
(2013) 10 P&H CK 0278
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 2545 of 1996 (O and M)

Fauji and Others

APPELLANT

Vs

The Financial Commissioner and Others

RESPONDENT

Date of Decision : 10-10-2013

Acts Referred:

Citation : (2013) 10 P&H CK 0278

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Advocate : Amit Jain, for the Appellant; Shruti Goyal, A.A.G., Haryana and Mr. Sudhir Aggarwal, Advocate for Respondents No. 4 to 10, for the Respondent

Final Decision : Disposed Off

Judgement

Ajay Tewari, J.—By this petition the petitioners have challenged the orders of the respondents No. 1 and 3 declining an application for computation of rent. The issue revolves around the interpretation given to the amendment of Section 14A of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as "Act of 1953"). Brief facts are that the petitioners were the tenants of the private respondents No. 4 to 10 who had filed application for ejectment on 05.10.1988 on the ground of non-payment of rent. During the pendency of the application, the Act of 1953 was amended by the Haryana Act No. 5 of 1991 and proviso was added to Clause (1) of Section 14A of the Act of 1953. The said amended section is read as under:-

(b) to clause (i), the following proviso shall be added namely:-

Provided that if the tenant makes payment of arrears of rent and interest, to be calculated by the Assistant Collector, Ist Grade, at eight percentum per annum on such arrears together with such costs of the application, if any, as may be allowed by the Assistant Collector, First Grade, either on the day of first hearing or within fifteen days from the date of such hearing, he shall not be ejected.

2. After the amendment, which took place on 22.04.1991 the petitioners moved

an application on 24.09.1991 for depositing the arrears of rent. The respondent No. 3 rejected the application on the ground that the stage of first hearing had elapsed. The order having been ultimately upheld the petitioners are before this Court.

3. The contention of learned counsel for the petitioners is that the amendment being beneficial amendment, the legislation should be liberally construed in favour of the tenants and further that on the date when the application was filed only written statement had been submitted and therefore the Court had not yet applied its mind. In support of his arguments, learned counsel for the petitioners has relied upon the judgments of the Hon''ble Supreme Court in the matters of Dahiben and others Vs. Vasanji Kevalbhai (dead) and others, Siraj Ahmad Siddiqui Vs. Shri Prem Nath Kapoor, .

4. In Dahiben''s case (supra), the Hon''ble Supreme Court held as follows:-

Being concerned with a legislation beneficial to tenants, the Courts are required to give a liberal interpretation; and if we can foretell our conclusion, according to us, the amendment of 1952 would relate back to the Act as enacted. In any case, the amendment would apply to the suit which was pending when the amendment had come into force.

5. In Sham Lal''s case (supra), the Hon''ble Supreme Court in para No. 11 held as follows:-

11. It appears that there is consensus in regard to the interpretation of the expression "first day" in the context of the rent legislations of several other States, for instance, the Gujarat High Court in Shah Ambalal Chhotlal and Others Vs. Shah Babaldas Dayabhai and Others, , dealing with the identical question as to the meaning of the words "the first day of the hearing of the suit" as provided in Sub-Section 3(b) of Section 12 of Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 has observed after considering several decisions that "the words "the first day of hearing" as meaning not the day for the return of the summons or the returnable day, but the day on which the Court applies its mind to the case which ordinarily would be at the time when either the issues are determined or evidence taken.

6. In Siraj Ahmad Siddiqui''s case (supra), the Hon''ble Supreme Court in para No. 13 held as follows:-

13. The date of first hearing of a suit under the Code is ordinarily understood to be the date on which the court proposes to apply its mind to the contentions in the pleadings of the parties to the suit and in the documents filed by them for the purpose of framing the issues to be decided in the suit. Does the definition of the expression "first hearing" for the purposes of Section 20(4) mean something different? The "step or proceedings mentioned in the summons" referred to in the definition should we think, be construed to be a step or proceeding to be taken by the court for it is, after all, a " hearing" that is the subject matter of the

definition, unless there be something compelling in the said Act to indicate otherwise; and we do not find in the said Act any such compelling provision. Further, it is not possible to construe the expression "first date for any step or proceeding" to mean the step of filing the written statement, though the date for that purpose may be mentioned in the summons, for the reason that, as set out earlier, it is permissible under the Code for the defendant to file a written statement even thereafter but prior to the first hearing when the court takes up the case, since there is nothing in the said Act which conflicts with the provisions of the Code in this behalf. We are of the view, therefore, that the date of first hearing as defined in the said Act is the date on which the court proposes to apply its mind to determine the points in controversy between the parties to the suit and to frame issues, if necessary.

7. Learned counsel for the respondents No. 4 to 10 has argued that normal principle of interpretation of statute is that any legislative action would normally be deemed to be prospective in operation unless either specifically retrospectively attached to it or it has to be read retrospectively as a matter of necessary implication. In support of his arguments, learned counsel for respondents No. 4 to 10 has relied upon the judgment of the Hon''ble Supreme Court in the matter of Shyam Sunder and Another Vs. Ram Kumar and Another, and the judgment of this Court in the matter of Jawala Singh v. Harnam Singh, 1993(2) RRR 19.

8. In Shyam Sunder's case (supra), the Hon''ble Supreme Court in para Nos. 23 to 27 held as follows:-

23. In Maxwell on the Interpretation of Statutes, 12th Edn. the statement of law in this regard is stated thus:

Perhaps no rule of construction is more firmly established than thus-that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only." The rule has, in fact, two aspects, for it, " involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary.

24. In Francis Bennion's Statutory Interpretation, 2nd Edn., the statement of law is stated as follows:

The essential idea of a legal system is that current law should govern current activities. Elsewhere in this work a particular Act is likened to a floodlight switched on or off, and the general body of law to the circumambient air. Clumsy though these images are, they show the inappropriateness of retrospective laws. If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it. Such, we believe, is the

nature of law. Dislike of ex post factor law is enshrined in the United States Constitution and in the Constitution of many American States, which forbid it. The true principle is that *lex prospicit non respicit* (law looks forward not back). As Willes, J. said retrospective legislation is "contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law.

25. In *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, this Court observed as thus:

The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed.

26. In *Smt. Dayawati and Another Vs. Inderjit and Others*, , it is held thus:

Now as a general proposition, it may be admitted that ordinarily a court of appeal cannot take into account a new law, brought into existence after the judgment appealed from has been rendered, because the rights of the litigants in an appeal are determined under the law in force at the date of the suit. Even before the days of Coke whose maxim-a new law ought to be prospective, not retrospective in its operation-is off-quoted, courts have looked with dis-favour upon laws which take away vested rights or affect pending cases. Matters of procedure are, however, different and the law affecting procedure is always retrospective. But it does not mean that there is an absolute rule of inviolability of substantive rights. If the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the court of trial as well as the court of appeal must have regard to an intention so expressed, and the court of appeal may give effect to such a law even after the judgment of the court of first instance.

27. In *Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others*, this Court laid down the ambit and scope of an amending act and its retrospective operation as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) a procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) a statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation unless otherwise provided, either expressly or by necessary implication.

28. In Jawala Singh's case (supra), this Court while relying upon Banta Singh v. Santi and others, 1977 PLJ, 452, held as follows:-

Rule 2-B and sub-rule(3) to rule 4 of Order 22 of the Code came into force with effect from March 17, 1975. The amendments noticed above were not enforced retrospectively and the question of abatement of the appeal has to be determined according to the law prevalent at the relevant time. As noticed above, the second appeal in the present case stood abated on November 1, 1972, which created vested right in favour of the respondent. It is settled law that vested right cannot be taken away by a future amendment in the law unless the amendment is expressly made retrospective or there is some indication in the provision which makes it of retrospective operation. The amendments noticed above have not been made expressly retrospective in operation nor anything inherent in these rules has been brought to our notice to persuade us to hold that they have retrospective operation so as to revive even the appeals which already stood abated long before their enforcement.

On the reasoning recorded in Banta Singh's case, there is no scope for taking a contrary view with respect to the applicability of Order 22 Rule 2(3) to the case in hand. The amendment made in 1992 as referred to above, does not expressly or by necessary implication suggest that it would revive the appeals, which have already abated. Thus, this amendment is to apply prospectively and not retrospectively to revive the appeals which already stood abated under the law prevalent at the relevant time.

9. Learned counsel for respondents No. 4 to 10 has argued that it cannot be disputed that the proviso was a beneficial provision for the tenant. However, it cannot also be disputed that the present amendment was not a procedural amendment but bestowed a substantive right on the tenant viz., the right to avoid eviction by making payment of the rent after the landlord had filed an eviction petition. In these circumstances and in view of the fact that the amendment did not specifically envisage retrospectivity it cannot be held to operate retrospective even by necessary implication.

10. In my opinion, the arguments of learned counsel for the petitioner are more persuasive since the argument regarding retrospective operation does not really arise in the present petition. The amendment provided that the payment of

arrears could have been made within 15 days of the first hearing. The question of first hearing and the duty of the Court has been decided by the Hon"ble Supreme Court on various occasions. One of them being the case of Sham Lal (supra) wherein the Hon"ble Supreme Court held that the date of first hearing would be the date on which the Court applies its mind to the case which ordinarily would be at the time when either the issues are determined or evidence taken. This was reiterated in Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others, , wherein the Hon"ble Supreme Court went further and held as under:-

To sum up, our conclusions are:

1. In Section 13(2)(i) proviso, the words "assessed by the Controller" qualify not merely the words "the cost of application" but the entire preceding part of the sentence i.e. "the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application".
2. The proviso to Section 13(2)(i) of East Punjab Urban Restriction Act, 1949 casts an obligation on the Controller to make an assessment of (i) arrears of rent (ii) the interest on such arrears, and (iii) the cost of application and then quantify by way of an interim or provisional order the amount which the tenant must pay or tender on the "first date of hearing" after the passing of such order of "assessment" by the Controller so as to satisfy the requirement of the proviso.
3. Of necessity, "the date of first hearing of the application" would mean the date falling after the date of such order by Controller.
4. On the failure of the tenant to comply, nothing remains to be done and an order for eviction shall follow. If the tenant makes compliance, the inquiry shall continue for finally adjudicating upon the dispute as to the arrears of rent in the light of the contending pleas raised by the landlord and the tenant before the Controller.
5. If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If, on the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount, failing which alone he shall be liable to be evicted. Compliance shall save him from eviction.
6. While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings.

11. In the present case no evidence had been led and the matter was fixed for evidence. In the circumstances, while applying the judgment of Sham Lal (supra) and Rakesh Wadhawan (supra) it has to be held that it was the duty of the Assistant Collector to have considered the application moved by the petitioners, computed the rent due and then given 15 days time to the petitioners to pay the same.

12. Resultantly, the petition is allowed in the above terms. The orders of Assistant Collector, Nuh and the Financial Commissioner, Haryana (Annexures P-1 and P-3 respectively) are set aside while that recommendation of the District Collector, Gurgaon vide order dated 02.06.1992 is accepted. The matter is referred back to the Assistant Collector. The parties through their counsel are directed to appear before him on 31.12.2013. The Assistant Collector is directed proceed further in the matter as per law. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.