Rajinder Kumar Joshi vs Veena Rani on 11 September, 1990

Equivalent citations: AIR1991SC259, JT1990(4)SC50, 1990(2)SCALE539, (1990)4SCC526, 1991(1)UJ105(SC), AIR 1991 SUPREME COURT 259, 1990 (4) SCC 526, 1991 (1) ALL CJ 66, (1990) 4 JT 50 (SC), 1991 ALL CJ 1 66, 1990 HRR 529.2, 1991 (1) UJ (SC) 1053, (1990) 2 RENCJ 481, (1990) 2 RENCR 571, (1991) 1 RENTLR 368, (1991) 1 LJR 809, (1991) 1 CURLJ(CCR) 402

Author: P.B. Sawant

Bench: P.B. Sawant, S.C. Agrawal

ORDER

P.B. Sawant, J.

1. This is a tenant's appeal against the order of the High Court rejecting his writ petition summarily wherein he had challenged the order passed by the authorities under the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the "Act") evicting him from the suit premises. The relevant facts are that the respondent-landlady had filed an application before the Rent Controller seeking eviction of the appellant, among other things, under Section 13(2)(i) of the Act since he was in arrears of rent from February 1, 1978 to May 4, 1982. The landlady had also sought his eviction on two other grounds, viz., she wanted the suit premises for her personal occupation and that the tenant was a nuisance to the neighbouring occupants. Since the two latter grounds were negatived and ultimately the decree was passed by the Rent Controller and was confirmed by the Appellate Authority only on the ground of the arrears of rent, we arc not concerned here with the said grounds.

2. The facts relating to the arrears of rent as found by the authorities arc that the respondent-landlady's husband, Jagmohan Lal had on her behalf rented out the premises to the appellant at the monthly rent of Rs. 200/-. Jagmohan Lal died in. 1978. According to the landlady the appellant did not pay the rent to her since February 1, 1978 till the date of her application for ejectment. The appellant's defence to the application was that he had taken the premises on rent from Jagmohan Lal. He denied that Jagmohan Lal had acted on behalf of the respondent-landlady. In short, he refused to recognise the respondent as his landlady. He also contended that the rent was Rs. 150/- per month and that he was in arrears of rent only for one month, viz., from May 1, 1982 to May 31, 1982 and that he had tendered the said rent in the court on the date of the first hearing before the Rent Controller.

3. The Rent Controller found that the rent of the premises was Rs. 150/- per month and not Rs. 200/-as contended by the landlady. But he also found that the appellant was in arrears of rent from February 1, 1978 and not, as contended by him, for only one month, viz, May 1982. This finding was confirmed by the Appellate Authority.

4. On this finding the contention raised by Mr. Nesargi, counsel for the appellant was that since the rate of rent was in dispute the provisions of Section 13(2)(i) of the Act were not attracted and, hence, no order of eviction could be passed against the appellant. In this connection, he emphasised the fact that whereas the landlady had demanded rent at the rate of Rs. 200/- per month, the Rent Controller had found that the rent was Rs. 150/- per month. Hence, it could not be said that the demand of the rent by the landlady was legal. His second contention was that since, the tenant had tendered the rent as calculated by him on the first hearing of the application no order of eviction could be passed against him. In support of this submission he pointed out that the proviso to Section 13(2)(i) of the Act merely states that "if the tenant on the first hearing of the application... pays or tenders the arrears of rent etc.", the tenant shall be deemed to have duly paid or tendered the rent and he was not liable to be evicted. The proviso, according to him, does not mention that what is to be paid or tendered is the rent as demanded by the landlord. It merely uses the expression "the arrears of rent", and hence the tenant would be saved from the penal consequences of the non-payment of rent if he says or tenders the arrears of rent, if any, as calculated by him. His third submission was that since the rent was disputed and at least a part of the dispute, viz., relating to the rate of rent, was found in favour of the tenant, the Rent Controller ought to have given time to the tenant to pay the rent calculated at the correct rate and only if the tenant had not paid the correctly calculated rent within the time so fixed by the Rent Controller, he should have been visited with the extreme penalty of eviction from the suit premises. In this connection, he brought to our notice the fact that the tenant had paid all the arrears of rent as found by the Rent Controller, viz., Rs. 10,410/- on November 26, 1983 as per the order dated October 28, 1983 passed by the Appellate Authority in the appeal preferred by him. He also referred us to the stand taken by the landlady in her statement before the Rent Controller that the rent was in arrears from 1976, which stand was contrary to what was stated in her application and which was also rejected for that purpose by the Rent Controller. He further emphasised the fact that the dispute with regard to the period for which the rent was in arrears was resolved against the tenant because the tenant could not produce the rent receipts when admittedly it was the case of the tenant that no rent receipts were issued at any time. He also submitted that the interpretation canvassed by him should be placed on the proviso to Section 13(2)(i) since it is in favour of the tenants and the Act is a welfare legislation enacted to protect the interests of tenants.

5. The contentions no doubt merit a serious consideration. As is evident from the facts of the present case, the landlady approached the Rent Controller alleging arrears of rent when both the rate of rent as well as the period for which the rent was in arrears were in dispute and she was herself not certain about either. The dispute with regard to the rate of rent was decided in favour of the tenant whereas the dispute with regard to the period of the arrears of rent was decided in favour of the landlady, if we take her assertion in her application but only partly in her favour, if we consider her case from the witness stand. As we notice from the the judgments of both the Rent Controller and Appellate Authority, both the disputes have been decided on the basis of the oral assertions of the

witnesses, and by preferring one assertion to the other without giving any cogent reasons for the same. But since it is a finding of fact and is not interfered with by the High Court in revision, this Court would all the more be reluctant to disturb it while exercising its jurisdiction under Article 136 of the Constitution. However, we cannot help noticing the lacuna in the Act and the hardship to which a tenant may be put when, as in the present case, the landlord makes a demand on the tenant for rent which is not due from him and yet the provisions of Section 13(2)(i) of the Act require him to tender the rent as demanded or to face the consequences of eviction from the rented premises. On the other hand, to hold that the requirement of the proviso to Section 13(2)(i) to lender the rent means the tender of the rent as the tenant thinks he is in arrears of would also render nugatory the requirements of the said proviso. For it would in almost all cases involve first a decision of the dispute with regard to both the rate of rent as well as the period of arrears leading to the hardship of the landlord some of whom arc as poor as, if not more than the landlord. A balance has to be struck between the two situations so as not to render the protection given by the Act to the tenant illusory and at the same time not to deprive the landlord of his least legitimate expectation to be paid regularly the rent for the use and occupation of his premises.

6. According to us, the problem posed by Mr. Nesargi is not insoluble. When the premises arc let out, they arc generally let out at an agreed rent. It is only in rare cases that the rent is cither not fixed or becomes a subject matter of dispute. The tenant is not without a remedy in such cases. The Act gives remedy both to the landlord as well as the tenant to apply to the Controller under Section 4 to fix the fair rent. Since the provisions of Section 13(2)(i) loom large and the tenant otherwise faces the prospect of being evicted it is for him in such cases to lake precaution and apply to the Controller to fix the lair rent failing which he may pay or tender the rent cither as demanded by the landlord or which according to him is due. In the latter case he takes the risk, for if it is proved ultimately that the rent paid or tendered by him was less than what was due, he faces eviction. It is also not correct to say that in the absence of rent-receipts issued by the landlord the tenant is unable to prove cither the rate of rent or the period for which the rent is in arrears. He can always make a written grievance to the landlord or apply to the Rent Controller for a direction to the landlord to issue rent-receipts or deposit the rent before the Rent Controller. Since the Act gives the tenant protection from eviction except on grounds stated therein', this is the minimum precaution that should be expected to be taken by the tenant to save himself from eviction. The Act has been on the statute book for a number of years now and no serious difficulty has been experienced on account of the fact that the Rent Controller has not been given the power to give time to the tenant to deposit the rent as, determined by him when the application for eviction on the ground of arrears of rent is preferred by the landlord. This is because the Act as pointed out above makes provision for resolving the dispute. On the other hand, to read in Section 13(2)(i) the provisions as suggested by Shri Nesargi would involve recasting of the statute which is not permissible for the Court to do.

7. Judged in the light of these considerations, we find that in the present case the appellant had all along been unreasonably disputing the right of the landlady to receive the rent. He refused to recognise her as the owner of the premises. Although according to him there was no rent receipt issued by the landlady, he did not take any step to secure the receipts. The difference in the rent as asserted by the parties was also not much, viz., Rs. 50/- per month. He could have tendered that rent to the landlady under protest and applied to the Rent Controller for refunding the excess with

interest. He further knew that he had no rent receipts and as it transpired he had not paid rent since 1978 till 1982, i.e., for about 4 years. During this period, it was possible for him to take all the steps mentioned above. In the circumstances, we are of the view that no interference with the impugned order of the High Court is called for.

8. We, therefore, dismiss the appeal but direct that the order of eviction shall not be executed for a period of one year from today provided the appellant gives the usual undertaking within four weeks from today. The parties Will bear their own costs.