
(1992) 09 P&H CK 0111
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2614 of 1991

Vinod Kumar Suri, Advocate

APPELLANT

Vs

Shri Ashok Kohli, Sole Proprietor, Kohli Auto Services

RESPONDENT

Date of Decision : 15-09-1992

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13(2), 15(5)

Citation : (1993) 103 PLR 569 : (1993) 1 RCR(Rent) 425

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : H.L. Sarin and Ashish Handa, for the Appellant; Surinder Gandhi, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—This order shall dispose of two civil revision petitions No. 2614 of 1991 filed by the landlord and 630 of 1992 filed by the tenant.

2. The relationship of landlord and tenant is. admitted between the parties. Mr. Vinod Suri landlord filed an application u/s 13 of the East Punjab Rent Restriction Act, 1949 (for short "the Act") for recovery of rent and in default for eviction of the tenant before the Rent Controller, Chandigarh on 10. 8.1988. The landlord claimed rent from the month of July, 1988 onwards. Pursuant to the notice issued by the Rent Controller, the respondent put in appearance and tendered the arrears of rent, interest and costs as assessed by the Rent Controller on 3.10.1988--The first date of hearing-which was accepted by the landlord. Simultaneously, another application u/s 13 of the Act was filed before the Rent Controller on 12.9.1988 which came up for hearing before the Rent Controller on 4.10.1988 and on that date the tenant moved an application u/s 10 read with section 151 of the CPC making a prayer for stay of the proceedings and also for dismissal of the application on the ground that rent sought to be recovered has already been paid alongwith costs and interest assessed and same has also been accepted by the landlord. The Rent Controller, however, did not agree to the plea

of the tenant for stay of proceedings and so dismissed the application vide order dated 31.3 1989. However, while dismissing the application, the rent Controller, observed that even after the payment of the rent by the tenant on 3. 10.1988 (payment made in the earlier application) the question of non payment of costs in the second application is yet to be decided.

3. The Rent Controller vide order dated 7.10.1989 came to the conclusion that since the landlord had already accepted the rent, costs and interest tendered by the tenant before the Court of Sh. Birinder Singh, Rent Controller, Chandigarh, and so by his conduct, the landlord estopped from claiming eviction of the tenant on the basis of costs in pending rent application. This order of the Rent Controller was challenged by the landlord on the ground that even " if the rent, interest and costs been tendered by the tenant and accepted by the landlord, yet the tenant in the present application was bound to tender the, costs of the second (petition which, admittedly his not been tendered by him and this way the Rent Controller has erred in law in dismissing the rent application following the judgment in case reported as Rattan Chand Vs. Jagmohan Singh, which stood overruled by a Full Bench judgment incase reported as Kalu Ram v. Gonda Mal 1980 82 P. L. R. 452 . The appellate Court agreeing with" the contentions raised by the counsel for the appellant, accepted the appeal and so ordered for the eviction of the tenant vide order dated 8-2-1992.

4. The short question which needs close examination is as to whether the tenant was bound to tender the costs of the petition even when no rent or interest was due towards him" and whether in the absence of any assessment by the Rent Controller with regard to the costs of the petition, it was incumbent upon the tenant to call upon the Rent Controller to assess the costs and deposit as well. Facts in these two revision petitions are not disputed. The rent for the period from July, 1988 onwards was claimed by the landlord vide application dated 10.8.1988 The tenant, admittedly, put in appearance and tendered rent for the period upto September, 1988 along-with interest and costs as assessed by the Rent Controller on 3-10-1988 which amount was accepted by the landlord without any protest. The second application was filed by the landlord on 12-9-1988 i.e. before the first date of hearing in the first rent application which was 3-10-1988. Section 13 of the Act absolves the tenant of his default, if any, in making payment of rent due in case the amount is paid or tendered alongwith interest and costs of the petition within a period of 15 days of the first hearing of application for ejectment after due service. The word "rent due", "arrear of rent" and "rent within the time aforesaid" were considered by the Division Bench of this Court in case reported as Basant Ram v. Gurcharan Singh 1959 61 P. L. R. 591, and it was held that there is no distinction between "arrear of rent" and the "rent due" as the term used in the Act the word "arrears" is not a term of art; it is commonly used to describe sums overdue and payable in respect of periods of time; it means something which is behind in payment or which remains unpaid, implying a duty and a default; it signifies money unpaid at the due time. The word "due", which has a variety of meanings depending on the

context, would, in section 13(2) (i) and the proviso, obviously mean the amount of rent which has matured or for which the tenant is in arrears. Such rent is to be paid in the absence of any agreement by the last day of the month next following that for which the rent is payable (Section 13(2) (i)). Examined in the light of Section 13(2) (i) of the Act, rent for the month of July, 1988, was recoverable by the landlord by the end of August. 1988 only whereas the application for recovery of rent from July, 1988 was filed on 10-8-1988. This way the first application for recovery" of rent from July, 1988 was not maintainable. However, the tenant to avoid any possible fall out on account of non tendering of the rent chose to tender the amount of rent claimed along with interest and costs on the first date of hearing i.e. 3-10-1988. Since he had already tendered the rent etc on 3-10-1988 which was accepted by the landlord without any reservation the tenant took up the plea of section 10 of the CPC to stay further proceedings in the second application. Significantly, the Rent Controller after noticing that rent which was being claimed in the second application has already been received by the landlord did not chose to assess the costs of the second application. The crux of the dispute pertains to the determination of this significant point raised by the parties i.e. as to the effect of non tendering of the costs as raised by the counsel for the landlord and non determination of the costs" by the Rent Controller and its effect by the counsel for the tenant. Before examining the respective contentions, reference to the relevant provision contained in section 13(2) (i) of the Act would be appropriate. As per provision to section 13(2) (i) of the Act, tenant is to pay, or tender the arrears of rent and interest to-be calculated by the Rent Controller at the rate of six per cent per annum on, such arrears together with the cost of application, if any, as may be allowed by the Rent Controller and in case he complies with the same, he shall be deemed to have paid or tendered the rent within the time stipulated. On perusal of this provision, it becomes clear that whereas it is the duty of the tenant to tender the arrears of rent, a duty has been cast upon the Rent Controller to calculate the interest at the rate of 6%. per annum on such arrears of rent and impose further cost of the petition as he may deem it proper. Counsel for the landlord, however, had laid much emphasis on the fact that even if the Rent Controller had not assessed the cost, it was the bounden duty of the tenant to ask the Rent Controller to assess the cost. Since the tenant did not evince any interest to tender the cost, the Rent-Controller, for obvious reason; did not do so, but all the same there has been non compliance of the statutory provision and the appellate Authority has rightly ordered for his eviction for non payment of cost. Counsel for the petitioner in support of his contention relied upon the judgment in case reported as Gulshan Rai v. Devi Dayal (1966) 68 P. L. R. 668, Badri Parshad v. Rameshwar Dass 1985 H. R. R. 282 . Counsel for the tenant, however, has contended that rent from July, 1988 onwards alongwith interest and cost was duly tendered on the first date of hearing i. e. 3-10-1988. He further contended that, in fact, the first eviction application filed on 10 8-1988 claiming rent from July, 1988, was not maintainable as no rent was due on the date the application was filed, yet the tenant without raising the legal plea chose

to tender the rent for the months of July, August and September alongwith interest and cost as assessed by the Rent Controller and on these premises the second application filed by the landlord on 12-9-1988 was nothing but an abuse of the process of the Court and otherwise also was filed to harass the tenant. Arguing further, the counsel urged that it was the duty of the Rent Controller to assess the cost of the application if he deem proper i. e. to say the Rent Controller is net duty bound to allow the cost of the petition. . In all cases, petition is filed u/s 13 of the Act. Since the discretion to impose cost of the petition lay with the Rent Controller, the Rent Controller, in view of the facts explained, found no ground to assess the cost and in the absence of such an order, the tenant had no occasion to deposit any amount towards cost. In support of his contention, the counsel relied upon the pronouncement of the Apex Court in case reported as Sheo Narain Vs. Sher Singh, and Mangat Rai and Another Vs. Kidar Nath and Others, . However, much emphasis has been laid by the counsel for the petitioner to the observations of Mehar Singh, J, in Gulshan Rai's case (supra) wherein the Court while dismissing the revision petition filed by the landlord observed as under :-

"So, where the Refit Controller merely makes an omission to assess costs but the tenant does not invite him to do so, so that he may be able to comply with the proviso to that provision, the case is entirely different and the tenant cannot have benefit of disobedience in the one case and his failure to invite the Controller to do his duty in the other."

The facts in the case referred are that an eviction application was filed by the landlord on the ground (a) that the tenant was in arrears of rent (b) that contrary to the terms of agreement of tenancy between the parties he made construction on the demised premises thereby committing such act as have impaired materially the value or utility of the demised premises. The second ground of eviction was not. pressed by the learned counsel in view of the concurrent findings of the Courts below holding that the tenant has not impaired the value and utility of the shop in dispute. However, the contest remained between the parties with regard to the first ground i.e. arrears of rent. The tenant in support of his contention urged that he had already deposited a sum of Rs. 144/- being rent for the months of February, March and April, 1961, u/s 31 of the Punjab Relief of Indebtedness Act, 1934 in the Court of Subordinate Judge and so no arrears of rent was due towards him on the date of the eviction application. Pursuant to the notice issued by the Rent Controller, counsel for the tenant tendered the amount of arrears of rent of Rs. 144/-, as already deposited by his client on April 19, 1961, and, in addition, paid interest on the arrears of rent. No amount of cost of the application was paid and the order of the Rent Controller of that date says- "I assess no costs". The Court while examining this aspect of the matter observed as under : -

"But, where the Rent Controller does not perform his duty and does not assess costs of the application for ejectment, the tenant is helpless and he cannot be

penalised for not doing what he could not do because of the failure of the Rent Controller to perform his duty "

5. Thus, the observations of the Court referred to by the learned counsel for the landlord are, in fact, obiter. Even otherwise, no person can be penalised for default of the Court. Since it was the duty of the Rent Controller to assess the costs and that too if he deems necessary to hold that even in such a case the tenant can be held to have defaulted would defeat the very purpose of enacting this statutory provision which the Legislature in its wisdom thought it to be appropriate. Examined even otherwise, no costs could be assessed by the Rent Controller as the tenant was not held to be in arrears of rent. Even the appellate Authority has affirmed the finding of the Rent Controller to the effect that no arrears of rent were due towards the tenant. Reference made to the judgment in Badri Parshad's case (supra) for the view that it is the duty of the Rent Controller to get the costs calculated is, in fact, not borne out on reading the relevant paragraph of this judgment. The observation of J. V. Gupta, J., as he then was, is in the following words :-

"As a matter of fact, it was the duty of the tenant to get the interest calculated from the Rent Controller on the first date of hearing. Instead of doing so. he sought the adjournments for producing the receipts evidencing the payment of rent. Thus, he himself evaded to make the payment of the arrears of rent within the statutory period of 15 days. That being so, the subsequent application for setting aside the ex parte proceedings was of no consequence. The tenant had already incurred the liability to be ejected from the demised premises."

Thus, there was no reference as was given in the catch words of the judgment that it is the duty of the tenant to get the costs calculated. Since costs were not assessed by the Rent Controller, there was no duty cast upon the tenant to ask the Rent Controller to assess the costs as assessment of costs is the discretion of the Rent Controller which in the circumstances of the case appears to have been rightly exercised in favour of the tenant. I accordingly accept the petition filed by the tenant thereby reversing the order of the appellate Authority and so maintain the order of the Rent Controller whereby the application for eviction was dismissed. Consequently, the revision petition filed by the landlord is dismissed. However, in the circumstances of the case, the parties shall bear their own costs.