

## **PUNJAB AND HARYANA HIGH COURT**

Vas Dev Sharma

Vs

Milkhi Ram Bhatia

(A Grover ,J.)

23.05.1960

### **JUDGMENT**

#### **A Grover ,J.**

(1) This judgment will dispose of C. R. No. 437-D of 1958 and C. R. No. 5490-D of 1959 as identical points are involved in both the petitions. The facts, however, in Vas Dev Sharma's case alone need be stated, at first.

(2) The tenancy of the suit premises commenced in the year 1943. In December,, 1951, a suit for ejectment was filed against the tenant but it failed in the first Court and the appellat Court. In June, 1954, a suit for ejectment was filed against the tenant on three ground viz., perversion of user, non-payment of rent and requirement for personal occupation. There was a compromise on 9th November, 1955. A decree for ejectment was passed in terms of the compromise according to which the tenant was to vacate the premises by 30th April, 1957. The rent was to be paid month by month on or before the 16th of every month. The tenant was not to sublet any portion of the premises. After 30th April, 1957, the landlord took out execution of the decree but the tenant raised an objection under Section 47 of the Code of Civil Procedure that as the ejectment decree was passed on the basis of a compromise it was invalid and could not be executed. Another plea taken was that a fresh contractual relationship had been created between the parties by virtue of the compromise. The executing Court as well as the first Court of appeal held that the decree was executable and that the objections raised by the tenant was unsustainable. The tenant has come up to this Court in revision.

(3) It is contended on behalf of the tenant who is the petitioner that according to the proviso to Section 13 of the Delhi and Ajmer Rent Control Act, 1952, it is only if the Court is satisfied that the various grounds that have been set out therein exist that any decree or order for the recovery of possession can be made. It is submitted that when the parties compromised in the present case

and the spirit passed a decree on the basis of that compromise it could not be said that the Court was so satisfied on the evidence adduced before it that the various grounds justifying an order of eviction existed. Now, a similar point came for consideration before a Division Bench of this Court in Babu Ram Sharma v. Bal Singh, (1959) 61 Pun LR 33, in which the landlord had applied to the Rent Controller for an order for ejection of the tenant under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, on the ground of non-payment of rent. The tenant appeared before the Rent Controller and denied the allegation made by the landlord in his application. Later on the parties entered into a compromise whereby the tenant undertook to pay Rs. 800/- as arrears of rent by instalments, the instalments being specified. In default of payment of any one of the installments the tenant was liable to be ejected. The tenant did not pay any installment with the result that the landlord sued out execution for ejection. The judgment-debtor subsequently took up the position that the Court had no jurisdiction to execute the order passed on the compromise because such an order did not in terms fall within the ambit of section 7 of the Punjab Act. The Bench held that the ground on which the landlord had originally sought eviction was non-payment of rent, which was within the express language of Section 13. It was, therefore, open to the Rent Controller to determine whether or not the allegation of the landlord that the tenant had not paid the rent was correct. It appeared that the tenant admitted that he had not paid the rent as alleged by the landlord. In this view of the matter it was considered unnecessary that the Controller should have held any further enquiry. Dua, J. made the following observations at page 38:--

"After fully considering the matter I am definitely of the opinion that if the compromise decree is based on the grounds on which the landlord could claim a decree for eviction under Section 13 of the East Punjab Urban Rent Restriction Act, then it is within the jurisdiction and competence of the Rent Controller to pass such a decree with a default clause; it is similarly competent for the civil Court to execute such a decree when default has occurred."

Here also, the suit which had been filed for ejection was founded on three grounds which are valid grounds under the proviso to Section 13 of the Delhi and Ajmer Rent Control Act. According to the ratio of the decision of the Bench, if a compromise decree is passed on any one of those grounds, then it would be within the jurisdiction and competence of the Court to pass a decree for ejection.

(4) The learned counsel for the petitioner has sought to distinguish the Bench decision from the facts of the present case by pointing out that there the tenant had admitted that he had not paid rent as alleged by the landlord. It is urged that no admission is proved in the present case and even if such an admission could be spelled out from the material on the record a decree for

ejectment could not be passed in invitum. Dealing with the second part of this argument, reference has been made to *Remon v. City of London Real Property Co. Ltd.*<sup>1</sup>, Scrutton L. J. observed that under the (English) Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, the tenant could determine the statutory tenancy at his own will while the landlord could only determine through the Court on statutory conditions. In *Barton v. Fincham*, (1921) 2 KB 291, the landlord wishing to sell the house with vacant possession made an agreement in writing with his tenant that in consideration of a present payment the tenant should give notice to quit and should peaceably yield up possession on a certain day. The landlord made the payment and the tenant gave the notice to quit; but when the day arrived the tenant refused to give up possession. The landlord brought an action for possession. No evidence was given that he had, otherwise than as aforesaid, contracted to sell or let the house or taken any other steps as a result of which he would be seriously prejudiced if he could not obtain possession. It was held that the jurisdiction of the Court to make an order for possession was restricted by the English Act of 1920 (supra) and if the conditions upon which alone an order could be made were not fulfilled, an order could not be made in invitum notwithstanding any agreement of parties to the contrary and that consequently the landlord could not recover. It is noteworthy that the facts of the aforesaid English case were quite different and are distinguishable from the facts of the instant case. The settlement which had been made between the landlord and the tenant preceded the action in Court for recovery of possession and the ejectment was sought on the basis of the settlement of the Court. Actually the observations of Scrutton LJ at page 298 are significant.

"It was urged that the effect of our decision would be to prevent agreements in Court. If the tenant is willing to go out, I do not see why any order is wanted; let him go; but, as at present advised, I do not see any reason why the Judge on being satisfied that a tenant is then ready to go out (not that he was once willing but has changed his mind) should not make an order for possession."

In *Throne v. Smith*<sup>2</sup>, the landlord of a dwelling-house within the Rent Restriction acts, having represented to the tenant that he required the house for his own occupation, gave the tenant notice to quit and brought an action in the country Court claiming possession under the acts.

The tenant attended the Court but did not contest the landlord's claim and an order for possession was made against him by consent. On possession being given the landlord did not enter into occupation, but put the property into the hands of estate agents for sale. The tenant thereupon claimed compensation under Section 5, Sub-section (6) of the Act of 1920 on the ground that the order for possession was obtained by misrepresentation. The country Court Judge held that he had no jurisdiction to grant compensation where the order had been made by consent. It was held that the order for possession had been obtained by misrepresentation and that the tenant was

entitled to the benefit of its provisions and that in the circumstances although there was no contentious hearing in the Court, the county Court Judge had jurisdiction to make the order for possession. Bucknill L.J. at page 314 observed that the tenant had agreed to the order because at the time when the landlord asked the Court to make the order the landlord by his own statements had satisfied the tenant that he intended to occupy the house himself and the tenant could not hope successfully to resist the claim. If the tenant had stated this expressly in Court the Judge would surely have had jurisdiction to make the order on that ground. The following observations on the same page are noteworthy:--

"Before making an order for possession the Judge is under a duty to satisfy himself as to the truth if there be a dispute between landlord and tenant but if the tenant in effect agrees that the landlord has a good claim to an order under the acts, I think the Judge has jurisdiction to make the order for possession under the Act without further inquiry."

In *Middleton v. Baldock (T.W.)*<sup>3</sup>, a house had been let to a husband on a weekly tenancy and was occupied by him and his wife until he deserted her. Having given the husband notice to quit, the landlord brought separate actions against husband and wife for possession. The husband filed an admission of the landlord's title and offered immediate possession. The county Court Judge made an order for possession against him as well as against the wife in the other action. It was held that the order for possession made against the husband was without jurisdiction in that a landlord seeking to recover possession against a tenant protected by the Rent Restriction Act must establish the right to possession on one of the grounds stated in the acts, unless, after possession had been claimed on such a ground, the tenant admitted facts to support it, in which event the Court need not itself investigate the matters of the fact admitted. The husband could not yield possession to the landlord seeking that his wife was rightfully in possession and his offer of possession was accordingly futile as being one which he was unable to perform in the absence of either the wife's consent to go out of the house or an order for ejectment against her. Jenkins L.J. at page 669 summarised the position thus:--

"I think that the principles deducible from those cases are these: Under the Acts the Court only has jurisdiction to order possession on one or other of the specified statutory grounds. It is not, however, always obliged to hear a case out, for, if the tenant appears and admits that the landlord is entitled to possession on one of the grounds stated in the acts, the Court may act on that admission and make the appropriate order. Again and this, I think is an extension of what I have just said--If there is a representation made by the plaintiff landlord to the defendant tenant to the effect, for instance, that the landlord want the premises for his own occupation--which possession may be ordered--and the tenant accepts that representation and on that footing

submits to an order, then the order can validly be made, subject to the possibility that, in the event of the representation turning out to have been false the efficacy of the order may be destroyed. But in my judgment the Court cannot go further than that and exercise a general jurisdiction to make a consent order without inquiry or investigation simply because the tenant appears in Court and says: "I consent to an order," or says in the witness box that he does not consent to the landlord's right. I think that necessarily follows from the principle that possession can only be ordered on one or other of the statutory grounds and that the tenant cannot waive the statutory protection by agreement."

From the above discussion of the English cases, the principle which has also been accepted by the Bench of this Court is quite clear that if the tenant admits after a suit for ejectment has been filed that the landlord is entitled to possession on one of the statutory grounds the Court can make an appropriate order or if the landlord has made some representation within the terms of the statute to the tenant and which is one of the ingredients of a ground on which possession can be ordered and the tenant accepts that representation and submits to an order, then also the Court will be fully justified in making a valid order of eviction. Each case, therefore, will have to be decided on its own facts and it will have to be seen whether there is any material to justify an inference that an admission, be it express or implied, has been made by the tenant on the existence of one of the statutory grounds.

(5) The learned counsel for the petitioner relied on a Full Bench decision in *Korah Punnen v. Parameshwara Kurup Vasudeva Kurup*<sup>4</sup>. In that case one of the main questions for decision was whether the defendants must be deemed to have waived the benefit under the Travancore-Cochin Buildings (Lease and Rent Control) Order, 1950. It was held that there could be no waiver of a provision in a statute which was enacted in public interest and it was held that clause 9(1) of that Order prohibited the Court from evicting the tenant by executing the compromise decree passed in the case and that the defendants were not estopped from claiming the benefit under the clause. The points which have been canvassed in this case do not appear to have been debated or decided by the learned Judges of the Travancore-Cochin High Court. The decision in *Waman Shrinivas Kini v. Ratilal Bhagwandas and Co.*<sup>5</sup>, can hardly be of much assistance to the counsel for the petitioner as there the question was whether an agreement to waive an illegality was void on grounds of public policy, the answer given being in the affirmative.

(6) In Vas Dev Sharma's case the plaint was filed in June, 1954. The written statement was filed on 20th July, 1954, when the issues were framed. As the arrears of rent had been paid on the issue relating to misuse and requirement for personal need the plaintiff led evidence of a number of witnesses and the defendant's evidence was being recorded when he asked for time on 9th November, 1955. There is a good deal of force in the submission of the learned counsel for the

landlord that enough material and evidence had come on the record to satisfy the Court as well as the tenant that the grounds on which ejectment had been sought would be ultimately established and when the tenant entered into the compromise, it was implicitly in the aforesaid circumstances that he was admitting the correctness of the grounds which had been taken for his ejectment. I am, therefore, of the opinion that the tests which have been laid down by the authorities have been fully satisfied and it cannot be said that the decree which was passed on the basis of compromise was a nullity or could not be executed.

(7) A faint attempt has been made by the learned counsel for the tenant to show that by virtue of the compromise a new tenancy was created. I cannot see how any new tenancy was being created when a decree for ejectment was being passed but only the process of eviction was to remain in abeyance for a certain period. The decision of the courts below consequently must be affirmed and the petition dismissed.

(8) In Jang Bahadur Singh's case, the suit for ejectment was filed on the ground of personal necessity and non-payment of rent. Arrears of rent and costs were deposited and so the only ground which remained was of bona fide requirement. It is stated that four witnesses had been summoned but the tenant made a statement that a decree for ejectment be passed against him executable after the expiry of a period of 1 3/4 years. From the conduct of the tenant, therefore, it must be implied that he admitted or was satisfied about the bona fide requirement of the landlord and it was for that reason that he offered a decree to be passed against himself. The tenant's petition for revision in that case also merits dismissal and is dismissed. In view of the nature of the points involved, the parties are left to bear their own costs in this Court in both the cases.

(9) Revision dismissed.

#### Cases Referred.

1(1921) 1 KB 49. At page 57

2(1947) 1 KB 307

3(1950) 1 KB 657

4AIR 1956 Trav-Co. 1

5 AIR 1959 SC 689