

Mangat Rai and Another

Vs

Kidar Nath and Others

Civil Appeal No. 3325 of 1979

(CJI Y. V. Chandrachud, Syed M. Fazal Ali, D. A. Desai JJ)

21.08.1980

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against a Judgment dated November 12, 1979 of the Punjab & Haryana High Court and raises a pure question of law. The facts of the case lie within a very narrow compass. The respondents-plaintiffs filed a suit for eviction of the appellants under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Rent Act'). The ejection was sought for from the shop B-VI, 1400 old B-IX-1736, New Ground Floor, situated in Saban Bazar, Ludhiana. The main ground on which the suit for eviction was filed was that the appellant had committed default in the payment of rent.

2. The suit was resisted by the appellant mainly on the ground that he was not in arrears as he had deposited the entire rent due in the Court of Senior sub-Judge, Ludhiana under Section 31 of the Punjab Relief of Indebtedness Act, 1934 (hereinafter referred to as the 'Indebtedness Act'). It was also averred by the defendant-tenant that not only the rent due was deposited but even future rent in advance had also been deposited before the first date of hearing. It was also alleged by the tenant that he had deposited the interest and cost of the suit amounting to Rs. 23 which was admittedly accepted by the landlord under protest. Thus, the tenant-appellant claimed complete protection under proviso to Section 13(2)(i) of the Rent Act. The defendant also pleaded that the notice given to the appellant by the landlord was legally defective.

3. The trial Court held that any deposit made by the appellant under Section 31 of the Indebtedness Act in the Court of the Senior sub-Judge was not a valid tender and therefore the appellant could not claim any protection under the proviso to Section 13(2)(i) of the Rent Act. On the question of notice, the trial Court held that the notice was valid and accordingly decreed the suit for ejection. Other pleas were also taken by the defendant which were overruled by the trial Court and have not been pressed before us. The appellant then filed an appeal before the District Judge, Ludhiana, being the appellate authority, under the Rent Act against the judgment of the trial Court. The appellate authority did not go at all into the question as to whether or not the deposit of the rent due by the appellant was a valid tender but held that as the notice was not in accordance with law, the suit was liable to fail. He accordingly allowed the appeal, set aside the order of the Controller and dismissed the suit for ejection. Thereafter, the landlord-respondent went up in revision to the High Court against the order of the appellate authority and the only contention raised before the High Court was that in view of the decision of this Court in *V. Dhanapal Chettiar v. Yesodai Ammal* (AIR 1979 SC 1745 : (1979) 4 SCC 214) as no notice was necessary, therefore the Rent Controller was wrong in non-suiting the plaintiff on the ground in invalidity of the notice. The High Court accordingly

decreed the suit without, however, going into the question of deposit of rent so as to protect the tenant from eviction. The appellant then filed an application for special leave which was granted and hence this appeal. The only point raised by the learned counsel for the appellant before us is that the appellant having deposited the rent before even the respondent filed the application for ejectment after which the appellant deposited the sum of Rs. 23 as cost and interest, he was entitled to the protection of the proviso to Section 13(2)(i) of the Rent Act and the suit should have been dismissed on this ground alone. It was further argued that the deposit of the rent due under Section 31 of the Indebtedness Act was a valid tender as it would, in the eye of law, be treated as a deposit in the Court of the Rent Controller because the Court of the Senior sub-Judge was also functioning as a Rent Controller. The counsel for the respondent, however, submitted that the deposit made by the appellant cannot be held to be a valid tender as decided by a decision of this Court in *Shri Vidya Prachar Trust v. Pandit Basant Ram* ((1970) 1 SCR 66 : (1969) 1 SCC 835). The learned counsel further submitted that although this case was noticed by two later decisions of this Court in *Sheo Narain v. Sher Singh* ((1980) 1 SCC 125) and *Duli Chand v. Maman Chand* ((1980) 1 SCC 246) yet the said case had been distinguished but not overruled.

4. Before examining the contention of the learned counsel for the parties it may be necessary to mention the undisputed facts which emerge from the petition, affidavits, annexures and counter-affidavits of the parties. It is not disputed that the rent of the premises was Rs. 35-50 per month and that the suit for ejectment was brought by the respondent for the rent which was due from July 9, 1967 to November 10, 1967, the date when the application for ejectment was filed. Secondly, it was also not disputed but rather tacitly admitted in the counter-affidavit filed by the respondent that a sum of Rs. 71 being the rent from July 10, 1967 to September 9, 1967 was deposited by the appellant on August 8, 1967 under Section 31 of the Indebtedness Act before the Court of the Senior sub-Judge. It was also not disputed that a sum of Rs. 106.50 being the rent for the period from September 10, 1967 to December 9, 1967 was deposited on November 7, 1967 vide challan Annexures R-7 and R-8 for Rs. 71 and Rs. 106.50 respectively, that is to say three days before the application for ejectment was filed. Finally, it was admitted by the respondent Kidar Nath that a sum of Rs. 23, being the cost and interest, was accepted by the landlord under protest before the first date of hearing and he further admitted that he learnt about the challans Exs. P-1 and P-2 containing the provisions deposit of rent due also on the first date of hearing when they were produced. It is thus manifest that the entire arrears of rent, interest and cost were available for payment to the respondent on the first hearing. Thus, all the essential requirements of the provisions were complied with. The argument of the respondent, however, only centered round the question as to whether or not the deposit made by the appellant could be treated as a deposit under the Rent Control Act and, therefore, a valid tender to the landlord. That is really the crucial question which falls for determination in the instant case. The counsel for the appellant has placed strong reliance on two later decisions of this Court in *Sheo Narain v. Sher Singh* ((1980) 1 SCC 125) and *Duli Chand v. Maman Chand* ((1980) 1 SCC 246), whereas the counsel for the respondent has relied on *Vidya Prachar Trust* case ((1970) 1 SCR 66 : (1969) 1 SCC 835). Before, however, going to the decisions we would like to examine the provisions of the relevant Acts. It is true that there is absolutely no provision in the Rent Act under which a deposit could be made by a tenant before the Controller to the credit of the landlord. Under Section 31 of the Indebtedness Act there is undoubtedly a specific provision for a person who owes money to another to deposit the amount in the court and once this is done, the interest would cease to run. The serious question for consideration is as to whether or not a deposit by the tenant under Section 31 of the Indebtedness Act could be treated as a deposit in the Court of Rent Controller so as to enure for his benefit. In order to understand this aspect of the matter we have to ascertain the object of the Indebtedness Act and particularly Section 31 of the

said Act. The main object of the Indebtedness Act appears to be to give relief to debtors and protect them from paying excessive rates of interest. The Act thus contains provisions for setting up Debt Conciliation Boards. Section 7(1) defines 'debt' and clause (2) of Section 7 defines 'debtor' thus :

"Debtor" means a person who owes a debt and -

(i) who both earns his livelihood mainly by agriculture, and is either a land-owner, or tenant of agricultural land, or a servant of a land-owner, or of a tenant of agricultural land, or

(ii) who earns his livelihood as a village menial paid in cash or kind for work connected with agriculture, or

(iii) whose total assets do not exceed five thousand rupees.

5. In Vidya Prachar Trust case ((1970) 1 SCR 66 : (1969) 1 SCC 835), Hidayatullah, C.J., examined some of the provisions of the Indebtedness Act and held that the Act was not intended to operate between landlords and tenants nor was the Court of Senior sub-Judge a clearing house for rent so as to convert it into a Court of Rent Collector and speaking for the court observed thus : (SCC p. 838, para 4)

The Act is not intended to operate between landlords and tenants; nor is the Court of the Senior sub-Judge created into a clearing house for rent .... There is no provision in the Urban Rent Restriction Act for making a deposit except one, and that is on the first day of the hearing of the case. It could not have been intended that all tenants who may be disinclined to pay rent to their landlords should be enabled to deposit it in the Court of a Senior sub-Judge making Senior sub-Judge a kind of a Rent Collector for all landlords.

6. With due respect, in making these observations the attention of the learned Chief Justice does not appear to have been drawn to certain important aspects and facets of the true scope and purport of Section 31 of the Indebtedness Act or even to the fact that the same sub-Judge before whom deposit could be made under Section 31 of the Indebtedness Act was also functioning as Rent Controller under the Rent Act. Section 31 runs thus :

31. Deposit in court. - (1) Any person who owes money may at time deposit in court a sum of money in full or part payment to his creditor.

(2) The court on receipt of such deposit shall give notice thereof to the creditor and shall, on his application, pay the sum to him.

(3) From the date of such deposit interest shall cease to run on the sum so deposited.

7. The learned Chief Justice held that although the general words 'any person who owes money' may appear to cover the case of a tenant yet as a whole the Act was not meant to cover cases of a landlord and tenant but only such debtors and creditors between whom there was an agreement for payment of interest. We are, however, unable to agree with this view because from the plain and unambiguous language of Section 31 it cannot be spelt out that the Act applies only to a particular type of debtors and creditors as hinted by the learned Chief Justice. We have highlighted this aspect of the matter to show that Section 31 has been couched in the widest possible terms and the legislature has advisedly not used the word 'debtor' in Section 31 so as to confine the provisions of

the section only to the 'debtor' defined in the said Act and to no other, but the legislature intended to embrace within its fold all person owing (sic owing) money including tenants who are in arrears.

8. Thus, under Section 31 any person who owes money is entitled to deposit in court the money owed either in full or in part in the name of his creditor. It is manifest, therefore, that this provision would apply even to a tenant who owes money to his landlord by way of rent due and he can also enjoy the facility provided by Section 31 of the Indebtedness Act.

9. It appears that by virtue of notification (No. 1562-Cr.-47/9224 published in the Punjab Gazette Extraordinary, dated April 14, 1947) all Subordinate Judges of First Class were appointed as Controllers. The notification may be extracted thus :

In pursuance of the provisions of clause (b) of Section 2 of the Punjab Urban Rent Restriction Act, 1947, the Governor of Punjab is pleased to appoint all first class Subordinate Judges in the Punjab to perform the functions of Controllers under the said Act, in the urban area within the limits of their existing civil jurisdiction.

10. In the instant case, it is not disputed that the Senior sub-Judge was a sub-Judge First Class as was not functioning as a Rent Controller in Ludhiana which was an urban area, hence any deposit made in his court by a tenant to the credit of a landlord to get the protection of the Rent Act, would have to be treated as a deposit before the Rent Controller. After all, if the sub-Judge was a Rent Controller, the amount would have to be deposited by a challan in the same treasury which was to be operated by the sub-Judge who was also a Controller. By a notification made under the Punjab Courts Act, 1918, a sub-Judge is conferred with first class, second class and third class powers according to the nature of the jurisdiction of the cases which they are competent to try. A sub-Judge, First Class exercises jurisdiction without any limit as to the value of the case. A sub-Judge, Second Class exercise jurisdiction in cases of which the value does not exceed Rs. 10,000 and a Subordinate Judge, III Class exercises jurisdiction in cases of which the value does not exceed Rs. 5,000. This appears to be the hierarchy of the sub-Judges under the Punjab Courts Act, 1918. This aspect of the matter was noticed by this Court in *Kuldip Singh v. State of Punjab* (1956 SCR 125 : AIR 1956 SC 391 : 1956 SCJ 387) where referring to the nature of the Senior sub-Judge, the following observations were made :

The Rules and Orders of the Punjab High Court reproduce a notification of the High Court dated May 16, 1935 as amended on February 23, 1940, at page 3 of Chapter 20-B of Volume I, where it is said in paragraph 2 -

It is further directed the Court of such Senior Subordinate Judge as a court in himself and not merely as the presiding officer of the Court of the Subordinate Judge.

11. Thus, the combined effect of the provisions of Section 31 of the Indebtedness Act and the notification by which a Senior sub-Judge was to function as a Controller under the Rent Act is that Section 31 is constituted a statutory agency or machinery for receiving all debts and paying the same to the creditors. This appears to us to be the dominant purpose and the avowed object of Section 31. It thus follows as a logical consequence that any deposit made by a tenant under Section 31 would have to be treated as a deposit under the Rent Act to the credit of the landlord and which will be available to him for payment whenever he likes. That this is the position has been clearly held by two Division Bench decisions of the Punjab High Court. In *Mam Chand v. Chhotu Ram* (ILR 1964 Pun 626 : (1964) 66 Pun LR 93 (DB) a Division Bench consisting of Falshaw, C.J. and

Grover, J. went into this very question in great detail and observed as follows :

It is equally clear that a deposit made under Section 31 would save the running of interest and that the tenants would be entitled to take the benefit of the provisions contained in Section 31 regarding cesser of interest from the date of payment into court for the purposes of calculating the amount which has to be deposited under the proviso in question to claim protection against eviction. If the money deposited in court under Section 31 is a good payment for the purpose of stopping the running of interest it looks highly problematical that it would cease to be a valid payment to the landlord of rent.

... in a case of the present type where it has not been shown that there was any other account between the landlord and the tenants and the amount was deposited clearly towards payment of rent because the landlord would not accept the money orders which had been previously sent, it is not possible to accept the view that the payment is not being made to the landlord on account of rent. It may well be that the landlord is not inclined to accept that payment but it is for that very purpose that the provision, namely, Section 31 of the Punjab Relief of Indebtedness Act, has been enacted ....

The language of Section 31 itself is clear that the person who owes money can deposit the same in court in full or part payment to his creditor. This means that deposit in court is tantamount to payment having been made to the creditor. Even if no such implied agency can be inferred, the court is constituted as a statutory agent because the payment made to it is by fiction of law considered to be payment made to the creditor by the debtor and which, in addition, is effective enough to stop the running of interest.

12. To the same effect is another decision of the same High Court in *Khushi Ram v. Shanti Rani* ((1964) 66 PLR 755 (DB) where Dulat, J., speaking for the court observed as follows :

It is clear that if such deposit is not to be equivalent to actual payment to the creditor, it is certainly good and valid tender of the money, for it has been paid into court and the creditor has been told through court that the money has been deposited and can be received by the creditor at any time. In my opinion, therefore, there is on occasion for further consideration of the decision of the Division Bench in *Mam Chand case* (ILR 1964 Pun 626 : (1964) 66 Pun LR 93 (DB)), which, if I may say so, adopts a perfectly reasonable and matter-of-fact view of the situation. I would therefore hold that a deposit made under Section 31 of the Punjab Relief of Indebtedness Act in respect of any arrears of rent must be taken in law to be at least a valid tender of such arrears. In both these cases, therefore, it is impossible to ignore the fact of the deposit.

13. We find ourselves in complete agreement with the observations made by the Punjab High Court in the two referred to above which lay down the correct law on the subject.

14. In view of these circumstances we are unable to agree with the view taken by the learned Chief Justice in *Vidya Prachar case* ((1970) 1 SCR 66 : (1969) 1 SCC 835) that the Court of Senior sub-Judge was not converted into a Court of Rent Controller by the tenant because the sub-Judge was

actually functioning as a Rent Controller by virtue of the notification, as indicated above. It may also be emphasised at this stage that the present suit was also filed before the Senior sub-Judge, Ludhiana where the deposit was made by the appellant, though after the suit was filed it was transferred to some other sub-Judge who was empowered to function as a Rent Controller. Moreover, it is manifest that the appellant-tenant fully answers the description of the opening words of Section 31 of the Indebtedness Act which are to the effect 'any person who owes money' and hence the appellant was entitled to make the deposit under Section 31 which would enure for the benefit of the creditor. In our opinion, therefore, to give a narrow meaning to the words "persons who owes money" used in Section 31 of the Indebtedness Act would be to unduly restrict the scope of Section 31 which appears to be contrary to the intention of the legislature. Furthermore, under the proviso to Section 13(2) of the Rent Act, the tenant was required to deposit interest also in order to get protection of the proviso. Hence, the tenant was debtor with a sort of a statutory agreement to pay interest and would therefore squarely fall within the definition of Section 31 of the Indebtedness Act even if the interpretation place by the learned Chief Justice on Section 31 in Vidya Prachar Trust case ((1970) 1 SCR 66 : (1969) 1 SCC 835) is accepted at its face value.

15. Another ground taken by the learned Chief Justice to hold that the deposit of money before the sub-Judge could not be valid tender was that under Section 19 read with Section 6 of the Rent Act, acceptance of future rent was punishable as an offence and hence it would be impossible to contend that a landlord would be required to accept rent at the peril of going to jail. In this connection, the Chief Justice observed ((1970) 1 SCR 66 : (1969) 1 SCC 835) as follows :

Further the deposit of money in the present case was not only of the rent due but also of future rent. Under Section 19 read with Section 6 of the Urban Rent Restriction Act a landlord is liable to be sent to jail if he recovers advance rent beyond one month.

16. With great respect to the Hon'ble Chief Justice, it seems to us that there is absolutely no bar either under Section 19 or Section 6 of the Rent Act to receive future rent. Section 6 of the Rent Act may be extracted thus :

6. Landlord not to claim anything in excess of fair rent. - (1) Save as provided in Section 5, when the Controller has fixed the fair rent of a building or rented land under Section 4 -

(a) the landlord shall not claim or receive any premium or other like sum in addition to fair rent or any rent in excess of such fair rent, but the landlord may stipulate for and receive in advance an amount not exceeding one month's rent;

(b) any agreement for the payment of any sum in addition to rent or of rent in excess of such fair rent shall be null and void.

Section 6 thus merely provides that where a fair rent is fixed by the Controller it would not be open to the landlord to receive any amount in advance in excess of the fair rent. Section 6(a) further permits the landlord to stipulate and receive in advance an amount not exceeding one month's rent. Clause (b) makes any agreement for payment of any sum in excess of such fair rent null and void. This section therefore clearly deals with a situation where a fair rent under Section 6 is fixed by the Controller on the application of the parties. Neither in the present case nor in Vidya Prachar Trust case ((1970) 1 SCR 66 : (1969) 1 SCC 835) was there any allegation that a fair rent had been fixed

by the Controller. Section 19 is the penal section which makes a person punishable with imprisonment for a maximum period of two years if he violates the provisions of Section 6. So long as fair rent is not fixed by the Controller the parties are free to agree to payment of any rent and neither Section 6 nor Section 19 would be attracted to such a case. Moreover, even if the tenant were deposit future rent it is always open to the landlord not to withdraw the future rent but confine himself to taking out only the rent that is in arrears which will not at all violate any provision of the Rent Act.

17. For these reason, therefore, with great respect to the Hon'ble Judges who decided the Vidya Prachar Trust case ((1970) 1 SCR 66 : (1969) 1 SCC 835), we are unable to agree with the view taken by them that a deposit by the tenant under Section 31 of the Indebtedness Act was not a valid tender and we are of the opinion that that case was not correctly decided and we, therefore, overrule the same.

18. Learned counsel for the respondent submitted that the proviso to Section 13(2)(i) of the Rent Act contemplates that the rent with cost and interest must be deposited on the first hearing of the application for ejection either by paying or tendering the same to the landlord on that date and neither before nor after that date. We are unable to place such a restricted or unreasonable interpretation on the language of the proviso which runs thus :

Provided that if the tenant on the first hearing of the applications for ejection after due service pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid.

19. Like all other Rent Control Acts in the other States in the country, the Rent Act is a piece of social legislation which seeks to strike a just balance between the rights of the landlords and the requirements of the tenants. The Act prevents the landlord from taking the extreme step of evicting the tenant merely on the ground of default in payment of rent if the landlord is guaranteed entire payment of the entire arrears of rent, cost and interest. Thus, the proviso affords a real and sanctified protection to the tenant which should not be nullified by giving a hypertechnical or literal construction to the language of the proviso which instead of advancing the object of the Act may result in its frustration.

20. The statutory provisions of the proviso, which is meant to give a special protection to the tenant, if properly and meaningfully construed, lead to the inescapable conclusion that the rent together with cost and interest etc., should be paid on or before the date of the first hearing and once this is done, there would be a sufficient compliance with the conditions mentioned in the proviso. It is not disputed in the instant case that the entire rent including even the future rent has been deposited with the Rent Controller before the date of the first hearing, that is to say on August 8, 1967 and November 7, 1967, whereas the first date of hearing was December 8, 1967. The landlord-respondent himself admitted that he had received the interest and cost of Rs. 23 on the first date of hearing. Thus, all the necessary conditions of the proviso to Section 13(2)(i) of the Rent Act were fully complied with in the instant case and in that view of the matter there was no legal obstacle in dismissing the suit for ejection.

21. In a recent case Sheo Narain v. Sher Singh ((1990) 1 SCC 125), this Court observed as follows : (SCC pp. 127 & 129, paras 4 & 9)

It is, therefore, manifest that in the instant case a deposit of the rent and the arrears along with interest had actually been made before the first date of hearing to the knowledge of the court and the court had acknowledged the fact of the deposit of the amount. Again, on the first date of hearing, i.e., May 11, 1967 the Rent Controller informed counsel for the applicant-respondent that a sum of Rs. 179-48 had been deposited. It is, therefore, clear that the applicant-respondent was apprised clearly of the fact that the amount in question had actually been deposited and was at his disposal and he could withdraw the same from the Court of the Rent Controller whenever he liked ....

There is no magical formula or any prescribed manner in which rent can be deposited by the tenant with the landlord. The rent can be deposited by placing the money in the hands of the landlord which would amount to actual tender; second mode of payment is to deposit the amount in the court where a case is pending in such a manner so as to make the amount available to the landlord without any hitch or hindrance whenever he wants it. Even the Act does not prescribe any particular mode of deposit. In fact, the use of the words "tender or deposit" in the proviso clearly postulates that the rent can be given to the landlord in either of the two modes. It may be tendered to the landlord personally or to his authorised agent or it may be deposited in court which is dealing with the case of the landlord to his knowledge so that the landlord may withdraw the deposit whenever he likes. ... In fact, if the tenant deposits the rent even before the first date of hearing it is a solid proof of his bona fides in the matter and the legal position would be that if the rent is deposited before the first date of hearing, it will be deemed to have been deposited on the date of the hearing also because the deposit continues to remain in the court on that date and the position would be as if the tenant has deposited the rent in court for payment to the landlord.

22. It was, however, urged by the respondent that in the case cited above, the rent was deposited after the suit for ejectment was filed and not before the suit, hence the deposit was held to be valid. In our opinion, this argument is not tenable because once it is held that a deposit under Section 31 of the Indebtedness Act is a valid tender having been deposited on or before the first date of hearing, the exact point of time when the deposit is made is wholly irrelevant and will not amount to non-compliance of the conditions of the proviso to Section 13(2)(i) of the Rent Act. In the instant case, we have also found that the deposit of the arrears of rent had been made prior to the filing of the ejectment petition and the interest and cost were paid on the first date of hearing as admitted by the respondent.

23. For these reasons, therefore, we hold that the appellant-tenant having complied with the conditions of the proviso to Section 13(2)(i) of the Rent Act, the High Court committed an error of law in decreeing the plaintiff's suit for ejectment. The result is that the appeal is allowed, the order of the High Court is set aside and the suit of the plaintiff for ejectment is dismissed. In the peculiar circumstances of this case and particularly having regard to the fact that Vidya Prachar Trust case ((1970) 1 SCR 66 : (1969) 1 SCC 835) held the field before this judgment rendered by us, we would leave the parties to bear their own costs.

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