

Shri Vidya Prachar Trust vs Pandit Basant Ram on 21 March, 1969

Equivalent citations: 1969 AIR 1273, 1970 SCR (1) 66, AIR 1969 SUPREME COURT 1273

Author: M. Hidayatullah

Bench: M. Hidayatullah, G.K. Mitter

PETITIONER:
SHRI VIDYA PRACHAR TRUST

Vs.

RESPONDENT:
PANDIT BASANT RAM

DATE OF JUDGMENT:
21/03/1969

BENCH:
HIDAYATULLAH, M. (CJ)
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MITTER, G.K.

CITATION:
1969 AIR 1273 1970 SCR (1) 66
1969 SCC (1) 835
CITATOR INFO :
D 1979 SC1307 (7,8,9)
D 1980 SC 138 (4,5,6,8,9,10,12,13,14)
O 1980 SC1709 (3,4,5,14,16,17,23)

ACT:
East Punjab Urban Rent Restriction Act, 1949-S. 13(2)(1)-
Eviction for non-payment of rent-Deposits in court under s.
31 Relief of in- debtedness Act, 1934-Whether equivalent to
tender of rent to landlord.

HEADNOTE:
The appellant landlord made an application under s. 13 of
the East Punjab Urban Rent Restriction Act, 1949 for the
respondent's eviction from certain premises on the ground
that the -rent 'for the premises from October 1959 to June

1961 had -not been paid. On the first day of hearing the respondent appeared and tendered part of the rent. He claimed that he had made two deposits in the court of the Senior Sub-Judge under s. 31 of the East Punjab Relief of Indebtedness Act, 1934 and that this was a valid tender of the balance rent to the landlord. The Rent Controller decided that the respondent was not in default and the appellate authority as well as the High Court took the same view.

On appeal to this Court,

HELD : The deposit under s. 31 of the Relief of Indebtedness Act did not save the tenant from the consequences of the default as contemplated by s. 13 of the Urban Rent Restriction Act. [70 F]

Section 31 is intended to operate between debtors and creditors where difficulty in making the payment, either wholly or partly, may arise in the debtor wishes to save himself from interest which is running. The Act is not intended to operate between landlords and tenants; nor is the Court of the Senior Sub-Judge a clearing house for rent. Although the general words "any person who, owes money" may appear to cover the case of a tenant, looking at the Act as a whole, 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, nor ordinarily, and therefore, the section cannot be said to cover a case between a landlord and a tenant. [69 F-H]

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 499 of 1966. Appeal by special leave from the judgment and order dated March 18, 1964 of the Punjab High Court in Civil Revision No. 750 of 1962.

Bishan Narain and Naunit Lal, for the appellant. N. N. Keswani, for the respondent.

Janardan Sharma and S. K. Nandy, for the intervener. The Judgment of the Court was delivered by. Hidayatullah, C.J. This is a landlord's appeal against an order of the High Court of Punjab, March 18, 1964, confirming the dismissal of his petition for the eviction of the respondent from certain premises taken on rent. The appellant had made the application under S. 13 of the East Punjab Urban Rent Restriction Act, 1949 on the allegation that rent for the premises from October 1, 1959 to June 30, 1961 had not been paid. The rent of the premises was Rs. 32/8/- and the water connection charges were Rs. 2/8/-/. On the first date of hearing the tenant appeared and tendered Rs. 292/8/- as rent from October 1, 1960 to June 30, 1961. He also paid Rs. 7/- as interest and Rs. 25/- as costs. These amounts were accepted by the landlord without prejudice to his claim that the rent for the earlier period had not been paid.

It appears that the tenant had made two deposits in the Court of the Senior Sub-Judge, Ludhiana under s. 31 of the East Punjab Relief of Indebtedness Act, 1934 on December 23, 1959 and July 18, 1960, the amount being 210/- on each occasion. The tenant claimed that this was a valid tender of rent to the landlord. The Rent Controller, by his order, decided that the tenant was not in default and the Appellate Authority and the High Court also took the same view. It was held by the Appellate Authority, as well as by the High Court, that the deposit under s. 31 of the Relief of Indebtedness Act was a valid tender under s. 13 of the Urban Rent Restriction Act. The Division Bench in the High Court followed an earlier decision of the same Court reported in *Mam Chand v. Chhotu Ram*(1). The correctness of that decision as well as the decision under appeal are challenged before us.

Before the hearing commenced the respondent took Objection to the grant of the special leave stating that the appellant was guilty of making "certain inaccurate untrue and misleading statements in respect of certain material facts". The charge was that before the Rent Controller there was no issue that the deposit under s. 31 of the Relief of Indebtedness Act was a valid tender of payment, although this was mentioned as a fact in the petition for special leave. It was also said that this question was given up before the Appellate Authority although it was stated that the point was decided by the Appellate Authority. Reliance was placed in this connection upon two decisions of this Court reported in *Hari Narain v. Badri Das*(2) and *Rajabhai Abdul Rehman Munshi v. Vasudev Dhanjibhai Mody*(3). These were cases of gross misstatement where the party applying for special leave had deliberately chosen to make false statements and false pleas. In the present case the same cannot be said of the appellant. There I was only one issue, before the Court and it was whether the deposit (1) 1. L. R. (1964) 1 Pb. 626. 2. [1964] 2 S. C. R. 203.

3. [1964] 3 S. C. R. 480 under one Act was good for the purposes of the other Act. All that the courts had to consider was whether that deposit saved the tenant from eviction or not. The High Court mentioned that this was the only point before all the courts below and we do not think that the complaint that there had been any false averment in the petition for special leave was sustainable. We accordingly -rejected the contention, raised by C.M.P. No. 64 of 1969.

As regards the merits of the case s. 13 (2) (1) of the East Punjab Urban Rent Restriction Act reads as follows "13. Eviction of tenants.

(1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, or in pursuance of an order made under-section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended (2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied-

(i) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that

for which the rent is payable :

Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid." 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 SubJudge was made not only of arrears of rent but prospectively for some future period for which the rent was then not due. The question is whether such payment is a valid payment or tender to the landlord.

Section 31 of the Relief of Indebtedness Act reads as follows :-

"31. Deposit in court.

(1) Any person who owes money may at any time deposit in court a sum of money in full or part payment to his creditor. (2) The court on receipt of such deposit shall give notice thereof to the creditor and shall, on his application, pay the sum to him. (3) From the date of such deposit interest shall cease to run on the sum so deposited."

This Act was passed to govern the relation between the debtors and creditors. The scheme of the Act bears upon this relationship because it provides for insolvency procedure, usurious loans, damdupat, redemption of mortgages, deposit in court, and sets up Debt Conciliation Boards, suitably amending the civil law wherever necessary. Incidentally, it provides for deposit in court with a view to giving a chance to debtors to save interest on the outstanding dues either wholly or partially. The section, therefore, is intended to operate between debtors and creditors where difficulty in making the payment, either wholly or partly, may arise and the debtor wishes to save himself from interest which is running. 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, nor 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 Collector 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, S. 31 has been misunderstood in the High Court. A second pointer is that the 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.

Further the deposit of money in the present case was not only of the rent due but also of future rent. Under s. 19 read with s. 6 of the Urban Rent Restriction Act a landlord is liable to be sent to jail if he recovers advance rent beyond one month. It is impossible to think that the landlords would be required to go to the Court of the Senior Sub-Judge with a view to finding out whether their tenants have deposited rent due to them or not. No doubt there is a provision for sending a notice, but we do not think that that notice is intended to cover such cases. On the whole, therefore, we are of opinion that the deposit under s. 31 of the Relief of Indebtedness Act did not save the tenant from the consequences of the default as contemplated by s. 13 of the Urban Rent Restriction Act. We accordingly allow the appeal and, setting aside the judgment of the High Court, order the eviction of the tenant from the premises rented out by him. He shall have three months' time in which to vacate the premises. The costs throughout must also be borne by the respondent.

R.K.P.S.

Appeal allowed.