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CHHOTE LAL

v.

SHRI KEWAL KRISHAN MEHTA*February 25, 1971*

B

[I. D. DUA AND V. BHARGAVA, JJ.]

East Punjab Urban Rent Restriction Act III of 1949—Application under s. 13 for ejection of tenant—Electricity charges whether part of rent for the purpose of determining arrears.

C

The appellant was the tenant of premises owned by respondent. He was ordered to be ejected from the premises on the ground that he was in arrears of rent for more than three months and did not tender them even at the first hearing by the Rent Controller of the application for ejection presented by the landlord under s. 13 of the East Punjab Urban Rent Restriction Act III of 1949. The District Judge dismissed the tenant's appeal. In revision, the High Court of Punjab and Haryana proceeded on the basis that on the date of application which was made on 22nd September, 1964, the total arrears due from the tenant including interest and electricity charges amounted to Rs. 497.33 P. The High Court was of the view that electricity charges would form part of the rent. The amount in deposit according to the tenant, came to Rs. 469. As this amount did not cover the entire arrears of rent due the tenant was held liable to ejection by the High Court. The present appeal was filed by special leave.

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HELD: In the application filed by the landlord it was nowhere stated that the arrears of electricity charges formed part of the rent. Consequently no issue was framed by the trial court whether the electricity charges formed part of the rent. On the face of it, there was no justification for accepting this new point when it was not pleaded at all in the original application. [857 D]

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Read correctly even the rent note made it clear that the electricity charges could not possibly form part of the rent. Further the amount due for consumption of electricity each month could only be known at the end of that month, while, under the agreement the rent had to be paid in advance. The charges were variable and would depend on the amount of electricity consumed. If the electric charges were held to be part of the rent it would lead to the inference that even the rent of the building was variable and was different each month. In view of these circumstances it was clear that the District Judge and the High Court went wrong in proceeding on the basis that the electric charge formed part of the rent and that non-payment of electric charges due amounted to non-payment of arrears of rent. [857 E-858 D]

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Hari Ram Jaggi v. Des Raj Sethi (1966) P.L.R. 431, distinguished.

H

The High Court had accepted that the amount in deposit was enough to cover arrears of rent, in case the electric charges were not treated as part of the rent. On this finding, the decision of the High Court upholding the order of eviction could not be justified. Further, according to the District Judge there was no deposit or tender even of the amount of Rs. 469 as claimed by the tenant. In the revision before the High

Court this finding of the District Judge was assailed by the tenant. The High Court did not examine the propriety or correctness of this finding. The case, therefore, must be remanded to the High Court for determination of the question whether the tenant had made a proper deposit or tender of sum of Rs. 469. In case he had done so he was not in arrears of rent and was not liable to ejection. [858E-H] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1947 of 1967. B

Appeal by special leave from the judgment and order dated November 20, 1967 of the Punjab and Haryana High Court in Civil Revision No. 1058 of 1966.

R. V. Pillai, M. L. Aggarwal and N. K. Aggarwal, for the appellant. C

S. P. Sinha and M. V. Goswami, for the respondent.

The Judgment of the Court was delivered by—

Bhargava, J.—This appeal by special leave is by a tenant who has been ordered to be ejected on the ground that he was in arrears of rent for more than three months and did not tender them even at the first hearing by the Rent Controller of the application for ejection presented by the landlord under section 13 of the East Punjab Urban Rent Restriction Act III of 1949. The High Court of Punjab and Haryana in its judgment stated that, admittedly, the rent of the premises was fixed at Rs. 20 per month and was to be paid in advance each month. In addition, the rent of the electricity was to be paid separately. In dealing with the case, the High Court proceeded on the basis that, on the date of the application which was made on 22nd September, 1964, the rent that was in arrears amounted to Rs. 400 calculated @ Rs. 20 per mensem. In addition, Rs. 22.05P. were due as interest on this amount up to that date, and the costs due could be taken at the figure of Rs. 25. This totals to a sum of Rs. 447.05P. It was argued that, in addition, a sum of Rs. 50.28P. was due as electricity charges. The amount in deposit, according to the tenant, came to Rs. 469. while the various amounts due, mentioned above, made up a total of Rs. 497.33P. On these facts, the High Court further was of the view that the amount due in respect of electricity charges will certainly form part of the rent and, relying on an earlier decision of the same Court in *Hari Ram Jaggi v. Des Raj Sethi*⁽¹⁾, it held that the deposit of Rs. 469 did not cover the entire arrears of rent due, so that the tenant was liable to ejection. On this view, the High Court upheld the order of the District Judge directing eviction of the tenant-appellant. This appeal is directed against this order of the High Court. D
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(1) 1966 P.L.B. 431.

A In deciding this case, neither the District Judge nor the High Court took care to examine the pleadings in the application for eviction put forward by the landlord-respondent, nor did they try to properly interpret the rent-note containing the terms of the tenancy. In para. 1 of the application presented by the landlord, it was clearly stated that "the respondent is a tenant of the petitioner at a monthly rent of Rs. 20." There was no mention at this stage that there was any other amount which formed part of the rent. In clause (c) of para. 2, it was stated that "the respondent has installed a separate meter without the consent of the petitioner thereby causing damage to the property and has failed to pay the electricity charges from January, 1963 to November, 1963 (when he got a new meter) which come to Rs. 50.28nP." In this pleading, all that was claimed was that the landlord was entitled to receive electricity charges from the tenant. It was nowhere stated that these arrears of electricity charges formed part of the rent. Consequently, no issue was framed in the trial Court on the question whether the electricity charges formed part of the rent or not. For the first time, the appellate Court took this point into consideration and held that the electricity charges formed part of the rent. On the face of it, there was no justification for accepting this new point when it was not pleaded at all in the original application. Further, even the rent note itself makes it clear that the electricity charges could not possibly form part of the rent. The rent note first mentions that the appellant is taking on rent the premises "on a monthly rent of Rs. 20, double of Rs. 10, for residential purposes, for a period of five months commencing from 1st May, 1954." Thereafter, the rent note, as translated in the paper book, shows that there was a further agreement as under :—

F "I shall pay one month's rent in advance and shall remain paying rent every month in advance. I shall not sub-let the entire or any portion thereof. I shall pay the electric charges separately. I shall not make any alteration"

G The agreement to pay the electric charges was, thus, separately mentioned. In Urdu, the language in which the rent note was scribed, the word which has been translated as charges was "Kiraya (کرایہ)" It is because of the use of this word that the High Court seems to have held that the electric charges payable were part of the rent. It failed to notice that the clause itself said that this amount in respect of electric charges was to be paid separately. Further, this was not rent for electric fittings, but was the amount payable in respect of actual electric energy consumed in each month. The amount due for consumption of electricity each month could only be known at the end of that month, while, under the earlier clause of the agreement, the rent had to be paid

in advance. On the face of it, therefore, the electric charges for a month could not possibly be paid with the rent. These electric charges could not, consequently, form part of the rent. The charges were further variable and would depend on the amount of electricity consumed. No fixed amount was payable in respect of electricity charges. If electric charges were to be held to be part of the rent, it would lead to the inference that even the rent of the building was variable and was different each month. In view of these circumstances, it is clear that the District Judge and the High Court went wrong in proceeding on the basis that the electric charges formed part of the rent and that non-payment of electric charges due amounted to non-payment of arrears of rent.

As we have mentioned earlier, the High Court followed the decision of the same Court in the earlier case of *Hari Ram Jaggi*⁽¹⁾. The High Court failed to notice that, in that case, there was a fixed amount payable every month as electric charges. We do not consider it necessary to express any opinion whether, in such a case, the electric charges could or could not form part of the rent. On the face of it, where the electric charges are not fixed and can only be ascertained at the end of each month, after the electricity consumed is known, while the rent is payable in advance, it is clear that the electric charges cannot be held to form part of the rent. The basis, on which that earlier case was decided, does not, therefore, exist in the present case.

The High Court has accepted that the amount in deposit was enough to cover arrears of rent, in case the electric charges are not treated as part of the rent. On this finding, the decision of the High Court upholding the order of eviction cannot be justified. It, however, appears that the District Judge had recorded another finding against the tenant. According to the District Judge, there was no deposit or tender even of the amount of Rs. 469. In the revision before the High Court, this finding of the District Judge was also assailed by the tenant. The High Court did not examine the propriety or correctness of this finding. Consequently, it is necessary that this aspect of the case should be examined by the High Court.

As a result, we set aside the order of the High Court dismissing the revision, and hold that, in case there was a proper deposit or tender of the sum of Rs. 469 by the tenant, the tenant was not in arrears of rent and was not liable to ejection. The case will now go back to the High Court for re-hearing of the revision on the question whether this sum of Rs. 469 had been tendered or deposited in accordance with law so as to satisfy the requirements of section 13 of Act III of 1949. The costs of this appeal will abide the result.

G.C.

Case remanded.

(1) [1966] PLR 431.