

Pushpa Devi and Others

Vs

Milkhi Ram (dead) by his Lrs

Civil Appeal No. 263 of 1988

(K. Jagannatha Shetty, N.M. Kasliwal JJ)

08.02.1990

JUDGMENT

K. JAGANNATHA SHETTY, J. -

1. The appeal concerns the scope and construction of Section 13 sub-section (2)(i) proviso of the East Punjab Urban Rent Restriction Act, 1949 (called shortly as 'the Act'). The point at issue relates to the validity of the arrears of rent deposited by the tenant under the proviso.

2. Milkhi Ram - the respondent in this appeal is the landlord of the premises consisting of a shop at Ludhiana. In February 1958 the shop was taken on rent by Amar Chand. The rent agreed was Rs. 45 per month. In December 1975 Amar Chand died. His brother Diwan Chand succeeded to the tenancy rights. In November 1976 he also died leaving behind his widow Pushpa Devi and his minor son Yashpal. They are appellants 1 and 2 in this appeal. The landlord brought an action for eviction under Section 13 of the Act on the ground of arrears of rent, sub-letting etc. His case was that appellants 1 and 2 inducted Saligram appellant 3 as a sub-tenant and delivered exclusive possession of the shop premises. The eviction was also sought on the ground that the tenant has made alterations resulting in material impairment in the value and utility of the premises. The appellant's case was that the shop was taken on lease by Amar Chand as partner of the firm M/s Amar Chand in which Amar Chand, Diwan Chand and Saligram were all partners in the business from the very commencement of tenancy. They denied that Saligram was inducted as sub-tenant. They also refuted the allegation as to material alterations affecting the value and utility of the premises.

3. Before the Rent Controller the appellants on the first date of hearing tendered the arrears of rent, with interest and cost determined by the Controller. The amount was rendered evidently under the proviso to Section 13 sub-section (2)(i) of the Act. Mr. Satpal Singh the common counsel for all the respondents tendered the amount along with his statement, which reads as follows :

"I tender Rs. 2025 as arrears of rent from December 1, 1975 to August 31, 1979, Rs. 240 as interest and Rs. 25 as costs as assessed on behalf of all the respondents, total amounting to Rs. 2290."

4. The landlord did not accept the amount but made the following endorsement :

"I do not accept the tender as it is neither legal nor valid. Respondent 3 Saligram, is a sub-tenant."

5. The Rent Controller at that stage did not state whether the objection of the landlord is legal and justified. Since the eviction was also based on other grounds, he allowed the parties to lead evidence on all the questions. After considering the evidence adduced by the parties, the Controller found no substance in the allegations that the tenant has made any material alteration impairing the utility of the building. On the question of original tenancy agreement, he found that the original tenant was not in the partnership firm of which Amar Chand was partner, but Amar Chand took the premises in his personal name and the tenancy was therefore personal to him. He also accepted the case of unauthorised sub-letting and held that appellant 3 was a sub-tenant inducted into the premises without consent of the landlord. On the validity of the amount tendered on behalf of all appellants including Saligram it was held that the tender was not legal and valid since Saligram was not a tenant. In other words, he held that the rent tendered by counsel for and on behalf of all the appellants was not a legal tender in terms of Section 13 sub-section (2)(i) proviso and the undisputed tenant alone ought to have tendered the rent. With these findings the Controller accepted the eviction petition and directed the tenant's eviction from the premises.

6. The appeal preferred by the tenant was disposed of on a preliminary point, that is, on the validity of the amount deposited by the common counsel for the parties on the first date of hearing of the case. The appellate authority held that the amount deposited on behalf of the three appellants was not valid since Saligram was a stranger. On this aspect, the appellate authority had little discretion in view of the two decisions of the Punjab & Haryana High Court : (i) Ram Gopal v. Ram Prakash (1963 RLR 1112 (P&H HC) and (ii) Punjab Rajasthan Goods Carriers v. Onkar Mal (1977 RLR (1) 195 (P&H HC). In both the cases, the High Court had held that the tenant as defined under the Act could deposit or tender the amount under the proviso and not a stranger. Following those decisions, the appellate authority confirmed the eviction and dismissed the appeal without examining whether Saligram was also a tenant, or whether the original tenancy was in favour of the partnership firm of which Amar Chand was a partner.

7. The order of the appellate authority has been confirmed by the High Court by dismissing the tenant's revision in limine.

8. The tenant along with Saligram by obtaining leave have preferred this appeal.

9. Since the validity of the deposit made by the tenant under the proviso to sub-section (2)(i) of Section 13 is in question and which in turn depends upon the principle laid down by the High Court in the said two authorities, it is convenient at this stage to have those cases properly analysed. In Ram Gopal case (1963 RLR 1112 (P&H HC) the arrears of rent were tendered by Chetan Ram, the tenant, his son Ram Bhagat along with Banarsi Das and Dhani Ram who were said to be the strangers. The landlord refused to accept that amount on the ground that the tenant was Chetan Ram alone and as the amount was tendered by persons other than Chetan Ram as well, there was no proper tender. The trial court accepted the contention of the landlord. Before the High Court it was contended for the tenant that the tender was valid since one of the tenderers was the tenant himself and the mere fact that he has joined the other persons who are strangers would not make any difference. The tender must be deemed to be by the tenant and his associates should be ignored. The High Court did not accept the submission. By following some of the previous cases, it held that under the proviso the payment or tender must be made exclusively by or on behalf of the tenant and on his account. The payment or tender made by the tenant along with the strangers and also on their account would be in contravention of the proviso and invalid. The High Court accordingly affirmed the order of eviction.

10. Onkar Mal (1977 RLR (1) 195 (P&H HC) is also a case of eviction based on arrears of rent as one of the grounds. The action was brought against Gulab Chand and Bhanwar Lal, - the original tenants and Sohan Lal, Jagan Nath and Balkar Singh alleged to be the sub-tenants inducted into the premises without consent of the landlord. The undisputed tenant did not attend the court despite due service of notice and was proceeded ex parte. The alleged sub-tenants in their written statement claimed that they shared the tenancy since they had entered into partnership with the tenant for carrying on their business. They tendered the arrears of rent together with interest and costs of the proceedings on the first date of hearing of the case. The question arose whether the tender was valid and whether the alleged sub-tenants could deposit the arrears of rent on their own account and also on behalf of the undisputed tenant. The landlord however, refused to accept the amount on the ground that those who deposited the arrears were not his tenants and they had no authority to tender the rent on behalf of Bhanwar Lal and Gulab Chand. The Rent Controller did not make any specific order on that contention. He proceeded to consider the question of sub-letting. After considering the evidence produced by the parties he recorded a finding that there was sub-letting by the tenant and consequently ordered eviction. The appellate authority and also the High Court concurred with that opinion. The High Court further held that it is only the person who fall within the definition of 'tenant' could tender the rent under the proviso and not a third party or sub-tenant inducted into the premises without consent of the landlord.

11. In the instant case, the appellate authority being bound by those two authorities has rejected the amount tendered by counsel as being invalid. The correctness of that view has been challenged in this appeal.

12. We may begin with the relevant provisions of the Act. The Act provides inter alia to restrict the increase of rent of certain premises situated within the limits of urban areas, and the eviction of tenants therefrom. Section 13 sets out the grounds for eviction and prohibits eviction of tenants except in accordance with the provisions contained therein. Sub-section (2) provides that a landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. Clauses (i) to (v) set out the grounds of eviction. Clause (i) non-payment of rent; clause (ii) sub-letting without the consent of the landlord or misusing the building for a purpose other than that for which it was leased; clause (iii) committing such acts as are likely to impair materially the value or utility of the building or rented land; clause (iv) tenant has been guilty of such acts and conduct as are a nuisance to the occupiers of buildings in the neighborhood; and clause (v) tenant not occupying the building for a continuous period of four months without reasonable cause where the building is situated in a place other than a hill station. If the landlord establishes any one of these grounds against the tenant, the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied, he shall make an order rejecting the application.

13. Although the Act makes default in payment of rent as a ground for eviction, yet, the efficacy of the ground is different. In this context, Section 13 sub-section (2)(i) is more important and it is, therefore, fully extracted hereunder :

"13(2). A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied -

(i) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the

agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable.

Provided that is the tenant on the first hearing of application for ejectment 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."

14. This is a special provision made for the benefit of the tenant who has defaulted to pay the agreed rent.

15. Various Rent Control Acts provide protection from eviction to the tenant with provisions similar to the proviso in question. Reference may be made to Section 13 sub-section (2)(i) proviso of the Haryana Act, (ii) Section 12 sub-section (3)(b) of the Bombay Rent Act, 1947, (iii) Section 14 sub-section (2)(i) proviso of the Himachal Pradesh Act.

16. Mr. Mehta learned counsel for the landlord respondent sought to justify the view taken by the High Court of Punjab in *Ram Gopal* (1963 RLR 1112 (P&H HC)) and *Onkar Mal* (1977 RLR (1) 195 (P&H HC)) cases. His argument went on the literal construction or strict construction based on the word 'tenant' defined under Section 2(h)(i) of the Act. He urged that the word 'tenant' referred to in the proviso must carry the same meaning as given to it under the definition and 'tenant' as defined thereunder is alone entitled to avail of the benefit of the proviso and no others.

17. We recognise that Section 13 sub-section (2)(i) proviso] refers to the tenant and his obligation to pay or tender the arrears of rent, interest and costs if he wants to save himself from eviction. We also recognise that under Section 2(h) (i) the word 'tenant' is defined to mean "any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of the tenancy in his favour but does not include a person placed in occupation of a building or rented land by its tenant unless with the consent in writing of the landlord ...." By the law in the court's keeping is just not a system of logical abstraction. Nor it is a budget of readymade answers determined by any general formula or principle in advance. In a famous passage Mr. Justice Holmes said :

"All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those on which the particular right is founded, and which becomes strong enough to hold their own when a certain point is reached .... The boundary at which the conflicting interests balance cannot be determined by any general formula in advance, but points in the line, or helping to establish it, are fixed by decisions that this or that concrete case falls on the nearer or further side." (*Hudson Country Water Co. v. McCarter*, 209 US 349, 355-56 : 52 Led 828, 832)

18. It is true when a word has been defined in the interpretation clause, prima facie that definition governs wherever that word is used in the body of the statute unless the context requires otherwise. "The context" as pointed out in the book *Cross-Statutory Interpretation* (2nd edn. p. 48) "is both internal and external". The internal context requires the interpreter to situate the disputed words within the section of which they are part and in relation to the rest of the Act. The external context involves determining the meaning from ordinary linguistic usage (including any special technical

meaning), from the purpose for which the provision was passed, and from the place of the provisions within the general scheme of statutory and common law rules and principles.

19. The opening sentence in the definition of the section "unless there is anything repugnant in the subject or context". In view of this qualification, the court has not only look at the words but also to examine the context and collocation in the light of the object of the Act and the purpose for which a particular provision was made by the legislature. Reference may be made to the observations of Wanchoo, J. in *Vanguard Fire and General Insurance Co. Ltd. v. M/s. Fraser and Ross* where the learned Judge said that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or context. In that case, the learned Judge examined the construction of the word 'insurer' as used in Section 33(1) and 2-D of the Insurance Act, 1938, in the light of the definition of that word under Section 2(9) thereof. The Insurance Act by Section 2(9) defines as 'insurer' as a person carrying on the business of 'insurance'. The question arose whether Section 33(1) and 2-D did not apply to insurer who had closed his business completely as the definition of the word insurer in Section 2(9) postulates actual carrying on the business. It was pointed out that in the context of Section 33 (1) and 2-D and taking into account the policy of the Act and the purposes for which the control was imposed on insurers, the word 'insurer' in the said sections also refers to insurers who were carrying on the business of insurance but have closed it.

20. Great artistry on the bench as elsewhere is, therefore, needed before we accept, reject or modify any theory or principle. Law as creative response should be so interpreted to meet the different fact situations coming before the court. For, Acts of Parliament were not drafted with divine prescience and perfect clarity. It is not possible for the legislators to foresee the manifold sets of facts and controversies which may arise while giving effect to a particular provision. Indeed, the legislators do not deal with the specific controversies. When conflicting interests arise or defect appears from the language of the statute, the court by consideration of the legislative intent must supplement the written word with 'force and life'. See, the observation of Lord Denning in *Seaford Court Estate Ltd. v. Asher* ((1949) 2 KB 481, 498).

21. The apparent purpose of the proviso was to relieve the defaulting tenant from extreme penalty of eviction. There cannot be any doubt on this purpose. The provision seems to be analogous to Section 114 of the Transfer of Property Act, 1882 which confers discretion to the court to grant relief against forfeiture for non-payment of rent. But the proviso goes a step further and leaves no such description to the Controller or court even if the tenant is a constant defaulter. If the arrears and other amounts specified are paid or tendered on the first date of hearing, the default as a ground for eviction disappears and the Controller is precluded from passing a decree for eviction. The governing principle of the proviso is that the tenant could pay and stay in an action for eviction on default. At the same time, the landlord is ensured payment of arrears, interest and the cost that he had incurred without the necessity of going to civil court to recover it. This seems to be the will and intention of the legislature in the shape and scope of the proviso.

22. Against this backdrop, we have to construe the word 'tenant' used in the proviso. Mr. Ramamurthy, learned counsel for the appellants urged for liberal construction of the word so as to include a person claiming to be a tenant. Reference was made to the observation of this Court in *Mangat Rai v. Kidarnath* ((1980) 4 SCC 276 : (1981) 1 SCR 476). There Fazal Ali, J. said that the proviso in question affords a real and sanctified protection to tenant against eviction on the ground of default. It should not be given a hypothetical or literal construction, but should be meaningfully construed. We agree with this observation. The legislative protection concerning the tenants should

not be narrowly tailored. Indeed, it should be given wider meaning and broader concept. We should try to understand the spirit of the text and not be bound by letter.

23. The argument of counsel for the landlord however, was that the proviso was intended to protect the tenant as defined under the statute and not a person claiming to be a tenant. The persons who are not tenants could not, therefore, be given the benefit of the proviso. This submission or the interpretation suggested by counsel does not provide a square answer for all problems coming before the court. If there are proceedings for eviction with persons claiming tenancy along with the undisputed tenant or to his exclusion, the acceptance of that submission may lead to arbitrary and unjust result. Take for instance, the landlord brings an action for eviction on default against A and B where A is recognised as the tenant, but not B. B however claims that he shares the tenancy with A and joins A in tendering the arrears on the first date of bearing of the case. A also does not dispute that claim. But if the contention of the landlord that the tenant as defined under the Act is alone entitled to tender the amount is accepted, the court could make an order of eviction by discarding the deposit. That would be repugnant to out notions of justice.

24. Take another hypothetical case whose occurrence is more probable and which often arises for decision. The landlord brings an action for eviction against A on the ground of default and also on subletting to B. But B denies sub-letting and contends that he was inducted into the premises with the consent of the landlord. A remains absent, perhaps he is not interested in the premises. B however, tenders the rent on his own account, but the landlord refuses to accept it on the plea that B has no right to tender the rent since he is not a recognised tenant. The acceptance of that view may result in ejection of A and B before determining the controversy between the parties. Both of them may have to be thrown out without deciding the issue raised in the pleadings.

25. We cannot have "sentence first - verdict afterwards". That is possible only by the demand of Queen in Alice's Adventures in Wonderland by Lewis Carroll (p. 186). We must construe the proviso so as to effectuate the twin considerations which we discussed earlier. We must eliminate the construction which is productive of injustice, arbitrary result and undesirable consequence.

26. It is time for us to be explicit. Taking into account the intention of the legislature and the purposes for which the proviso was enacted, we are of the opinion that the obligation to tender the rent under the proviso on the first hearing date does not depend upon the existence of admitted jural relationship of landlord and tenant. When an action for eviction is brought by the landlord on the ground of default, the proviso stands attracted. The benefit of the proviso could be availed of by the tenant and also by those who claim to be the tenant. The view to the contrary expressed by the High Court of Punjab and Haryana in Ram Gopal (1963 RLR 1112 (P&H HC) and Onkar Mal (1977 RLR (1) 195 (P&H HC) cases is likely to be greater mischief to the tenants than a protection for them and is therefore overruled.

27. In the result, the appeal is allowed, the judgment of the appellate authority as affirmed by the High Court is reversed. The matter stands remitted to the appellate authority for disposal in the light of the observations made and in accordance with law.

28. In the circumstances of the case, we make no order as to costs.

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