

PUNJAB AND HARYANA HIGH COURT

Debi

Vs

Desa Ramji Lal

(Kapur, J.)

14.05.1954

ORDER

Kapur, J.

1. This rule has been obtained by the tenants against an appellate order passed by Additional District Judge Mehr Singh Chadha reversing the order of the Rent Controller and thus ordering ejection of the tenants

2. The landlord applied to the Rent Controller for eviction of the tenants under Section 13 (2) (i) of the Rent Restriction Act. This was on 24-11-1952. The tenants pleaded that they had deposited the entire rent due from them and they could deduct Rs. 10/- which were due to them on account of costs of a previous application. Rs. 96/- were due on account of rent for four years, but the amount deposited by the tenants was Rs. 18/-, and it is not clear from the record whether the rent was deposited on the first hearing, and no costs and interest due was deposited until the Court ordered the tenants to do so. Thus, there was no compliance with the provisions of Section 13 (2) (i) of the Rent Restriction Act.

3. The Controller, however, thinking that he had discretion, did not order eviction on the ground that the tenants were illiterate and had been in possession of the house for a long time and thus allowed them time to pay costs plus interest and this order the learned Additional District Judge has set aside in appeal.

4. The first question raised before me is that the Additional District Judge had no jurisdiction to entertain this appeal, because he is not the appellate authority under Section 15 (1) of the Act read with Notification No. 1562-Cr-47/9228 issued under the Act. The question, whether an Additional District Judge can exercise jurisdiction under Section 15 (1) of the Act, has been the subject-matter of decision in this Court in -- '*Parkash Lal v. Sant Singh*'¹, and -- '*Mangal Sain v. Ajit Parshad*'², where it was held that an Additional District Judge would have no jurisdiction. I am in respectful agreement with this view of the law, and, in my opinion, an Additional District

Judge has no jurisdiction. Strictly speaking, all I have to do is to send back the case to be tried by the District Judge, but that would really be waste of public time and money, because the interpretation of Section 13 has been authoritatively done by the Supreme Court in -- '*Waryam Singh v. Amar Nath*'³, where in somewhat similar circumstances the Controller had not ordered eviction in spite of there being a non-compliance with Section 13 (2) (i) and the Judicial Commissioned of Himachal Pradesh to whom the matter was taken under Article 227 held that it was incumbent on the Controller to make an order if the proviso to Section 13 (2) (i) had not been complied with, and this was upheld by their Lordships of the Supreme Court at p. 217 where Das J. observed:

"As rightly pointed out by the Judicial Commissioner in the case before us the lower Courts in refusing to make an order for ejection acted arbitrarily. The lower Courts realised the legal position but in effect declined to do what was by Section 13 (2) (i) incumbent on them to do and thereby refused to exercise jurisdiction vested in them by law. It was, therefore, a case which called for an interference by the Court of the Judicial Commissioner and it acted quite properly in doing so." I am bound by this decision. Mr. Sarin has drawn my attention to an un-reported ruling of this Court in -- '*Digambar Jain Sabha Simla v. Messrs. Express Block, Simla*', 55 Pun LR 2 (Short Notes) (D), where Harnam Singh J. and myself were of the opinion that the use of the word 'may' showed that even if the conditions of Section 13 (2) were not complied with the Court could refuse an order of ejection. Without giving any opinion as to how far the other subsections of this Section 13 (2) are to be governed by the rule laid down by the Supreme Court in -- '*Waryam Singh's case (C)*' as far as non-payment of the rent is concerned, it must be taken to have been authoritatively decided, and I am, as I have said before, bound by this judgment, and our own judgment may or may not be correct in regard to other sub-sections of Section 13 (2), but it cannot apply to a case of non-payment of rent.

5. In view of the authoritative pronouncement of the Supreme Court, I do not think it necessary to go through the formality of sending this case back to the District Judge for decision because he is also bound to decide in accordance with the rule laid down by the Supreme Court, and I think the ends of justice require that I should exercise my powers under Article 227 in setting aside the order of the Rent Controller even though the matter has not been to the proper appellate authority.

6. I would therefore set aside the order of the Controller and order ejection of the tenants. I give them three months' time from today. No order as to costs.

7. I would like to draw the attention of all the District Judges to the two rulings of this Court holding that Additional District Judges have no power to entertain appeals under the Rent Control Act, and I direct that a copy of this judgment should be sent to all the District Judges.

Cases Referred.

1AIR 1951 Punj 415 (A)
2AIR 1951 Punj 355 (B)
3AIR 1954 SC 215 (C)