

Before J. V. Gupta, J.

MOTI RAM,—Petitioner.

versus

LAJPAT RAI AND ANOTHER,—Respondents.

C. R. No. 1243 of 1981.

November 18, 1987.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 15(2) and 17—Code of Civil Procedure (V of 1908)—Section 144—Execution of order—Surety bond for arrears of rent furnished under interim order of appellate authority—Surety bond—Whether executable by Civil Court under the Rent Act—Surety—Whether liable.

Held, that the stay order was passed in appeal by the Appellate Authority and the surety bond was filed in pursuance of the order passed under Section 15(2) of the East Punjab Rent Restriction Act, 1949 and that being so, in view of the provisions of Section 17 of the Act every order passed on appeal under Section 15 could be executed by a Civil Court. Since such an order passed by the Appellate Authority could be executed as a decree of the Civil Court, Section 145 of the Code of the Civil Procedure, 1908 provides for enforcement of liability of the surety and under that provision the surety could be made liable to make payment of the amount for which he stood surety. (Para 4).

Petition for Revision under Section 115 CPC against the order of the Court of Shri D. S. Chinna, Additional Senior Sub Judge-cum-Rent Controller, Jullundur, dated 9th April, 1981, dismissing the objection filed on behalf of the petitioner Moti Ram who had stood surety for the tenant Girdhari Lal.

P. S. Rana, Advocate, for the Petitioner.

G. S. Sachdeva, Advocate, for Respondent No. 1.

JUDGMENT

J. V. Gupta, J.

(1) This petition is directed against the order of the executing court dated 9th April, 1981, whereby the objections filed on behalf

Moti Ram v. Lajpat Rai and another (J. V. Gupta, J.)

of the petitioner Moti Ram who had stood surety for the tenant Girdhari Lal were dismissed.

(2) Lajpat Rai, landlord/deedee-holder, filed ejection application which was allowed by the Rent Controller. In appeal filed by the tenant, stay was granted subject to security for payment of arrears of rent amounting to Rs. 2,075. The petitioner Moti Ram stood surety for payment of the said amount on behalf of the tenant. Ultimately, the appeal filed by the tenant was dismissed. In execution, the landlord/deedee-holder sought recovery of the arrears of rent amounting to Rs. 2,075 from Moti Ram, petitioner, being the surety. Objections were filed thereto that no such recovery could be made from him in execution of the ejection order. The said objections were dismissed by the executing court.

(3) The order of the Appellate Authority granting the stay was in the following terms :—

“In view of the factum that the rate of rent is under assail as also the validity of the tender in this appeal, it would not be just and proper to order the tenant to deposit rent at the rate of Rs. 50 per month. Anyhow, to safeguard the interest of the landlord the tenant is directed to furnish security to the tune of Rs. 2,500 to the satisfaction of the Rent Controller undertaking to pay the arrears as decided by this Authority in appeal. He is directed to furnish the requisite security within 15 days, failing which the stay shall stand vacated.”

It was in pursuance of this order that the petitioner furnished surety bonds. Learned counsel for the petitioner submitted that under the Rent Restriction Act, only the order of ejection was executable, and this order, as such, could not be executed. The remedy of the landlord, if any, was to file a separate suit on the basis of the surety bonds, furnished by his client. In support of his contention, he referred to *The Central Board of Industries and Commerce, etc. vs. Sham Lal Gupta* (1). On the other hand, learned counsel for the landlord/respondent submitted that the arrears of rent could be recovered on the basis of the surety bond furnished by Moti Ram, petitioner, as any order passed in appeal

(1) 1976 RCR 224

u/s 15 of the East Punjab Urban Rent Restriction Act was executable as a decree of the Civil Court. In support of his contention he referred to *Arjan Lal vs. Parbash Chander* (2) and *Howrah Insurance Co. Ltd. vs. Sochinda Mohan Das Gupta* (3).

(4) After hearing the learned counsel for the parties, I do not find any merit in this petition. Section 17 of the East Punjab Urban Rent Restriction Act reads as under :—

“Every order made u/s 10 or sec. 13 and every order passed on appeal u/s 15 shall be executed by a Civil Court having jurisdiction in the area as if it were a decree of that court.”

It is no more disputed that the stay order was passed in appeal by the Appellate Authority, and the petitioner filed the surety bond in pursuance of the order passed u/s 15(2) of the Act. That being so, in view of the provisions of Sec. 17 reproduced above, every order passed on appeal u/s 15 could be executed by a Civil Court. In para 8 of the report re: 1976 R.C.R. 224 (Supra), it was observed :—

“A reference of sec. 36(2) of the Act would indicate the purposes for which it is a Civil Court. Section 42 indicates that the order that may be made by the Controller or on appeal by the Tribunal is executable by the Controller as a decree by a Civil Court, and for this purpose the Controller will have all the powers of a Civil Court.”

In any case, I do not find any illegality or infirmity with the order of the executing court so as to be interfered with in revisional jurisdiction. Once it is held that the order passed by the Appellate Authority could be executed as a decree of the Civil Court, sec. 145 of the Code of Civil Procedure provides for enforcement of liability of the surety and under that provision, the surety could be made liable to make payment of the amount for which he stood surety as such. Under these circumstances, the petition fails and is dismissed with costs.

R. N. R.

(2) 1968 PLR 237

(3) AIR 1975 S.C. 2051