

# RAJASTHAN HIGH COURT

Shambhooram

Vs.

. Mangalsingh

Civil Revn. Nos. 43 and 54 of 1956  
(K.N. Wanchoo, C. J. and D.S. Dave, J.)

28.01.1958

## JUDGMENT

### **K.N. Wanchoo, C.J.**

1. These are two connected revisions arising out of two suits for ejectment filed by Shambhoo Ram and Sampatram against Mangalsingh in one case (43) and Yadram in the other (54). They have been referred to a Division Bench for disposal in view of the conflict between three Single Judge decisions of this Court, namely *Daulatram v. Bhomraj*, <sup>1</sup> *Girraj Prasad v. Dha Kan Bai*, <sup>2</sup> *Suraj Narain v. Khawas Bala Bux* <sup>3</sup>

2. As common question of law relating to the interpretation of Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act 1950 (No. XVII of 1950) (hereinafter called the Act) arise in them, propose to dispose them of by one judgment.

3. The facts of the two cases, which are relevant for present purposes, are these. Shambhooram and Sampatram are landlords and Mangalsingh and Yadram are their tenants. The tenants had taken their houses on rent originally at Rs. 6/- per mensem and executed rent-notes in that connection. Before the 1st of April, 1951 the landlords gave notice to the tenants for enhancement of rent and consequently the tenants agreed to enhance the rent to Rs. 7/8/- per mensem from the 1st of April, 1951. They paid rent at this enhanced rate for a few months. Thereafter there was some dispute and they stopped paying rent. Consequently, the landlords gave notice on the 13th of August, 1953. to the tenants to pay the arrears of rent and also asked them to vacate the premises by the 31st of August, 1953 in view of their continued failure to pay the rent.

4. The suits were filed in April, 1954. The tenants contested the suit. They admitted that rent had been originally settled at Rs. 6/- per month and had been enhanced to Rs. 7/8/- per month from the 1st of April, 1951. But their contention was that this enhancement was subject to restoration of certain amenities which the landlords had stopped and also subject to the landlords white washing and repairing the houses; but when the landlords did not do so, the tenants refused to pay them at Rs. 7/8/- per month. They were always prepared to pay at Rs. 6/- per month, but the landlords refused to accept the rent at this rate.

5. Two issues arose in these cases. The first was whether the enhancement was conditional on restoration of certain amenities. Both the courts below have come to the finding that this was not so and the arrears of rent have been decreed at Rs. 7/8A per month. The second issue related to whether the tenants had become defaulters and were entitled to the benefit of Section 13(4) of the Act. Both the courts have given the benefit of Section 13(4) to the tenants and have dismissed the suit so far as it related to ejectment. The present revisions challenge the view of the courts below that the tenants were entitled to the benefit of Section 13(4). The only point, therefore, which calls for consideration in these cases is the interpretation of the relevant provisions of Section 13 and whether the tenants are entitled to the benefit of Section 13(4).

6. The relevant provisions of Section 13, with which we are concerned, are these : -

"13(1) Notwithstanding anything contained in any law or contract, no Court shall pass any decree, or make any order, in favor of a landlord, whether in execution of a decree or otherwise, evicting the tenant, so long as he is ready and willing to pay rent therefore to the full extent allowable by this Act, unless it is satisfied -

(a) that the tenant has neither paid nor tendered the amount of rent due from him for any two months;

Provided that no eviction shall be ordered under this clause if the tenant pays in Court on the first day of hearing such arrears of rent together with the costs of the suit.

Provided further that the tenant shall not be entitled to the benefit of protection against eviction under this clause if he has made a like default in payment of rent on three occasions within a period of eighteen months;

.....

13(4). In a suit for eviction on the ground set forth in Clause (a) of Sub-Section (1), if it is not dismissed for either of the reasons stated in the provisos thereto, the Court shall on the first day fixed for the hearing thereof by order determine the amount of rent due from the tenant, which is in arrears, up to the date of such order as also the amount of interest thereon at the rate of six per centum per annum and of the costs of the suit allowable to the landlord and direct the tenant to pay the aggregate of the amounts so specified on or before a date fixed thereby, which shall not be beyond the fifteenth day from, but exclusive of the date thereof. If on or before the date so fixed for payment, the tenant deposits in Court the aggregate of such amounts, the suit shall be dismissed and the sum so deposited shall be paid to the landlord.

5. If, on the first day fixed for the hearing of such a suit, the tenant expresses his intention to contest the same or if he fails to make the payment referred to in Sub-Section (4), the Court shall proceed with the hearing of the suit and may, on the application of the landlord made at any stage of the suit and after giving an opportunity to the parties to be heard, make an order, requiring the tenant to deposit in Court month by month the rent at the rate at which it was last paid. On his failure to deposit the rent for any month by the fifteenth day of the next following month, the Court shall order the defense against eviction to be struck out and the tenant to be placed in the same position as if he had not defended the suit."

7. Before I consider these provisions, I should like to refer to the three cases of this Court which are said to be in conflict. Girraj Prasad's case, 1955 Raj LW 378 was the first to be decided on the 20th of September, 1954 by Sharma, J. at Jaipur. The learned Judge was of opinion that the second proviso to Section 13(1)(a) would prevail over Section 13(4) and if the tenant had made the defaults mentioned in the second proviso to Section 13(1)(a), he could not get the benefit of Section 13(4).

8. The same view was taken by Ranawat, J. in Surajnarain's case, 1955 Raj LW 379, which is the last of the three decided on the 19th of January, 1955 also at Jaipur. Daulatiarn's case, 1955 Raj LW 373, came in between and was decided by Dave, J. on the 23rd of December, 1954. He took the view that under Section 13(4) the tenant was entitled to protection in spite of the defaults mentioned in the second proviso to Section 13(1)(a) if he paid the arrears of rent, the interest thereon and the costs of the

suit as determined by the court under Sub-Section (4).

9. The difficulty in interpreting these provisions has arisen on account of what appear to me to be drafting defects. Section 13(1) has a number of clauses from (a) to (k) which set out the reasons, one or the other of which must be satisfied before a decree for ejection can be passed. Clause (a) lays down that the tenant may be ejected if he has neither paid nor tendered the amount of rent due from him for any two months. Immediately thereafter follows the, first proviso which says that that no eviction shall be ordered if the tenant pays in court on the first day of hearing such arrears of rent together with the costs of the suit. This of course presumes that there is no contest by the tenant and immediately the case is called on the first day of hearing, he pays the arrears due together with costs of the suit. Then comes the second proviso which takes away some of the benefit conferred on the tenant by the first proviso. It provides that the tenant shall not be entitled to the benefit of protection against eviction under clause (a) if he has made a like default for payment of rent on three occasions within a period of eighteen months.

10. Now let me come to the difficulties that have arisen in the interpretation of Section 13(1)(a) and Section 13(4). In the first place, there is a discrepancy between the first proviso to Section 13(1)(a) and the terms of Section 13(4). The first proviso to Section 13(1)(a) only mentions "such arrears of rent together with the costs of the suit" while Section 13(4) mentions "arrears up to the date of such order (which is to be passed on the first day of hearing) as also the amount of interest thereon at 6 per cent, and the costs of the suit." It will be noticed that Section 13(4) introduces "interest" which is not mentioned in the first proviso to Section 13(1)(a). Further Section 13(1)(a) does not make it clear what such arrears are. But that may be taken to be cleared by the terms of Section 13(4), for both these provisions deal with something which takes place on the first day of hearing and such arrears in the first proviso to Section 13(1)(a) may be taken to be arrears up to the date of the first day of hearing. The difficulty about interest, however, still remains.

11. The other difficulty arises from the following opening words of Section 13(4) : "In a suit for eviction on the ground set forth in clause (a) of Sub-Section (1), if it is not dismissed for either of the reasons stated in the provisos." After these opening words, Sub-Section (4) goes on to lay down how the court will deal with the matter on the

first day of hearing and finally provides that the suit shall be dismissed if the conditions laid down in Sub-Section (4) are satisfied. Now the difficulty arises in this way. As I have said before, Section 13(1) lays down the reasons one or the other of which must be satisfied before eviction can take place. Section 13(4) then provides what would happen on the first day of hearing and what kind of order the Court will pass. But Section 13(4) seems to lay down that it will come into operation only if the suit is not dismissed for either of the reasons stated in the provisos to Clause (a) of Section 13(1).

So if the opening words of Section 13(4) are taken literally, it follows that there can be a dismissal of the suit under Section 13(i)(a) on the basis of the two provisos therein. Now it is obvious that there cannot be a dismissal of a suit for ejection on the basis of both the provisos to Section 13(i)(a). A dismissal is possible on the basis of the first proviso; but as soon as the second proviso applies, a dismissal is not possible and the suit may have to be decreed even for ejection, if default is proved. Therefore, when the legislature says in Section 13(4) that the Court shall proceed in such and such manner if the suit is not dismissed for either of the reasons stated in the provisos to Section 13(1)(a), there is an obvious mistake in the language. Again the discrepancy between the first proviso to Section 13(1)(a) and Section 13(4) relating to interest makes the harmonisation of the two provisions difficult. The argument is that if there is no default as envisaged by the second proviso to Section 13(1)(a), the tenant has only to pay arrears of rent and costs in order to get the suit dismissed and need not pay interest. But if he has defaulted under the second proviso also, Section 13(4) is said to give him protection in spite of that default by adding the provision of interest. This argument is only possible because of the discrepancy. Was it the intention of the legislature to take away the benefit that might arise to the landlord under the second proviso by this rather dubious provision in Section 13(4) ? The answer to my mind bristles with difficulties, for I would have thought that where rent was withheld, interest would be payable as a matter of course. If on the other hand, those words are deleted, the remaining part of Sub-Section (4) may be quite intelligible, but another difficulty will arise. The first proviso only provides for deposit of arrears of rent and costs, while Section 13(4) mentions interest also. Was it the intention of the legislature that if payment is made on the first day of hearing, no interest need be paid and if it is fifteen days later interest would have to be paid ? I have however come to the conclusion that this point does not directly arise here and I need not express a final opinion on it. I also feel that the difficulties may be pointed out to Government so that the legislature may intervene to make the meaning clear if it so desires. A copy of this

judgment will therefore be sent to the Government for such action as it pleases to take and this point should be left to be decided where it directly arises.

12. Let me now explain why the point does not directly arise in this case. This will be clear from a perusal of Sub-Section (5). Sub-Section (5) begins by laying down that if the tenant expresses his intention to contest the suit, the Court shall proceed with the hearing of the suit. Therefore, as soon as the tenant contests the suit on any ground whatsoever except as to the matter of arithmetical calculation of the amount of rent due up to date or interest or costs, he cannot claim the benefit of Sub-Section (4). The suit then becomes contested and has to be disposed of in such manner as the Court deems fit according to the general law. Sub-Section (5) also comes into play for another reason. If the tenant does not contest the suit and the Court determines the rent up to date, the interest and the costs due and passes an order for its payment within clear fifteen days and even thereafter the tenant fails to pay the amount within the time allowed, he loses the benefit of Section 13(4) in view of what Section 13(5) lays down and the Court then proceeds to hear the suit and decides it as it thinks fit.

13. The conclusions, therefore, at which I arrive with respect to Sections 13(1)(a), 13(4) and 13(5) of the Act are these. Section 13(1)(a) first proviso and Section 13(1)(4) apply where there is no contest by the tenant except as to mere arithmetical calculation of the amount of rent due up to date, the interest and the costs of the suit. I am for present purposes not saying anything about the conflict that has arisen in this Court about the second proviso to Section 13(1)(a) and Section 13(4). Then comes Section 13(5). The expression of the intention to contest immediately arises as soon as the tenant files a written statement contesting the suit on any ground other than just mentioned above and need not be in so many express words. As soon as Section 13(5) applies and there is a contest of the nature other than what has been said above relating to Section 13(4) or where, in Case there was no contest and the tenant was given time to pay under Section 13(4), he did not avail of it by paying the amount within clear fifteen days of the order, the tenant cannot be allowed the benefit of the first proviso to Section 13(1)(a) or of Sub-Section (4) of Section 13 and the suit must take its course under the general law of the land.

14. Let us now apply these principles to the facts of these two cases. In these cases, the landlords sued at Rs. 7/8/- per month. The tenant's contested the suit on two grounds. One related to default, the other related to the rate of rent, the tenants

contesting that for certain reasons they were bound to pay at only Rs. 6/- per month, while the landlords claimed that they were bound to pay at Rs. 7/8/- per month. There was thus a clear intention to contest the suit in these cases.

The case, therefore, fell under Sub-Section (5) of Section 13. As the landlords claimed eviction under clause (a) of Section 13(1), the tenants would, therefore, not be entitled to the benefit of Section 13(4) at all whatever be its interpretation in a case of this kind. The Courts below were, therefore, wrong in dismissing the suit so far as it related to ejection and in giving the benefit of Section 13(4) to the tenants.

15. An argument was also raised that the amendments made in 1952 to clause (a) of Section 13(1) were against the provisions of the Transfer of Property Act, which came into force in this State on 1-4-1951 and as the assent of the President was not taken to these amendments to clause (a), the tenants could not take advantage of it, Reference in this connection was made to two decisions of this Court in *Milapchand v. Dwarkadas*,<sup>4</sup> and *Govind Singh v. Rajkrishna Singh*,<sup>5</sup>

In these two cases, the validity of the Act was considered and the Act as it stood in 1950 was upheld as valid. In the latter case, it was pointed out that the Court was not expressing any opinion about the validity of the amendment made in the Act after 1-4-1951. The Amendment Act (No. IX of 1952) was made by His Highness the Rajpramukh on 1-3-1952 and did not receive the assent of the President. It amended clause (a) of Section 13(1) and added Sections 13(4) and 13(5). It is urged on behalf of the opposite parties that this amendment is contrary to Section 114 of the Transfer of Property Act and also to Section 108(q) of the Transfer of Property Act read with S. III of the Same Act.

16. It may be mentioned at the outset that the provisions of the Act are supplementary to the provisions of the Transfer of Property Act and it has, to be seen in the light of the above whether the amendment made to clause (a) of Section 13(1) and the addition of Sub-Sections (3) and (4) to Section 13 in any way conflict with the provisions of the Transfer of Property Act pointed out above. So far as Section 314 of the Transfer of Property Act is concerned, I am of opinion that there is no question of conflict at all. That section deals with special cases where the lease of immovable property has determined by forfeiture for non-payment of rent. Section 13(1)(a) of the Act does not deal with a case of forfeiture for non-payment of rent and cannot, therefore, be inconsistent with the provisions of Section 114 of the Transfer of Property Act. Section 108(q) of the Transfer of Property Act provides that in the absence of a

contract or local usage to the contrary, the lessee is bound to put the lessor in to possession of the property on the determination of the lease. One of the ways in which lease is determined under S. III of the Transfer of Property Act, is, on the expiry of a notice for the determination of a lease. It is urged that a notice was given determining the lease in the terms of Section 106 of the Transfer of Property Act and, therefore, it was the duty of the lessee to put the lessor into possession of the property under Section 108(q). The argument runs that as the lessee is claiming the benefit of Section 13(1)(a) of the Act, he is not performing his duty under clause (a) of Section 108 of the Transfer of Property Act. Therefore Section 13(1)(a), as it now stands, inasmuch as it helps the lessee to avoid the doing of his duty under clause (q) of Section 108, is in conflict with it and, therefore, ultra vires as the President's assent has not been taken. I have given this matter my earnest consideration and have come to the conclusion that there is no real conflict. Section 13(1)(a) does not say that the lessee is not bound to put the lessor into possession, on the determination of a lease. It also does not lay down that a notice to quit would not be sufficient to determine the lease. It merely adds certain supplementary provisions which have to be complied with before actual ejectment can be ordered by the Court. The provisions of the Transfer of Property Act as to determination of lease by notice and the duty of the lessee to put the lessor into possession on such determination still stand and all that the amendment to Section 13(1)(a) of the Act does is to add certain conditions which have to be further fulfilled before actual ejectment is ordered by a Court. I do not think, in the circumstances, that there is any real conflict between Section 13(1)(a) as amended and Clause (q) of Section 108 read with S. III of the Transfer of Property Act. An Act, which is admittedly supplementary and supplements the provisions of the Transfer of Property Act without in any way amending them so far as they go, cannot in my opinion be said to conflict with the provisions of the Transfer of Property Act which it leaves intact. It is only when the provision made by the legislature of a State is repugnant to any provision of a law made by Parliament that the State law would fall under Article 254(1) of the Constitution. But where, as in the present case, the law made by Parliament stands as it is and the State law merely adds to it, there cannot be said to be repugnancy unless it is intended that the Union law is a complete and exhaustive Code. That, in my opinion, cannot be postulated as to Section 108 of the Transfer of Property Act which applies in the absence of a contract or local usage to the contrary. I fail to see, in the circumstances, why if a state law leaves Section 108 of the Transfer of Property Act intact as it stands and adds certain provisions which have to be further complied with in the matter of eviction, it can be said that it is

repugnant to Section 108(q). There is, therefore, no force in this contention and I reject it. The result of the above discussion is that the opposite parties, who are the tenants, were not entitled to the benefit of Section 13(4) in these cases. The Courts below have gone wrong in giving them that benefit. I would, therefore, allow the revision and grant a decree for ejection in favor of the applicants in addition to the decree for arrears of rent which has already been granted by the Courts below. In view of the fact that the law on the point was not settled, I would leave the parties to bear their own costs of this Court. Costs of the two Courts below will be as ordered by those Courts.

D. S. DAVE, J. :

17. I agree with my Lord the Chief Justice that in the present cases the tenants (opposite parties) having expressed their intention to contest the petitioners, suits against them on the very first day fixed for the hearing of those suits, the provisions of Section 13, Sub-Section (5) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, as amended in 1952 were attracted and thereafter the question of the application of Sub-Section (4) could not arise. Under the circumstances, I concur in the order passed above.

BY THE COURT

18. We therefore allow the revisions and grant a decree for ejection in favour of the applicants in addition to the decree for arrears of rent which has already been granted by the Courts below. In view of the fact that the law on the point was not settled, we order parties to bear their own costs of this Court.

Costs of the two Courts below will be as ordered by those Courts.

Revision petitions allowed.

Cases Referred.

1. 1955 Raj LW 373
2. 1955 Raj LW 378
3. 1955 Raj LW 379
4. 1954 Raj LW 587
5. 1956 Raj LW 56