJ)

27.03.1979

JUDGMENT

SARKARIA, J. –

1. This appeal by special leave is directed against a judgment, dated October 15, 1965, of the Punjab High Court at Chandigarh.
2. The appellant is the landlord; the respondent is the tenant. The appellant made an application on May 2, 1964 under Section 13 of the East Punjab Rent Restriction Act, 1949 (hereinafter referred to as the "Rent Act") before the Rent Controller, Bhiwani for ejectment of the tenant-respondent from the shop in dispute on the ground that the respondent had failed to pay rent for the period from February 1, 1964 to March 31, 1964 in addition to house tax and water tax. According to the appellant's application the respondent was to pay Rs. 50 p.m. as rent.
3. On May 25, 1964, which was the date of first hearing, the respondent made an application to the Rent Controller, stating that he had deposited Rs. 109.37 in the Government Treasury under the orders of the Court of the Rent Controller-cum-Senior Sub-Judge on April 14, 1964 towards the rent for the months of February and March 1964 and thereafter a further amount towards the rent of April 1964, under the Punjab Relief of Indebtedness Act, 1934 (hereinafter referred to as the "Relief Act") to the credit of the landlord, about which notice had been issued to the latter. Along with that application, he further tendered Rs. 28.75 (including Rs. 0.75 towards interest, Rs. 25 towards cost and Rs. 3 for overhead expenses), and deposited the same in the court to the credit of the appellant on April 14, 1964, because the latter declined to accept the amount tendered saying that the tender was not in compliance with the proviso to sub-section (2) of Section 13 of the Rent Act.
4. In his written statement, the respondent pleaded that the landlord-appellant had brought as many as 4 eviction applications against him within a period of two years and all those applications had been dismissed; that the present application was not sustainable because the respondent was not in arrears; that he had tendered the rent month by month as it fell due, in the presence of respectable persons, but the landlord had declined to accept the tenders being motivated by mala fides. He further pleaded that the landlord had due notice of the deposit of rent for the three months in question before filing the present application for eviction.
5. The Rent Controller did not frame any issue, nor did he call upon the respondent to adduce evidence regarding his plea that he had tendered the rent due every month according to law but the landlord had, from mala fide motive, declined to accept the same. The Rent Controller, however, held that the rent deposited by the tenant to the credit of the landlord under Section 31 of the Relief

Act, was a valid tender and payment to the landlord for the purpose of Section 13(2) of the Rent Act and dismissed the landlord's application for eviction. Aggrieved by the order of the Rent Controller, the landlord preferred an appeal before the appellate authority, who following the judgment of the High Court in Mamchand v. Chhotu Ram ((1964) 66 Punj L R 93), dismissed the appeal. The landlord's revision was also dismissed by the High Court on October 15, 1965.

6. Hence this appeal.

7. Shri Andley, learned counsel for the appellant, has sought to make out these points :

(1) The word 'tender' in the proviso to sub-section (2) to Section 13 of the Rent Act means physical production of the required amount before the Rent Controller at the first hearing of the case, so that the landlord can immediately take it. Since this was not done, the amount physically offered being exclusive of the arrears of rent, there was no valid tender within the contemplation of the aforesaid proviso.

(2) Deposit of the rent due in court to credit of the landlord under Section 31 of the Relief Act, is not a valid tender within the meaning of Section 13(2) of the Rent Act. Reliance has been placed in this connection on the decision of this Court in Shri Vidya Prachar Trust v. Basant Ram ((1970) 1 SCR 66 : (1969) 1 SCC 835 : AIR 1969 SC 1273). It is pointed out that decisions of the Punjab High Court in Mamchand v. Chhotu Ram ((1964) 66 Punj LR 93) and Khushi Ram v. Shanti Rani ((1964) 66 Punj L R 93), wherein it was held that such a deposit made by a tenant under Section 31 of the Relief Act is a sufficient compliance with the terms of the proviso to Section 13 of the Rent Act, were expressly overruled by this Court in Shri Vidya Prachar Trust case ((1970) 1 SCR 66 : (1969) 1 SCC 835 : AIR 1969 SC 1273), and are no longer good law.

(3) Once it is found that the tenant had not paid or tendered the rent as contemplated by the proviso to sub-section (2) of Section 13 of the Rent Act, the Court is bound to order eviction of the tenant.

(4) In the alternative, the case be remanded to the Rent Controller to enable the tenant-respondent to prove his allegation that he had regularly tendered the rent for the months of February, March and April 1964, as it fell due, to the landlord but the latter had unjustifiably refused to receive the same.

8. As against this, Mr. Bhandare submits that Shri Vidya Prachar Trust case ((1970) 1 SCR 66 : (1969) 1 SCC 835 : AIR 1969 SC 1273) was not correctly decided and needs reconsideration. In the alternative it is submitted that the ratio of Shri Vidya Prachar Trust case ((1970) 1 SCR 66 : (1969) 1 SCC 835 : AIR 1969 SC 1273), is not applicable to the facts of the instant case because, here, the deposit was made in the court of the same Rent Controller in which the eviction petition was filed, and consequently the rent deposited was in the custody of that court and could be made available to the landlord at the first hearing. Mr. Bhandare further disputes the correctness of proposition (3) propounded by the learned counsel for the appellant. It is submitted that the proviso gives the defaulting tenant only an additional facility to stave off eviction. But if the tenant had regularly paid or tendered the rent due in accordance with the substantive part of clause (i) of sub-section (2) of Section 13, the Rent Controller will not be justified in ordering eviction, for the simple reason that in such a case, the tenant cannot be said to be in arrears of rent. Mr. Bhandare further submits that in

his written statement, the tenant had clearly alleged that he had been tendering the rent month by month, as it fell due, to the landlord but the latter had been persistently refusing to receive the same and that was why he had deposited the rent in the Court. This plea in the written statement, it is argued, has not been specifically denied by the landlord in his replication and therefore, under Order VIII, Rule 5 of the Code of Civil Procedure, it will be deemed to have been admitted. On these premises, it is maintained that the question of remanding the case, in any event, to the Court of the Rent Controller does not arise.

9. We need not deal with all the contentions that have been canvassed on both sides. Nor do we feel the necessity of reconsidering the decision in *Shri Vidya Prachar Trust v. Basant Ram* ((1970) 1 SCR 66 : (1969) 1 SCC 835 : AIR 1969 SC 1273), because on facts, the instant case is clearly distinguishable from that case. Here, before us, the rent for the months of February, March and April, 1964 was deposited by the tenant to the credit of the landlord in the very court of the Rent Controller in which the landlord subsequently filed the eviction petition. The deposit lying in the treasury was in the legal custody and control of the court of the Rent Controller, and at the first hearing, if not earlier, the landlord was informed that he was entitled to withdraw that deposit. Thus, even if the tenant had obtained the order of the Rent Controller for making the deposit, by referring to Section 31 of the Relief Act, the fact remained that the money was in custodia legis and could be ordered to be paid to the landlord there and then by the Court at the first hearing. It might have been different if the deposit had been made in some other court.

10. Mr. Andley drew our attention to the order made by the Rent Controller on the application of the tenant, whereby he had sought permission to deposit the rent for the months of February and March 1964. In this order on that application, the Rent Controller has said that the tenant could make the deposit at his own responsibility. Even so, it does not alter the fact that the money was in the custody and control of the Rent Controller and was available for payment to the landlord, at the first hearing. The whole object of the proviso to Section 13(2)(i) is to give the defaulting tenant a final opportunity to stave off his eviction on the ground of non-payment of rent, by paying or tendering on the first date of hearing of the eviction petition the arrears of rent together with interest and costs. The tenant by making the deposit of the arrears of rent and interest and costs, and informing the landlord at the first hearing that he could receive the same from the Court, had substantially complied with the requirement of the said proviso.

11. In the view we take, it is not necessary to send the case back to the Rent Controller for trying the issue as to whether the tenant had, according to the allegation in the written statement, regularly tendered the rent month by month for February, March and April 1964, to the landlord and the latter had unjustifiably refused to receive the same.

12. In the result, the appeal fails and is dismissed. In the circumstances of the case, there shall be no order as to costs.

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