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BRIJ BHUSHAN

v

KEWAL KUMAR

AUGUST 5, 1998

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[DR. A.S. ANAND, B.N KIRPAL AND V.N KHARE, JJ.]

Rent Control and Eviction :

Haryana Urban [Control of Rent and Eviction] Act, 1973:

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Ss. 6 A and 13(2)(i) proviso—Application by tenant to deposit rent in Court alleging that landlord refused to accept the same—On orders of Rent Controller tenant deposited rent— Thereafter application u/s 13 by landlord for ejectment of tenant on ground that rent had become due with cost and interest—Tenant resisting the claim of landlord—Landlord filed no rejoinder nor did he challenge the order u/s. 6-A— Application u/s 13 for ejectment allowed—Held, Rent Controller imported the requirement of the proviso to s. 13(2)(i) into s. 6-A which was wholly erroneous—Ground for holding that deposit, 6-A was not valid because interest and cost had not been paid is erroneous—There is no such requirement regarding payment of interest and cost u/s 6-A—Tenant had deposited rent u/s 6-A and also cost and interest as contemplated by s. 13(2)(i)—Application for eviction ought to have been rejected by Rent Controller—Appellate authority and High Court committed no error in setting aside the order of Rent Controller and dismissing ejectment application filed by landlord.

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CIVIL APPELLATE JURISDICTION : Civil Appeal no. 2755 of 1998.

From the Judgment and Order dated 3.4.97 of the Punjab and Haryana High Court in C.R. No. 481 of 1997.

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M.L. Verma and K.B. Rohtagi for the Appellant.

O.P Sharma, R.C Gubrele, K.R. Gupta and Ashok Sudan for the Respondent.

The following Order of the Court was delivered :

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The only question involved in this appeal by special leave is whether

the amount deposited by the tenant/respondent under Section 6A was valid tender? The learned Rent Controller held the deposit as not a valid tender while the appellate authority and the revisional court took a contrary view. A

The factual matrix of the case is that the tenant/respondent filed an application under Section 6A of the Haryana Urban (Control of Rent & eviction) Act, 1973, (hereinafter referred to as the 'Act') before the learned Rent Controller, Ambala on 19.5.88 alleging that the landlord was not receiving rent and was also not issuing receipt for the same, and, therefore, the tenant had no other option available to him except to deposit the arrears of rent in that court. On obtaining orders from the learned Rent Controller the tenant deposited the rent from 12.2.87 to 11.5.88 amounting to Rs. 7500 in respect of the demised premises in the court. Notice was directed to be issued to the respondent for withdrawal of the amount by the learned Rent controller. While the matter rested thus, the landlord filed an application under Section 13 of the Act seeking ejectment of the tenant from the demised premises on the ground that the tenant had not paid the rent to the landlord from 12.2.87 to 11.8.88 at the rate of Rs. 500 p.m. and a sum of Rs. 9000 had become due and payable to the landlord along with cost and interest. The tenant resisted the application for ejectment and in the written statement asserted that he had already deposited the arrears of rent from 12.2.87 to 11.5.88 amounting in to Rs. 7500 under Section 6A of the Act under orders of the court dated 14/15.6. 1988 and that the necessity to do so had arisen because the landlord had refused to receive the rent and give receipt for the same. It was maintained in the written statement that the landlord did not receive the rent in spite of best efforts made by the tenant and that attitude of the landlord compelled him to move the court of the Rent Controller under Section 6A of the Act seeking permission to deposit the rent in the court. No rejoinder was filed to this written Statement. The landlord also did not challenge the order of the Rent Controller made under Section 6A at any stage. Thus, the assertion of the tenant both in the application under Section 6A and in the written statement to the effect that the landlord despite the best efforts made by the tenant had refused to receive the rent and give receipt for the same remained unrebuted. The learned Rent Controller inspite of this position allowed the application for ejectment on 25.7.94 and while deciding issue No.2 which reads— B
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“Whether the respondent has deposited the rent from 12.2.1987 to 11.5.188 under Section 6A of the Rent Act, if so, its effect ?”, held:-

“Under this issue, the respondent is required to prove that the H

A respondent deposited the rent from 12.2.87 to 11.5.88 under Section 6-A of the Rent Act. There is admission of the deposit of the rent but the tender cannot be called a valid tender, in view of the interest and the assessment (sic: of cost) being not paid and there being no evidence to this effect. In these circumstances, issue No. 2 is proved against the respondent.”

B The order of ejectment dated 25.7.94 was successfully challenged by the tenant before the appellate authority and a revision filed by the landlord against the appellate authority was dismissed by the High Court.

C We have heard the learned counsel for the parties and examined the record. Section 6A of the Act reads thus:-

D “6-A . Deposit of rent. — (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, if a landlord refuses to receive, or grant a receipt for, any rent payable in respect of the building or rented land when tendered to him by a tenant, the tenant may apply to the controller for leave to deposit, the rent in his office, and the Controller shall receive the deposit. If, after examining the applicant, he is satisfied that there is sufficient ground for the application and if the applicant pays the fee, if any, chargeable for the issue of the notice hereinafter provided.

E (2) When a deposit has been received under sub-section (1), it shall be deemed to be a payment made by the tenant to his landlord in respect of the rent due.

F (3) On receiving the deposit, the Controller shall give notice of the receipt thereof to the landlord and shall pay the amount thereof to him.”

The requirement of deposit of *interest and cost* is a requirement provided by the proviso to Section 13(2) (i) of the Act. That proviso reads thus:-

G “Provided that if the tenant, within a period of fifteen days of the first hearing of the application of ejectment after due service, pays or tenders the arrears of rent and interest, to be calculated by the Controller, at eight percentum 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;

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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 this Act;" A

The learned Rent Controller imported the requirement of the proviso to Section 13(2) (i) of the Act into Section 6A which was wholly erroneous. The ground for holding that the deposit under Section 6A was not valid because interest and cost had not been paid is not tenable. There is no such requirement regarding payment of interest and costs under Section 6A of the Act. B

In the established facts and situation that the tenant had deposited the rent from 12.2.87 to 11.5.88 under Section 6A of the Act and had also tendered rent for the remaining period along with interest and cost as contemplated by the proviso to Section 13(2) (i) of the Act, the application for eviction ought to have been rejected by the learned Rent Controller. Both the appellate authority and the High Court, therefore, committed no error in setting aside the order of the Rent Controller and dismissing the ejection application filed by the landlord under Section 13(2) (i) of the Act against the tenant. C D

For what we have said above, there is no merit in this appeal which fails, and, is hereby dismissed. No costs.

R.P.

Appeal dismissed.