

A

RAMA KANT AND ORS.

v.

SONA DEVI

FEBRUARY 21, 2002

B

[SYED SHAH MOHAMMED QUADRI AND
DORAISWAMY RAJU, JJ.]

Rent Control and Eviction :

C

Haryana Urban (Control of Rent and Eviction) Act, 1973:

D

S.13(2), first proviso—Rent tendered by son of tenant—Valid tender of rent—Non-residential premises—Eviction petition against tenants for non-payment of rent—Son of one of the tenants tendered the rent as provided in first proviso to s. 13(2)—Landlady accepting rent without prejudice to her rights—Rent Controller dismissed eviction petition holding that there was a valid tender of rent—Appellate Authority ordered eviction of tenants holding that tender of rent could not be treated as a valid tender—High Court dismissing revision of tenants—Held, the son of the tenant while tendering the rent never claimed that he was tendering it as a sub-tenant—In his statement he did say that he tendered the rent on behalf of his father—Tender of rent by him was as a member of family of the tenant—When rent is tendered by any member of tenant's family to landlord without any inconsistent claim, it cannot but be for and on behalf of the tenant—It therefore, cannot be said that tender of rent by tenant's son was not a valid tender.

E

F

Pushpa Devi and Ors. v. Milkhi Ram (dead) by his Lrs., [1990] 2 SCC 134 and Maghi Lal (dead) through Lrs. v. Kundan Lal and Ors., [1994] Supp. 2 SCC 444, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6724 of 1999.

G

From the Judgment and Order dated 18.3.99 of the Punjab and Haryana High Court in C.R. No. 2864 of 1998.

R.P. Bansal, Sanjay Agarwal, S.K. Verma and P.R. Kumar for the Appellant.

H

Pradeep Gupta for K.K. Gupta for the Respondent.

The following Order of the Court was delivered :

The point that arises for consideration in this appeal is whether the first appellant, a tenant, can avail protection of the first proviso to Section 13(2) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 on payment of the arrears of rent and other amounts specified therein by the third appellant, his son.

This appeal is from the order of the High Court of Punjab and Haryana at Chandigarh dismissing the appellants' Civil Revision No. 2864 of 1998 on March 18, 1999. Appellant Nos. 1 and 2 are brothers and are tenants of a shop bearing No. 680/17 situated in Prem Market, New Subzi Mandi Road, Kaitahal (for short, 'the premises'). The respondent is the landlady of the premises. On July 1, 1990, a rental agreement was executed between the respondent and appellant Nos. 1 and 2 agreeing to let out the premises on a monthly rent of Rs. 750 plus house tax. Appellant No. 3 who is the son of appellant No. 1, has been residing with him and helping him in his business. The respondent filed eviction petition on the ground of non-payment of rent of the premises from October 1, 1995 till the date of filing of the case on December 6, 1995 under Section 13(2) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short, 'the Act')

The appellants contested the case. Appellant No. 3 paid the arrears of rent for the said period together with other specified sums. The respondent accepted the same without prejudice to her rights. The appellants contended that it was a valid tender on behalf of the first appellant.

The learned Rent Controller accepted the contention of the appellants that there was a valid tender of rent within the ambit of the said provision and dismissed the eviction petition on March 31, 1997. However, on appeal by the respondent, the Appellate Authority took the view that the tender of rent by appellant No. 3, could not be treated as a valid tender as being for and on behalf of the first Appellate ordered eviction of the appellants and thus allowed the appeal on May 16, 1998. The appellants unsuccessfully assailed the order of the Appellate Authority before the High Court in Civil Revision No. 2864 of 1998. On dismissal of their revision by order dated March 18, 1999, the appellants have come up in appeal by special leave of this Court.

Mr. R.P. Bansal, the learned senior counsel appearing for the appellants, contends that the rent tendered by appellant No. 3 was accepted by the

A respondent without prejudice which only means that acceptance of rent would not prejudice the other proceedings pending between the same parties, therefore payment of rent should be treated as a valid tender within the meaning of the first proviso of Section (2) of Section 13 of the Act. He invited our attention to the following decisions of this Court: *Pushpa Devi and Ors. v. Milkhi Ram (dead) by his Lrs.*, [1990] 2 SCC 134 and *Maghi Lal (dead) through Lrs. v. Kundan Lal and Ors.*, [1994] Supp. 2 SCC 444.

C Shri Pradeep Gupta, the learned counsel for the respondent, on the other hands, contends that appellant No. 3 though a son, was alleged to be a sub-tenant and on that ground another eviction proceeding is pending between the parties and therefore rent tendered by him could not be treated as a valid tender in the present case.

We may refer to the relevant provision of Section 13(2) of the Act which reads as under:

D “Section 13. Eviction of tenants—

(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 :-

E (i) that the tenant has not paid or tendered that 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:

F Provided that if the tenant within a period of fifteen days of the first hearing of the application for ejection after due service, pays or tenders the arrears of rent and interest to be calculated by the Controller, at eight percent 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 provision of this Act;

H xxx

xxx

xxx

From a perusal of the above noted provision, it is plain that not paying or rendering rent due by a tenant in respect of the building or rented land within 15 days after the expiry of the time fixed in the agreement of tenancy or in the absence of any such agreement by the last day of the month next following that for which the rent is payable, gives cause of action to a landlord to seek eviction of the tenant by applying to the Controller for a direction in that behalf. By the deeming provision of the first proviso to sub-section (2), quoted above, the right of the landlord to seek eviction on the ground of non-payment of rent gets defeated if the tenant within a period of fifteen days of the first hearing of the application for ejection after due service, pays or tenders the arrears of rent and interest, to be calculated by the Controller, at eight percent 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.

It may be relevant to note here that while granting leave it was pointed out that the said two decisions need to be examined as no reasoning was to be found in the latter decision.

It would be useful to refer to the aforementioned decisions before adverting to the contentions of the learned counsel.

In *Pushpa Devi's* case (supra) one Amar Chand had taken the premises on rent. He along with his brother Diwan Chand and another person Salig Ram had constituted a partnership firm. On the death of Amar Chand, his brother Diwan Chand and on his death his widow Pushpa Devi and her minor son Yash Pal became the tenant. They along with Salig Ram continued as partners of the firm. The question in that case was, whether rent tendered on behalf of all the appellants including Salig Ram was a valid tender within the meaning of Section 13(2) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as. 'the Rent Act'). It was held that tender of rent was valid. This Court pointed out that the said provision appeared to be analogous to Section 114 of the Transfer of Property Act which conferred discretion to the Court to grant relief against forfeiture for non-payment of rent and that the proviso in the Rent Act went a step further leaving no discretion to the Controller or court even if the tenant was a constant defaulter, provided the arrears and other amount specified were paid or tendered on the first date of hearing.

In *Maghi Lal's* case (supra) the original lease was in favour of the *said Maghi Lal*. After the lease he formed a partnership with two others and those

A two persons tendered the rent. Inasmuch as they were not the tenants, this Court held that the landlord was not obliged to accept the payment of rent recognising them as "tenant". In that case *Pushpa Devi's* case (supra) was distinguished on the facts of that case.

B It may be pointed out that in *Pushpa Devi's* case, Amarchand had taken the premises on rent as a partner of the firm. The advocate appearing for all the partners tendered the rent. The objection there was on the ground that one of the three partners for whom the advocate was appearing, namely, Salig Ram was not a party to the rental agreement, therefore, the tender of rent by the advocate was not valid. The objection was turned down by this Court. In C *Maghi Lal's* case (supra), Maghi Lal taken the premises in his individual capacity and later entered into partnership. Payment of rent by the other partner who was not the tenant, was held to be not a valid tender.

In the instant case, appellant No. 3 who paid the rent is admittedly the son of appellant No. 1. It is not in dispute that under proviso to sub-section D (2) of Section 13, the rent due was paid by appellant No. 3. The controversy, however, is that tender of rent by appellant No. 3 who is admittedly not a tenant though accepted, is not a valid tender within the meaning of the first proviso. It may be noticed here that while tendering the arrears of rent he never claimed that he was tendering it as the sub-tenant. In his statement in E the witness box he did say that he tendered the rent on behalf of his father. The tender of rent by appellant No. 3 was as a member of family of the first appellant. When rent is tendered by any member of the tenants' family to the landlord without any inconsistent claim, it cannot but be for and on behalf of the tenant. In view of this position it cannot be said that the tender of rent by appellant No. 3 was not a valid tender.

F For the aforementioned reasons, we are unable to sustain the impugned order of the High Court, confirming the order of the Appellate Authority. It is set aside accordingly and the order of the learned Rent Controller is restored. Consequently, the eviction petition shall stand dismissed. The appeal is allowed; in the facts and circumstances of the case, we make no order as to G costs.

R.P.

Appeal allowed.