

(2003) 09 SC CK 0087

In the Supreme Court Of India

Case No : Civil Appeal No's. 6605-6606 of 2002

Mangat Singh Trilochan Singh thr. Mangat Singh (dead) thr.
Lrs. and Others

APPELLANT

Vs

Satpal

RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(3)
Civil Procedure Code, 1908 (CPC) — Order 15 Rule 5, Order 15 Rule 5(2), 115
East Punjab Urban Rent Restriction Act, 1949 — Section 13(2)</l

Citation : AIR 2003 SC 4300 : (2003) AIRSCW 4959 : (2003) 3 BLJR 2410 :
(2004) 1 CHN 49 Supp : (2003) 4 JCR 216 : (2003) 1 JT 624 Supp : (2004) 1 LW
581 : (2004) 137 PLR 225 : (2003) 8 SCALE 139 : (2003) 8 SCC 357 : (2003) 4
SCR 54 Supp : (2003) 7 Supreme 1 : (2004)

Hon'ble Judges : Shivaraj V. Patil, J;D. M. Dharmadhikari, J

Bench : Division Bench

Advocate : G.I. Sanghi and V.C. Mahajan, Dhruv Mehta, Mohit Chaudhary,
Shalini Gupta, S. K. Mehta, Meera Agarwal, R.C. Mishra, Rakesh K. Khanna,
Rashmi Khanna, Reetesh Singh, Surya Kant, S.M. Sarin and P.N. Puri, for the
appearing parties, for the Appellant;

Final Decision : Dismissed

Judgement

Dharmadhikari, J.—The High Court by the orders impugned in these appeals has reversed the judgment of trial court and defence of the petitioners - tenants in each of the cases has been struck off on the alleged ground of non-deposit of arrears of rent within the specified period in accordance with provisions of Order XV Rule 5 of the CPC [hereinafter referred to as the Code].

2. The trial court by separate orders passed in each of the cases had rejected the prayer of the landlords for striking off the defence and allowed the applications of the appellants - tenants seeking permission to deposit the arrears of rent.

3. Learned senior counsel Shri G.L. Sanghi appearing for the appellants - tenants has brought to our notice the contents of the summons served by the trial court

on the tenants after the institution of the suit for eviction against them. Relying on the contents of the summons, the submission made is that only a date of appearance of the parties was intimated and it was not a date fixed for hearing of the suit. It is further submitted that since the date mentioned in the summons was not the date for hearing of the parties in the suit, the period specified for deposit of rent under Order XV Rule 5 of the Code could not be reckoned from that date. Reliance is placed on the decisions of this court in *Sham Lal (Dead) by Lrs. Vs. Atme Nand Jain Sabha (Regd.)*, *Dal Bazar*, and *Bimal Chand Jain Vs. Sri Gopal Agarwal*,

4. Relying on the same decisions of this Court (*supra*) the next submission made is that the power of the court to strike off the defence, in the event of non-deposit of arrears of rent within the specified period, is discretionary and it is not compulsory for the court in every case to take such extreme step of penalising the tenant. Lastly, it is submitted that the trial court having exercised its discretion by not striking off the defence of the tenants and accepting the rent deposited, the High Court had no justification in exercise of its revisional jurisdiction u/s 115 of the Code, to interfere with the same.

5. In reply, learned senior counsel Shri V.C. Mahajan appearing for the respondents - landlords supported the orders of the High Court and placed reliance on the decision of this Court in *Anandi Devi v. Om Prakash*

6. After hearing the learned counsel appearing for the contesting parties and perusing the orders of the trial court and the High Court, we find that the question of law raised stands concluded in favour of the tenants. Our conclusion, therefore, is that these appeals must be allowed by setting aside the orders of the High Court and remitting the cases to the trial court for proceeding further with the trial of the suit.

7. The Order XV Rule 5 of the Code as applicable to the State of Punjab, Haryana and Chandigarh reads as under :-

"5. Striking off defence for failure to deposit admitted rent. - (1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount, admitted by him to be due together with interests thereon at the rate of nine per cent per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or monthly mount due as aforesaid, the Court may, subject to the provisions of Sub-rule (2) strike off his defence.

Explanation 1.- The expression "first hearing" means the date for filing written statement or for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.

Explanation 2.- The expression "entire amount admitted by him to be due" means the entire gross amount whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account and the amount, if any, deposited in any Court.

Explanation 3.- (1) The expression "monthly amount due" means the amount due every month, whether as rent or compensation for use and occupation of the admitted rate of rent, after making on other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account.

(2) Before making on order for striking off defence, that Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days, of the first hearing or, of the expiry of the week referred to in Subsection (1) as the case may be.

(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff :

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited :

Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible or any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same."

[Emphasis supplied]

8. The trial court by separate orders passed, refused to strike off the defence of the tenants for the reason amongst others, as stated by it, that a substantial question of jurisdiction of the civil court is involved in the cases. Admittedly, before filing of the present suit for eviction, landlords had earlier filed applications before the competent authority under the provisions of East Punjab Urban Rent Restriction Act which were later withdrawn.

9. The trial court placed reliance on the decisions of this Court (supra) which have also been relied upon for the tenants before us on the interpretation of the provisions of Order XV Rule 5 of the Code. This Court has held that it is not obligatory for the court in every case to strike off defence only because there is delay in deposit of the arrears of rent. The court has discretion in the matter and the power to strike off the defence is to be exercised with due regard to the facts and circumstances of each case.

10. After duly noticing the legal position as has been explained by this Court, the trial court has recorded in its order that the Rent Controller had fixed a fair rent for the suit premises and the arrears of rent at that rate were deposited by the tenants in the State Bank of Patiala for payment to the landlords. It finds that the tenants had not withheld payment of rent arbitrarily. There was no lack of

bona fides on their part. It is in these circumstances that the trial court refused to strike off the defence and on consideration of the representation of the tenants accepted the deposit of arrears of rent.

11. The contention advanced on behalf of the tenants that the arrears of rent were duly deposited within the specified period from the first effective 'date of hearing' also gets support from the decision of this Court in the case of Sham Lal (supra). In that case, the words 'first hearing of the application,' as used in Section 13(2)(i) of East Punjab Urban Rent Restriction Act, came up for interpretation. It was held that to promote object of the legislation contained in the provisions, the expression used therein has to be construed reasonably. The use of the expression 'first hearing' is held not to mean 'the date fixed for return of summons or the returnable date which is the day of appearance' before the court of the parties. See the following observations of this Court in above respect :-

"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 Chhotalal 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".

[Emphasis added]

12. In the instant cases before us, the trial court accepted the deposit of arrears of rent by the tenants and refused to strike off defence for more than one valid reason. The most important reason assigned by the trial Judge is that there is a serious question of jurisdiction of the civil court involved in the cases. The court also came to the conclusion that as the arrears of rent were deposited in the Bank, there were no mala fides on the part of the tenants. The rent was not withheld for any ulterior purpose. The arrears of rent were, thereafter, deposited in court with an application or representation which was made in accordance with Sub-rule (2) of Rule 5 of Order XV of the Code.

13. The last submission made on behalf of the tenants has also great force that since the trial court had exercised its jurisdiction lawfully by refusing to strike off defence and accepting the deposit of arrears of rent, the High Court could not justifiably interfere with the same in exercise of its revisional jurisdiction u/s 115 of the Code.

14. As a result of the discussions aforesaid, we find that the trial court had exercised its jurisdiction in accordance with law in refusing to strike off the

defence of the tenants. In the result, these appeals succeed and are, accordingly, allowed. The impugned orders dated 25.2.2002 of the High Court in all these cases are hereby set aside. These cases are remitted to the trial court for proceeding with the suits In accordance with law.

15. In these circumstances, we leave the parties to bear their own costs in these appeals.