

## REVISIONAL CIVIL

Before Bishan Narain, J.

RAM NATH,—*Petitioner*

*versus*

GIRDHARI LAL, ETC.,—*Respondents*

Civil Revision No. 211-D of 1955

*Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—  
Section 13(2)—Construction of—Arrears of rent—Date up to  
which to be calculated—Rent—Due date of payment of—  
Sub-tenant—Whether can deposit arrears of rent in Court—  
Section 35—Powers of the High Court under—Scope and  
extent of—Rent Control Acts—Policy of.*

1958

Sept. 12th

*Held*, that under section 13(2) of Delhi and Ajmer Rent Control Act, 1952, the tenant has to pay the arrears of rent on the first day of hearing or within the time extended by the Court. The first day of hearing and the time extended by the Court fixes the point of time for payment. At that time the tenant has to pay in Court the arrears of rent then due. This means that the amount to be paid in the Court is to be the arrears of rent due on the date. Whenever payment is made in Court the rent due is to be calculated up to the date of payment in the Court. In law, rent becomes due only when the proper date for payment has arrived. The rent may be payable at the end of a week or a month or a year. Till that point of time arrives, there is no arrear of rent. That being so, the arrears of rent are to be calculated up to the date on which rent is payable, e.g., in the case where the rent is payable at the end of a month, the arrears are to be calculated up to the last day of the previous month and are not to be calculated up to the date on which payment is to be made in Court.

*Held*, that a sub-tenant who has been recognised as such by the landlord is a tenant within the meaning of section 2(j) of the Delhi and Ajmer Rent Control Act, 1952 and he has the right to deposit the arrears of rent in Court.

*Held*, that powers given to the High Court under section 35 of Delhi and Ajmer Rent Control Act, are similar to those

given by section 25 of the Small Cause Courts Act and are wider than those given under section 115 of the Code of Civil Procedure. It is well-established that the High Court in the exercise of its discretion should not interfere with the decision of the lower court, even if it be contrary to law, only in the interest of justice.

*Held*, that the policy of the Rent Control Act is that in view of acute shortage of accommodation available, the landlords are not to evict their tenants except on grounds specified in section 13 of the Act. One of the grounds of eviction is non-payment of arrears of rent. The tenants who do not pay rent regularly are not to be favoured or encouraged. There is no doubt that there are some tenants who deliberately do not pay rent regularly but there are landlords who deliberately create difficulties in the way of the tenants by not accepting rent in the hope that some slip on the part of the tenant may enable the landlord to evict him. In the latter cases, the High Court is not without power to relieve the tenant from the consequence of such slips.

*Petition under Section 35 of Delhi and Ajmer Rent Control Act, 38 of 1952, for revision of the decree of Shri Gurdev Singh, 1st Additional District Judge, Delhi, dated the 31st January, 1955, affirming that of Shri Brij Lal Mago, Sub-Judge, 1st Class, Delhi, dated 2nd August, 1954, passing a decree for Rs. 946-15-6, in favour of the plaintiff against the defendants but dismissing the plaintiff's suit for ejectment and ordering the parties to bear their own costs. Claim for ejectment in respect of two Godowns bearing Municipal No. 5760/5761 old No. 5037 (New) situate in Rui Mandi, Sadar Bazar, Delhi, and for recovery of Rs. 946-15-6 as arrears of rent.*

R. S. NARULA and D. K. KAPUR, for Petitioner.

R. L. ANAND, for Respondents.

#### JUDGMENT

Bishan Narain, J. BISHAN NARAIN, J.—Ram Nath is owner of certain godowns situated in Mandi Rui, Sadar Bazar, Delhi. He gave on lease two of these godowns to Girdhari Lal and Gopi Ram on a monthly rent

of Rs. 113-7-0 inclusive of house tax. This rent was payable according to Hindi months. The premises were let for a fixed term of four years which expired on 13th of December, 1951. In April, 1949, the tenants sublet the premises to Bhatia Oil Mills. The rent was increased to Rs. 117-11-0 including House Tax with effect from 1st of October, 1949, on account of increase in the rate of the House Tax. The sub-tenants paid rent from the date of their occupation of the premises in 1949 till 14th of December, 1951, to Ram Nath landlord. On 9th of August, 1952, Ram Nath filed a suit for eviction of the tenants and the sub-tenants on the ground of non-payment of rent even after notice of demand and also on the ground of unauthorised subletting. In other words he sought eviction of the tenants and the sub-tenants under section 13(1) (a) and section 13(2) for non-payment of arrears of rent then due and for unauthorised subletting under section 13(1) (b) of the Delhi and Ajmer Rent Control Act (No. XXXVIII) of 1952. Other issues also arose out of the pleadings between the parties but it is not necessary to refer to them in this judgment as these matters were not raised before me. The Trial Court rejected both these grounds and dismissed the suit so far as it related to ejectment. The plaintiff's appeal was dismissed by the Senior Sub-Judge. He has now filed this application for revision under section 35 of the Delhi and Ajmer Rent Control Act, 1952.

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On behalf of the petitioner the only points raised before me were (1) that deposit of arrears of rent by sub-tenants as distinct from tenants was not in accordance with law and (2) that in any case the deposit was inadequate.

There is no substance in the first point. It has been found by the lower Courts that the sub-lease was authorised in view of the terms of the

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lease between the plaintiff and his tenants which authorised the tenants to sublet the premises but on subletting the liability of the tenants to pay the rent remained in tact. Further it has been found that the landlord accepted rent from the sub-tenants from December, 1949, till December, 1951. These findings are not challenged before me. It is true that the landlord is not bound to accept rent from any person other than the tenant, otherwise he runs the risk of creating a tenancy by estoppel. In the present case, however, the tenants had a right to sublet the premises and this right was exercised by them. The landlord recognised the sub-tenants by accepting rent from them for about two years. In such circumstances the landlord is bound to accept rent from the sub-tenant although his right to realise rent from the tenants remains unimpaired. It follows, therefore, that the sub-tenants could deposit the arrears of rent under section 13 of the Rent Control Act. This view is fortified by the definition of 'tenant' given in Section 2(j) which reads:—

“‘Tenant’ means any person by whom or on whose account rent is payable for any premises and includes such sub-tenants and other persons as have derived title under a tenant under the provisions of any law before the commencement of this Act.”

This definition includes a person by whom rent is payable and also includes such sub-tenants who derived title under the tenant before the commencement of the 1952 Act. The sub-tenants in the present case satisfy both these conditions as rent is payable by them and their title was derived in 1949-50 which is before the Delhi and Ajmer Rent Control Act, 1952, came into force.

The determination of the second point as to whether the deposit made is adequate or not largely depends on the construction of section 13(2) of the Act. The facts which raise the contest are these. The landlord sent a notice of demand within section 13(1) (a) to the tenants but not to the sub-tenants. The tenants did not pay the rent demanded from them within the time prescribed in the section. The landlord then filed the present suit on 9th of August, 1952, claiming eight months' rent from 14th of December, 1951, to 5th of August, 1952, amounting to Rs. 941-8-0 and sought ejectment of the tenants and also of the sub-tenants for non-payment of arrears of rent. The trial Court ordered issue of summons to the defendants for 20th of January, 1953. The sub-tenants deposited Rs. 1,047 in Court on 16th January, 1953, i.e., before the date of hearing. 20th of January, 1953, was, however, declared a holiday and the Court adjourned the case to 17th of February, 1953. One of the tenants and the sub-tenants appeared in Court on that date but not the second tenant. The Court ordered substituted service for the unserved tenant. On the same day the sub-tenants applied to the Court to consider the deposit which they had made under section 30 of the Relief of Indebtedness Act and in the alternative they sought extension of time for deposit of the arrears of rent. The trial Court extended time for deposit of Rs. 940-12-0 which they had deposited under that Act in the Court of the Administrative Sub-Judge. This time was extended up to 26th of March, 1953, and the sub-tenants actually deposited this amount in Court on 16th of March, 1953. All the defendants appeared before the trial Court on 26th of March, 1953, and it is common ground that this must be considered as the first date of hearing of the suit. But this time the sub-tenants had deposited Rs. 1,987-12-0 in all

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out of which the amount of Rs. 446 was towards costs. The lower Appellate Court held that under section 13(2) the amount of the arrears of rent should be calculated up to the date of deposit or up to the first date of hearing whichever be earlier. He held that in the present case the deposit was made on the 16th of January, 1953, and, therefore, the arrears of rent were to be calculated up to this date irrespective of the actual date on which the deposits were made. He held that the subsequent deposit of Rs. 940-12-0 was to be related back to 16th of January, 1953, as the Court had extended time for deposit. Calculating arrears up to 16th January, 1953, the lower Appellate Court held that the amount due including costs came to Rs. 1,973-1-0 while the sub-tenants deposited in all Rs. 1,987-12-0. Calculating on this basis the trial Court as well as the lower Appellate Court held that the deposit was adequate and that the tenants were protected from eviction under section 13(2) of the Rent Control Act of 1952.

The learned counsel for the landlord has questioned the correctness of this basis. His contention is that the arrears of rent are to be calculated up to the date of the final deposit, i.e., up to the 26th of March, 1953, in the present case. The learned counsel argued that the tenant must strictly comply with the provisions of section 13(2) to escape eviction as this protection takes away the common law or general right of a landlord to evict his tenant.

Section 13(2) reads—

“No decree or order for recovery of possession shall be passed on the ground specified in clause (a) of the proviso to subsection (1), if, on the first day of the hearing of the suit or within such further time as may be allowed by the

Court, the tenant pays in court the arrears of rent then due together with the cost of the suit.”

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Under this provision the tenant has to pay the arrears of rent on the first day of hearing or within the time extended by the Court. The first day of hearing or the time extended by the Court fixes the point of time for payment. At that time the tenant has to pay in Court the arrears of rent then due. This means that the amount to be paid in the Court is to be the arrears of rent due on that date. It is noticeable that the section does not contemplate payment in Court before first date of hearing, and there is no provision which governs such a payment. The omission, however, is of no consequence as whenever payment is made in Court the rent due is to be calculated up to that date. The section lays down that the arrears of rent are to be calculated up to the date of payment in Court. Therefore, the arrears of rent as distinct from rent payable up to that date is to be calculated. Now, in law rent becomes due only when the proper date for payment has arrived. The rent may be payable at the end of a week or a month or a year. Till that point of time arrives there is no arrear of rent. That being so, the arrears of rent are to be calculated up to the date on which rent is payable, e.g., in the case where the rent is payable at the end of a month, the arrears are to be calculated up to the last day of the previous month and are not to be calculated up to the date on which payment is to be made in Court. On this basis the arrears of rent then due have to be calculated according to the Hindi month up to the date on which last payment of rent became due.

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In the present case the sub-tenants made first payment of Rs. 1,047 in Court on the 16th of

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January, 1953. The rent due from 14th of December, 1951, till the end of the previous month according to Hindi calculation was admittedly more than this amount. It will not be out of place to state here that the payment of Rs. 940-12-0 made under section 30 of the Relief of Indebtedness Act cannot be considered to be payment in Court within the Rent Control Act of 1952. The sub-tenants then paid Rs. 940-12-0 in Court on 16th of March, 1953 (within the time extended by the Court). By this date the arrears of rent exceeded the total amount paid in Court by the sub-tenants. It must, therefore, be held that the sub-tenants did not pay arrears of rent then due in Court in accordance with section 13(2) of the Delhi and Ajmer Rent Control Act of 1952.

The next question which arises is whether I should interfere with the order of the Senior Sub-Judge in the present proceedings. Section 35 reads:—

“The High Court may, at any time, call for the record of any case under this Act for the purpose of satisfying itself that a decision made therein is according to law and may pass such order in relation thereto as it thinks fit.”

The powers given to the High Court by this Section are similar to those given by section 25 of the Small Cause Courts Act and are wider than those given under section 115, Civil Procedure Code. It is well-established that the High Court in the exercise of its discretion should not interfere with the decision, even if it be contrary to law, only in the interest of justice. The policy of the Rent Control Act is that in view of acute shortage of accommodation available here the landlords are not to evict their tenants except on grounds specified in section 13 of the Act. One of the grounds of eviction is non-payment of arrears of rent. The



tenants who do not pay rent regularly are not to be favoured or encouraged. There is no doubt that there are some tenants who deliberately do not pay rent regularly but there are also landlords who, deliberately create difficulties in the way of the tenants by not accepting rent in the hope that some slip on the part of the tenant may enable the landlord to evict them. In the latter cases this Court is not without power to relieve the tenant from the consequences of such slips. The present case is a typical case where the sub-tenants in spite of their best efforts have made a slip in depositing amount which is less than the amount required to be paid in Court under section 13(2) of the Act. They had regularly paid the rent to the landlord for at least two years. The landlord suddenly decided not to accept rent from them. They, therefore, started depositing it in Court under section 30 of the Relief of Indebtedness Act. This deposit is not within the provisions of the Rent Control Act but the tenants in Delhi have been adopting this practice of depositing rent under that Act since a number of years to my knowledge. Such a deposit at least establishes the sub-tenants' *bona fides* in the matter. They then miscalculated the date up to which the arrears of rent were to be calculated under section 13(2) of the Rent Control Act. In this connection it must be remembered that the lower Courts considered this payment to be in accordance with law. In these circumstances section 35 is wide enough to enable this Court to do real justice between the parties. For these reasons, in exercise of my discretion I decline to interfere with the decision of the Senior Sub-Judge whereby he refused to pass a decree for eviction against the tenants or the sub-tenants. Accordingly, I dismiss this petition with costs.

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