

SHAM LAL (DEAD) BY LRS.

v.

ATME NAND JAIN SABHA (REGD.) DAL BAZAR

DECEMBER 10, 1986

[M.P. THAKKAR AND B.C. RAY, JJ.]

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East Punjab Urban Rent Restriction Act, 1949, section 13(2)—Meaning of the word "First day of hearing of the application"—Whether means the date of first appearance by the defendant-tenant or the date on which the Rent Controller assesses the arrears of rent due etc.

The appellant is a tenant in respect of a room forming part of the property Unit No. B-IX-148 (New), Chaura Bazar, Ludhiana, which has been rented on a monthly rental of Rs. 23 by the landlady Smt. Guran Devi on the basis of rent deed dated 7th July, 1967 for a period of three months. After the expiry of the term of the tenancy, he continued in possession of the suit premises as a statutory tenant under Smt. Guran Devi. Smt. Guran Devi, however, gifted away this property in favour of the Respondent on February 13, 1968 and from that date the appellant became a tenant under the respondent. The ejectment was sought on the ground of default in payment of rent from 13.2.1968 till the date of filing of the application for ejectment in July, 1969 under Section 13 of East Punjab Urban Rent Restriction Act, 1949. The summons of this application was served on the tenant-appellant and the returnable date was fixed for 26.6.1969. On that date, the appellant appeared before the Rent Controller, Ludhiana with his counsel and prayed for adjournment for filing written statement. The case was adjourned to 2.7.1969. On that date the written statement was filed and the tenant tendered a sum of Rs. 336 on account of arrears of rent from 13.2.1968 to 12.6.1969 together with Rs. 15 as interest and Rs. 25 as costs as fixed by the Rent Controller. The landlord accepted the amount under protest. One of the issues framed in the said case was whether the tender was a valid tender within the meaning of proviso to section 13(2) of East Punjab Urban Rent Restriction Act, 1949. The Rent Controller allowed the eviction petition being of the view that since on the first day of appearance the tenant did not tender payment he was in default. On appeal, the appellate authority reversed the finding holding that the next date fixed by the Rent Controller for filing written statement and on which date the payment was tendered and received by the landlord under protest was the "first day of hearing" contemplated by proviso to section 13(2)(i) of the Rent Act. In Revision, the High Court restored the order of the Rent Controller. Hence the appeal by special leave.

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Allowing the appeal, the Court,

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HELD: The day mentioned in the summons i.e. 26.6.1969, in the instant case, cannot be treated to be day of first hearing of the ejection application but it is the day for appearance of the defendant as on that day the Court does not take up the hearing or apply its mind to the hearing of the application. It is only after written statement is filed, the issues are framed and hearing commences. [513A]

The object of the East Punjab Urban Rent Restriction Act as stated in the Preamble to the Act is to restrict the increase of rent of certain premises situated within the limits of urban areas and eviction of tenants therefrom. From the objects of this Act it is abundantly clear that this Act was enacted with the object of affording protection to the tenants against arbitrary increase of rent of certain premises within the limits of urban areas as well as from eviction of the tenants from the rented premises. In this context, it is imperative that the word "the first hearing of the application" have to be interpreted in a manner which promote the object of this beneficial legislation. Viewed from this aspect it must be held that the words "first hearing of the application" as used in proviso (i) to sub-section 2 of section 13 of the said Act does not mean the day fixed for return of the summons or the returnable day but the day when the Court applies its mind to the case. [515E-G]

Ved Prakash v. Vishwa Mohan, [1981] 3 SCC 667, followed.

Mangat Rai v. Ved Prakash, 1969 Vol. I Rent Control Reporter p. 96; *Shah Ambalal Chhotalal & Ors., v. Shah Babal Das Dayabhai & Ors.*, AIR 1964 (Gujarat) p. 9 and *Khanderao Malkarjun Dhotre v. Anandrao Laxmanrao Mashalkar*, AIR 1959 (Bombay) p. 471, approved.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 918 of 1973

From the Judgment and Order dated 10.12.1986 of the Punjab and Haryana High Court in Civil Revision No. 895 of 1972.

S.K. Mehta, M.K. Dua and Aman Vachher for the Appellant.

S.N. Kacker and B.P. Maheshwari for the Respondent.

The Judgment of the Court was delivered by

B.C. RAY, J. This appeal by special leave is directed against the judgment and order passed on 27th February, 1973 in Civil Revision No. 895 of 1972 by the High Court of Punjab and Haryana whereby the revision case was allowed reversing the judgment and order of the appellate authority and allowing the application for ejection. The tenant-appellant was granted three months' time to vacate the shop and was also directed to deposit arrears of rent, if any within one month from the date of the order. He was also directed to deposit advance rent for three months on the date of the order failing which he will be evicted on the expiry of one month.

The appellant is a tenant in respect of a room forming part of the property unit No. B-VI-33(old) and B-IX-148(New), Chaura Bazar, Ludhiana, which has been rented on a monthly rental of Rs. 23 by the landlady Smt. Goran Devi on the basis of rent deed dated 7th July, 1967 for a period of three months. After the expiry of the term of the tenancy, he continued in possession of the suit premises as a statutory tenant under Smt. Guran Devi. Smt. Guran Devi however, gifted away this property in favour of the Respondent on February 13, 1968 and from that date the appellant became a tenant under the respondent. The ejectment was sought on the ground of default in payment of rent from 13.2.1968 till the date of filing of the application for ejectment in July, 1969 under Sec. 13 of East Punjab Urban Rent Restriction Act, 1949. The summons of this application was served on the tenant-appellant and the returnable date was fixed for 26.6.1969. On that date, the appellant appeared before the Rent Controller, Ludhiana with his counsel and prayed for adjournment for filing written statement. The case was adjourned to 2.7.1969. On that date the written statement was filed and the tenant tendered a sum of Rs. 336 on account of arrears of rent from 13.2.1968 to 12.6.1969 together with Rs. 15 as interest and Rs. 25 as costs as fixed by the Rent Controller. The landlord accepted the amount under protest. One of the issues framed in the said case was whether the tender was a valid tender within the meaning of proviso to Sec. 13(2) of East Punjab Urban Rent Restriction Act, 1949.

The Rent Controller after hearing the parties found that the tenant-appellant having failed to tender the arrears of rent and interest at 6% per annum on such arrears together with the costs of the application, on 26.6.1969 which according to him was the first hearing of the application for ejectment, the tenant was not entitled to get the protection of Sec. 13(2)(i) proviso. The Rent Controller repelled the contention made on behalf of the tenant that the said date was not the date of first hearing and that the cost of the application having not been assessed on 26.6.1969, that day cannot be taken as the first day of hearing of the application and the tenant having deposited all the arrears of rent together with interest and costs as assessed on the next date i.e. 2.7.1969 he could not be considered to be a defaulter. In that view of the matter the Rent Controller allowed the application for ejectment and directed the tenant to vacate the premises and to deliver possession to the landlord-petitioner in respect of the room in question within one month of the date of the order.

Against this judgment and order the tenant filed an appeal being M.C.A. No. 165/131 of 1970 before the appellate authority Ludhiana under the East Punjab Urban Rent Restriction Act. The appellate authority reversed the order of the Rent Controller by holding that as the Rent Controller failed to discharge his duty in assessing the costs to be deposited by the tenant along with the arrears of rent and interest on 26.6.1969, the tenant cannot be

- A penalised for the mistake of the Court and the deposit that has been made by the tenant on the next date i.e. 2.7.1969 when the cost of the application was assessed by the Rent Controller, should be treated as deposit made in accordance with the provisions of Sec. 13 of the said Act. It has been further held that for the mistake of the Court or its officers nobody could be made to suffer. The appellate authority further held that the words 'first day of hearing'
- B presuppose the existence of an occasion enabling the parties to be heard and the court to hear them in respect of the cause. The tender was accordingly held to be valid tender within the meaning of the provisions of the said Act. The appeal was allowed and the order of eviction made by the Rent Controller was set aside.

- C Against this judgment and order a Revision Application being Civil Revision No. 895 of 1972 was filed before the High Court of Punjab and Haryana. The said Revision Case was allowed by holding that the day of first hearing was 26.6.1969 when the tenant appeared before the Rent Controller with his counsel and sought time for filing written statement and the tender of the arrears of rent together with interest and costs of the application being not
- D made on that date, the subsequent tender of the same on 2.7.1969 was not a valid tender within the meaning of proviso (i) to sub-Sec. 2 of Section 13 of the said Act. An order was made directing the tenant-appellant to vacate the premises within three months. The tenant was also directed to deposit the rent for three months within one month from the date of this order, in default he will suffer eviction after expiry of one month.

- E It is against this judgment and order the instant appeal on special leave has been preferred before this Court.

- The only question that poses itself for consideration in this appeal is whether the date of appearance as mentioned in the summons i.e. 26.6.1969 is the date of first hearing of the application for ejection and non-payment or
- F non-tendering of arrears of rent together with interest and costs of the application on that very date will make the tenant liable for eviction from the rented premises on the ground of default. In the instant case on the returnable day of the summons the tenant-defendant appeared with his counsel i.e. on 26.6.1969 and prayed for an adjournment for filing written statement. The case was accordingly adjourned to 2.7.1969. It is also pertinent to note that on
- G the returnable day i.e. 26.6.1969 the Rent Controller did not make any order assessing the costs of the application which was required to be deposited along with arrears of rent and interest at 6% per annum on such arrears. It is on 2.7.1969, the Rent Controller assessed the cost of the application and the tenant-appellant deposited the arrears of rent up-to-date together with interest at the rate of 6% on such arrears and the costs assessed by the Rent Controller
- H on that date. The said amount tendered in the Court was accepted by the landlord under protest.

The day mentioned in the summons i.e. 26.6.1969 in our considered opinion cannot be treated to be the day of first hearing of the ejectment application but it is the day for appearance of the defendant as on that day the Court does not take up the hearing or apply its mind to the hearing of the application. It is only after written statement is filed, the issues are framed and hearing commences. We draw inspiration and support from a decision of this Court rendered in *Ved Prakash v. Vishwa Mohan* [1981] 3 SCC 667., wherein this Court was concerned with the same expression viz. 'first hearing' employed in Sec. 20(4) of the U.P. Rent Act of 1972 (prior to the amendment of U.P. Act XXVIII of 1976) which is in pari-materia with the corresponding provision in the Punjab Rent Act. The analogous provisions in these two Rent Acts in so far as material are reproduced in juxtaposition hereunder.

Sec. 20(4) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972

Sec. 13 of the East Punjab Urban Rent Restriction Act, 1949

"In any suit for eviction on the ground mentioned in clause (a) of Sub-Sec. (2) if *at the first hearing* of the suit the tenant unconditionally pays or tenders to the landlord the entire amount of rent and damages for use and occupation of the building from him (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof ... the court may, in lieu of passing a decree for eviction on that ground pass an order relieving the tenant against his liability for eviction on that ground." (Emphasis added).

"Eviction of tenants—(1) xxxxx (2) xxxxx 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 by him in respect of the building or rented land 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.

(ii) x x x

(iii) x x x

(iv) x x x

(v) x x x

the Controller may make an order directing the tenant to put the landlord in possession of the building or granted land ... " (Emphasis added)

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A This Court whilst interpreting the critical expression "first hearing" enunciated the law as under:

B "The question of law raised before us may perhaps be pronounced upon as it is of general importance. Section 20(4) of the Act which we have excerpted above fixes the crucial date for deposit of rent as "at the first hearing of the suit." What is "the first hearing of the suit"? Certain decisions have been cited before us of the Allahabad High Court which indicate that "the first hearing of the suit" is when, after framing of issues, the suit is posted for trial, that is, production of evidence..... We see none here and therefore, adopt as correct the decision of the High Court regarding the meaning of the expression "at the first hearing of the suit". We may however add that the expression "at the first hearing of the suit" is also to be found in Order 10, Rule 1, Order 14 Rule 1(5) and Order 15, Rule 1 of the Code of Civil Procedure. These provisions indicate that "the first hearing of the suit" can never be earlier than the date fixed for the preliminary examination of the parties (Order 10 Rule 1) and the settlement of issues (Order 14, Rule 1(5)."

D The Punjab and Haryana High Court itself in *Mangat Rai v. Ved Prakash* (1969 Vol. I Rent control Reporter p. 96) has expressed the same view in paragraph 15 of the judgment:—

E "15. The principles that can be deduced from the plethora of case law on the point, including the authorities referred to above, are consistent with the literal meaning of word 'hearing' which in its Dictionary sense means 'the listening of evidence and pleading in Court of law, the trial of a cause'. It seems to be abundantly clear that in order to constitute, 'first hearing' within the meaning of Sec. 13(2)(i) proviso, the following prerequisites must co-exist:—

F (i) There should be a 'hearing' which presupposes the existence of an occasion enabling the parties to be heard and the court to hear them in respect of the cause.

G (ii) Such hearing should be the first in point of time after due service of the summons/notice on the tenant.

Both these essentials are positive, and in the absence of either of them, there can be no "first hearing!"

H It appears that there is consensus in regard to the interpretation of the expression 'first day' in the context of the rent legislations of several other

states, for instance, the Gujarat High Court in *Shah Ambalal Chhotalal and others. v. Shah Babal Das Dayabhai and Ors.*, AIR [1964] (Gujarat) p. 9, dealing with the identical question as to the meaning of the words “the first day of the hearing of the suit” as provided in sub-Sec. 3(b) of Sec. 12 of Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 has observed after considering several decisions that “the words ‘the first day of hearing’ as meaning not the day for the return of the summons or the returnable day, but the day on which the Court applies its mind to the case which ordinarily would be at the time when either the issues are determined or evidence taken.”

Similar view was also taken by the High Court of Bombay earlier in the case of *Khanderao Malkarjun Dhotre v. Anandrao Laxmanrao Mashalkar*. AIR [1959] (Bombay) p. 471 It has been observed in this case as follows:—

“I am of opinion that “the first day of hearing” in S. 12(3)(b) means, not the day fixed for return of the summons or what is sometimes called the returnable day, but the day on which the learned Judge applies his mind to the case, which ordinarily he would do at the time when the issues are determined, is the day mentioned and that is the day before which the rent should have been paid.”

It was tried to be contended that these decisions being rendered in connection with the ‘suit’ cannot be taken into consideration in the case of a ‘proceeding’ before the Rent Controller. We do not find any substance in this contention which seeks to draw a distinction without a difference in substance. It is appropriate to point out in this connection that the object of the East Punjab Urban Rent Restriction Act as stated in the Preamble to the Act is to restrict the increase of rent of certain premises situated within the limits of urban areas and eviction of tenants therefrom. From the objects of this Act it is abundantly clear that this Act was enacted with the object of affording protection to the tenants against arbitrary increase of rent of certain premises within the limits of urban areas as well as from eviction of the tenants from the rented premises. In this context, it is imperative that the word “the first hearing of the application” have to be interpreted in a manner which promote the object of this beneficial legislation. Viewed from this aspect we cannot but hold that the words “first hearing of the application” as used in proviso (i) to sub-section 2 of Section 13 of the said Act does not mean the day fixed for return of the summons or the returnable day but the day when the Court applies its mind to the case.

In the premises aforesaid, we allow the appeal and set aside the order of eviction passed by the High Court and confirm the judgment and order of the lower appellate court dismissing the application for eviction. There will however be no order as to costs in the peculiar circumstances of the case.