

**PUNJAB AND HARYANA HIGH COURT**

Mehnga Singh

Vs

Dewan Dilbagh Rai

Civil Revision No. 361 of 1969

(D.K. Mahajan and Bal Raj Tuli, M., JJ.)

17.11.1970

**ORDER**

**D.K. Mahajan, J.**

1. This petition for revision is directed against the order of the Appellate Authority reversing on appeal the decision of the Rent Controller dismissing the landlord's application for eviction of tenants.

The only ground that survived trial was whether the tender of arrears of rent was proper and, therefore, the tenant could not be evicted. The Rent Controller held that the tender was proper. The Appellate Authority held that it was not proper and basing itself on the Supreme Court decision in *Shri Vidya Prachar Trust v. Basant Ram*<sup>1</sup>, allowed the landlord's petition and ordered eviction of the tenants.

2. On facts there is no dispute. Before the eviction application was made the tenant had deposited certain rents in the Court of the Senior Sub-Judge designated as a Court exercising the powers of Rent Controller. When the eviction application was filed the tenant deposited the balance of the rent and wanted credit for the rent already deposited. According to him he had deposited the balance of the rent after taking into account the amounts already deposited and thus no rent was in arrears. The Appellate Authority, as is already stated, relied on the Supreme Court decision in *Shri Vidya Prachar Trust's* case (supra). In that case the rent was deposited under Section 31 of Punjab Relief of Indebtedness Act and that deposit was not treated as a deposit under the East Punjab Urban Rent Restriction Act. It is not clear from the Supreme Court decision that the deposit was made in the Court exercising the powers of Rent Controller. This is the only distinction that I find in the present case and the Supreme Court decision. This is a matter which is frequently arising and it will be proper that this petition is heard by a larger Bench, particularly, when the interpretation of the Supreme Court decision is involved. I, therefore, direct that the papers of this case be placed before my Lord the Chief Justice for constituting a larger Bench for hearing this petition.

**JUDGMENT OF DIVISION BENCH**

3. Dewan Dilbagh Rai respondent is the landlord while Mehnga Singh petitioner is his tenant in a shop situate at Sadar Bazar, Gurdaspur. On March 31, 1967, the landlord filed an application under section 13 of the East Punjab Urban Rent Restriction Act, III of 1949, (hereinafter referred to as the Act) on the ground that the tenant had failed to pay rent from August 1, 1966. to February 28, 1967, and had sublet the shop to respondents 2 to 5 without his consent. The tenant and other respondents to the petition resisted the said petition on the ground that the arrears of rent for the period of seven months claimed by the landlord in his petition for ejection had already been deposited in the Court under section 31 of the Punjab Relief of Indebtedness Act and that no rent was due to the landlord at the time the application for ejection was made. The allegation of subletting was also denied and it was contended that respondents 2 and 3 are brothers of the tenant, Mehnga Singh, and they have been working with him since the shop was taken on lease by respondent 1. With regard to respondents 4 and 5, it was pleaded that they were the employees of respondents 1 to 3 and were not doing any independent business in the shop in dispute. It was also alleged that the plea of subletting was barred by *res judicata*. On the pleadings of the parties, the learned Rent Controller framed the following issues:

1. Whether the respondents are liable to be ejected on the grounds alleged in the petition?
2. Whether the plea of subletting is barred by *res judicata* ?
3. Relief.

The learned Rent Controller came to the conclusion that the tenant had deposited the sum of Rs. 96.25 on November 4, 1966, and Rs. 240.60 on March 15, 1967, for payment to the landlord and in this manner it was proved that the rent claimed by the landlord in his application for ejection had been paid by the tenant and, therefore, the ground of non-payment of arrears of rent was not available to the landlord for the ejection of the tenant. The ground of subletting was also found against the landlord and as a result of his findings, the application for ejection was dismissed on February 15, 1968.

4. The landlord filed an appeal which was allowed by the learned Appellate Authority, Gurdaspur, on April 17, 1969, on the ground that the deposit of rent in the Court under section 31 of the Punjab Relief of Indebtedness Act did not amount to either tender or payment of arrears of rent to the landlord and, therefore, the tenant was liable to ejection on the ground of non-payment of rent. For coming to this conclusion, the learned Appellate Authority relied on the judgment of their Lordships of the Supreme Court in *Shri Vidya Prachar Trust v. Basant Ram*, which was till then not reported. Their Lordships reversed the judgment of a Division Bench of this Court on the point. Feeling aggrieved from that order, Mehnga Singh and his two brothers filed the present revision petition in this Court under section 15(5) of the Act which came up for hearing before my learned brother Mahajan, J., on September 25, 1970. It was argued before the learned Judge that the decision of their Lordships of the Supreme Court relied upon by the learned Appellate Authority did not apply to the facts of this case because the tenant had deposited the rent due from him not under section 31 of the Punjab Relief of Indebtedness Act but in the Court of the Rent Controller who is the appropriate authority for trying the applications for ejection under section 13 of the Act. Considering that this was an important point of law of frequent occurrence, the learned judge referred the case to a larger Bench and that is how this petition has come up before us for decision.

5. The facts stated above are not in dispute and the learned counsel for the petitioners has filed copies of the receipts in proof of the two deposits made by Mehnga Singh tenant in the Court of the Senior Subordinate Judge exercising the powers of Rent Controller, Gurdaspur, on November 4, 1966, and March 15, 1967. It is admitted by the learned counsel for the petitioners that there is no provision in the Act enabling the tenant to deposit the rent in the Court of a Rent Controller instead of paying it to the landlord or even if the landlord refuses to accept the same. On these facts, the observations of their Lordships of the Supreme Court in Shri Vidya Prachar Trust case (supra) aptly apply to the facts of this case and cannot be distinguished on any ground. Their Lordships observed :-

"The Act does not lay down any other procedure Under which money can be deposited with any Government Authority. Such provisions are to be found in other Rent Control Acts but are missing in this Act. Eviction, therefore, takes place on the ground of non-payment or tender of rent due within time fixed by the tenancy and 15 days thereafter. There is only one saving for the tenant and that is when he tenders the full rent in Court before the Rent Controller together with interest and costs. In the present case, the tenant did tender rent but only for a portion of the period and he relied on his deposit under the Relief of Indebtedness Act as due discharge of his liability for the earlier period. It may be stated that the deposit before the Senior Sub Judge was made not only of arrears of rent but prospectively for some further period for which the rent was then not due. The question is whether such payment is a valid payment or tender to the landlord."

Their Lordships then considered the provisions of section 31 of the Punjab Relief of Indebtedness Act and held:

"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. Although the general words 'any person' who owes money may appear to cover the case of a tenant, we have to look at the Act as a whole and see what kind of a person is intended thereby. The phrase must be read to cover cases of debtors and creditors between whom there is an agreement for payment of interest because the deposit is intended to stop interest from running. No interest is agreed to be paid by tenants, at any rate, per ordinarily, and, therefore, the section cannot be said to cover a case between a landlord and a tenant. 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 the Senior Sub Judge a kind of a Rent Controller for all landlords. The provision for stoppage of interest is a pointer that the interest in the first instance must have been due. In our judgment section 31 has been misunderstood in the High Court. A second pointer is that amount may be deposited in part which cannot possibly be a valid tender in case of rent. It may be pointed out that the decision of the Division Bench runs counter to two other decisions of single Judges of the same High Court who have taken the same view which we are taking here. The decisions are noticed

by the Division Bench but have not been accepted. The decisions of the learned single Judges are to be preferred. The Division Bench has taken a very extended view of the deposit under the Relief of Indebtedness Act."

In view of these observations of their Lordships it cannot be held that the two deposits made by Mehnga Singh petitioner amounted to payment or tender of rent due to the landlord respondent.

6. The learned counsel for the petitioners, however, submitted that the Court should discard technicalities of law and act upon equitable principles, keeping in view the spirit of the law. On that basis, the argument proceeded that the amount deposited in the Court of the Senior Sub Judge by the tenant was available to the landlord on the first date of hearing of the application for ejectment because the information of the deposits was given out by him to the landlord on that day and he could have withdrawn the amount from the said Court particularly because his application for ejectment of the tenant was pending in that very Court. We are, however, of the opinion that there is no substance in this argument as the payment or tender of the amount due has to be made to the landlord in cash by the tenant to avoid his ejectment on the ground of non-payment of arrears of rent, together with interest and costs, on the first date of hearing of the application for ejectment and the tenant cannot force the landlord to withdraw the amount which had been deposited by the tenant with some Government Authority. Since the amount had not been paid to the landlord by that date, he was entitled to interest on the entire amount of arrears which was never tendered by the tenant to the landlord and, therefore, it cannot be said that the provisions of section 13 (2)(i) of the Act were complied with. It is also to be noted that while depositing the amount in the Court of the Senior Sub Judge, the tenant did not notify the address of the landlord and, therefore, no notice was ever issued to him by the Court informing him that any amount to his credit has been deposited which he could withdraw. The deposit was made as if a case 'Mehnga Singh versus R. S. Dilbagh Rai Dewan' was pending in that Court which was not the case when the deposits were made.

7. For the reasons given above, we find no merit in this revision petition which is dismissed but without any order as to costs.

(Sd.) Bal Raj Tuli,

(Sd.) D.K. Mahajan, Judges.

Petition dismissed.

Cases Referred.

<sup>1</sup>1969 RCR 343 : 1969 P.L.R. 526