

## **Om Prakash And Others vs Ram Kumar And Others on 30 November, 1990**

**Equivalent citations:** AIR1991SC409, JT1991(5)SC51, (1991)1SCC441, 1991(1)UJ89(SC), AIR 1991 SUPREME COURT 409, 1991 (1) SCC 441, 1991 AIR SCW 50, 1991 HRR 86, 1991 (1) UJ (SC) 89, 1991 UJ(SC) 1 89, (1991) 5 JT 51 (SC), (1991) 1 RENCJ 1, (1991) 1 RENCN 354, (1991) 1 RENTLR 186, (1991) 1 LJR 942, (1991) 1 ANDHWR 54, (1991) 1 CURLJ(CCR) 387

**Author:** M. Fathima Beevi

**Bench:** S. Ratnavel Pandian, M. Fathima Beevi

ORDER

M. Fathima Beevi, J.

1. The appeal by special leave arises from the proceedings for eviction under the Haryana Urban (Control of Rent And Eviction) Act; 1973 (for short the Act). Section 13(2) of the Act enables the landlord of a building in possession of a tenant to seek eviction on an application for direction in that behalf on any one of the grounds provided thereunder. If the Controller is satisfied that the tenant has not paid or tendered the rent due from the tenant in respect of the building within 15 days after expiry of the time fixed in the agreement of the tenancy with the landlord, the Controller may make an order directing the tenant to put the landlord in possession as provided in Clause (i) of Sub-section (2) of Section 13 of the Act. Section 13 of the Act so far as it is material reads as under:-

13. Eviction of tenants. - (1) A tenant in possession of a building or a rented land shall not be evicted except in accordance with the provisions of this section.

(2) A landlord who seeks to evict his tenant shall apply to the Controller, for direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied,-

(i) that the tenant has not paid or tendered the rent due from 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, within a period of fifteen days of the first hearing of the application for ejectment after due service, pays or tenders the arrears of rent and interest, to be calculated by the Controller, at 8 per cent per annum on such arrears together with such costs of the application, if any, as may be allowed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid:

Provided further that the landlord shall not be entitled to claim arrears of rent for a period exceeding three years immediately preceding the date of application under the provisions of the Act,

(ii) ...

(a) ...

(b) ...

(iii) ...

(iv) ...

(v) ...

the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application: Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.

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2. Puran Chand, the second respondent, herein is the tenant in possession of a shop building owned by Smt. Parmeshwari Devi. An application was filed by Smt. Parmeshwari Devi against her son-in-law, Ram Kumar, under Section 13(2) of the Act for ejectment on the ground of non-payment of rent alleging that Ram Kumar was in possession of the shop in question as tenant. While Ram Kumar conceded the claim, Puram Chand got himself impleaded in the proceedings and contested the matter asserting that he was the direct tenant in possession of the building and there had been no arrears of rent. The Controller dismissed the application finding that Ram Kumar was not the

tenant and the second respondent is in possession as tenant and holding the view that the landlord could not be allowed to seek an ejectment order through dubious means by arraying only the person with whom there existed no relationship as landlord and tenant. The appellate authority confirmed the order. The revision preferred by the landlord was dismissed by the High Court. The appellants are the legal representatives of Smt. Rameshwari Devi.

3. Shri Rajendra Sachhar, learned Counsel for the appellants, contended that the courts below have not correctly appreciated the scope of the relevant provisions in the Act in rejecting the application and in a case where the tenant has failed to pay or tender the rent as required under the proviso to Clause (i) of Sub-section (2) of Section 13 of the Act, the ground of non-payment of rent entitling the landlord to an order of ejectment is clearly proved. It is, therefore, submitted that when the second respondent has not paid the rent for the period in question even during the pendency of the proceedings, the appellants are entitled to an order in their favour. According to the learned counsel, it is not necessary for the appellants to specifically allege that the second respondent was the tenant or that he defaulted the payment of rent and seek an order of ejectment against him by an amendment of the application for granting such relief and the view held by the High Court to the contrary is erroneous.

4. We are impressed by this argument. We have referred to the relevant provision in the statute which requires the landlord who seeks eviction of the tenant in possession to make an application in this behalf. The application contemplated under the section is one for a direction to the tenant to put the landlord in possession. The application has to be sustained on anyone of the grounds specified in Sub-section (2) of Section 13 of the Act. When a specific allegation is made that the tenant is in arrears, the tenant is given an opportunity to pay or tender the rent within the stipulated time and avoid an order of ejectment. In a case where the real tenant is not proceeded against in the manner required under Section 13 and proceedings are instituted against another person suppressing the real facts, the landlord cannot succeed simply because the real tenant in possession is brought on record as a necessary party by the order of the Court. The tenant so impleaded in the absence of a definite allegation of non-payment of rent by him is not under obligation to pay or tender the rent stated to be in arrears in terms of the proviso to Clause (i), so long as the landlord does not accept him as the tenant or seek even alternatively direction against him. It is more so in a case where the landlord had in earlier proceedings admitted the possession of the tenant and was well aware that an effective order without the tenant being on the party array would not be given. It is only when the landlord seeks an order directing the tenant to put him in possession on the ground of non-payment of rent and the tenant is called upon to answer the claim, the occasion for the tenant to pay the arrears of rent arises. When the tenant is not proceeded against in that manner, an application made against one who is neither the tenant nor the person in possession, the Controller is justified in rejecting the application. A party cannot be granted a relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party and deprive him of the valuable rights under the statute. In an action by the landlord the tenant is expected to defend only the claim made against him and if a cause of action arises to the landlord on the basis of the plea set up by the tenant, in such action, it is necessary that the landlord seeks to enforce that cause of action in the same proceedings by suit at the amendment or by separate proceedings to entitle the landlord to relief on the basis of such cause of action. The

principle that the Court is to mould the relief taking into consideration subsequent events is not applicable in such cases.

5. The appellants herein have even when the second respondent applied for getting himself impleaded as a party in the proceedings directed against the first respondent, Ram Kumar, refuted the claim that second respondent is the tenant. They did not amend the petition or seek eviction of the second respondent, though the Court ordered the second respondent to be brought on record as a necessary party. In the earlier proceedings, the landlord had conceded the possession of the second respondent and had alleged that he is a sub-tenant under Ram Kumar. The question of sub-tenancy was not decided in that suit. Having known that second respondent is in actual possession of the building, the appellants in the present proceedings only sought eviction of Ram Kumar from the premises. The second respondent by getting himself impleaded in the proceedings cannot be considered to have agreed to suffer ejectment. The appellants could get an order against the second respondent only on a proper application in that behalf as provided under the statute and not in the present action. The decision in *Buta Singh v. Banwari Lal and Ors.* (1984) 86 PLR 559, relied on by Mr. Sachhar has no bearing on the facts of the present case. We find the case has been overruled by the Division Bench of the Punjab and Haryana High Court in *Sukhdev Raj v. Rukmani Devi and Ors.* (1988) 1 PLR 679. In the latter case, the question whether the sub-tenant can be ordered to be ejected for non-payment of arrears of rent when he claims to be direct tenant under the landlord even when the landlord has not sought his ejectment on that ground was answered by the High Court thus:-

The question of his ejectment on the ground of non-payment of rent, however, stands on a different footing. As the landlord never accepted the alleged sub-tenant as his tenant nor sought his ejectment on the ground of non-payment of rent, would certainly prejudice the rights of the sub-tenant who never got a chance to avail the opportunity granted under the statute to tender the rent on appearance in the court, moreover, even if he had offered to tender the rent. So, the rule appears to be well established that the plaintiff cannot be given any relief contrary to his case on the admission of the defendant if it is going to cause prejudice and injustice to the latter.

6. We find no merit in the appeal which is accordingly dismissed. In the circumstances of the case, we make no order as to costs.