

Before Viney Mittal, J

SURINDER KAUR & ANOTHER,—*Petitioner*

versus

RATTAN CHAND DUGGAL @ R. R. DUGGAL—*Respondent*

Civil Revision No. 309 of 2004

2nd September, 2005

East Punjab Urban Rent Restriction Act, 1949—Ss. 13 & 14—Landlord seeking ejectment of tenant on the grounds of non-payment of rent and personal necessity—An earlier ejectment petition filed by landlord on the ground of personal necessity dismissed in default—Whether second ejectment petition on the same ground is maintainable—Held, yes—No decision on merits in earlier proceedings—Provisions of O.9 R1.9 CPC being substantive provisions cannot be attracted to the proceedings under the Rent Act—Concurrent findings of Courts below that the personal necessity of the landlords is clearly proved—Ejectment petition filed by the landlords allowed.

Held, that from the perusal of the provisions of Section 14 of the Act, it is apparent that the Rent Controller can summarily reject any application for ejectment filed under section 13 which raises substantially the issues as had been finally decided in a former proceeding of the Act. The order dated 4th August, 1999 passed by the learned Rent Controller does show that the merits of the controversy had not been dealt with and, therefore, it could not be said that the rights of the parties had substantially been decided. Accordingly, provisions of Section 14 of the Act would not be attracted to non-suit the landlords in any manner. Rent Control Legislation is a complete Code in itself and the provisions of Code of Civil Procedure are not attracted. Although there is no dispute that certain principles of Code of Civil Procedure would be attracted, but strict provisions of the Code of Civil Procedure being not attracted, the rights of the parties cannot be decided on the basis of the application provisions of the Code of Civil Procedure. Accordingly, provisions of Order 9 Rule 9 of the Code of Civil Procedure being substantive provisions cannot be attracted to the proceedings under the Rent Act.

(Paras 6 & 7)

Pritam Saini, Advocate, *for the petitioners.*

None *for the respondents.*

JUDGMENT

VINEY MITTAL, J.

(1) The landlords are the petitioners before this Court. They filed an ejectment petition on March, 17, 2001 seeking ejectment of the tenant. The ejectment was sought on the ground of personal necessity of the landlords. The ejectment was also sought on the ground of non-payment of arrears of rent. The claim of the landlords was contested by the tenant. The grounds of ejectment were contested. It was further claimed that the landlords had earlier filed a petition on October 9, 1995 seeking ejectment of the tenant and in the aforesaid petition also one of the grounds for ejectment was the personal necessity of the landlords. The said petition was dismissed on August 4, 1999 and therefore, the present petition was not maintainable. The Rent Controller while deciding issue No. 1 held that although the ejectment was also sought on the ground of non-payment of arrears of rent but the arrears of rent were paid by the tenant on the first date of hearing, therefore, the aforesaid tender was valid. On that basis, the only ground which survived thereafter was the ground of personal necessity.

(2) The learned Rent Controller found it as a fact the ground of personal necessity was duly proved by the landlords. However, the learned Rent Controller while upholding the objection raised by the tenant with regard to maintainability of the petition held that since the earlier petition filed by the landlords had been dismissed in default on August 4, 1999, therefore, the present petition filed by them was not maintainable. Accordingly *vide* order dated February 4, 2003, the ejectment petition filed by the landlords was dismissed. An appeal filed by the landlords was also dismissed by the learned Appellate Authority. The learned Appellate Authority also affirmed the findings of the learned Rent Controller with regard to the personal necessity of the landlords but again on the basis of the provisions of order 9 rule 9 of the Code of Civil Procedure held that the ejectment petition filed by the landlords was not maintainable. Consequently, the appeal filed by the landlords was also dismissed. The landlords have now approached this Court through the present revision petition.

(3) I have heard Shri Pritam Saini, the learned counsel appearing for the petitioner and have also gone through the record of the case. No one has put in appearance on the behalf of the respondent, despite service.

(4) The facts are not in dispute. It is not in dispute that on October 9, 1995, in the earlier petition filed by the landlords, besides the other grounds the ejection of the tenant was sought on the ground of personal necessity as well. On August 4, 1999, the following order was passed by the Rent Controller in the earlier proceedings :

“Present: Counsel for the parties.

Counsel for petitioner Shri D.P. Jhangra has made a statement that he has no instructions to appear in this case on behalf of applicant/petitioner. Petitioner is not present.

In view of the statement of the counsel for the petitioner and non-appearance of the petitioner, the case is dismissed in default. File be consigned to the record room.

4th August, 1999.

Sd/-

Rent Controller,
Nawanshahr.”

(5) From the aforesaid perusal of the order it is apparent that the learned Rent Controller in the earlier proceedings had not decided the controversy on merits. At this stage, section 14 of the East Punjab Urban Rent Restriction Act, 1949 may be relevant to be noticed. Section 14 reads as under :

“Decisions which have become final not be reopened in appeal—The Controller shall summarily reject any application under sub-section (2) or under sub-section (3) of Section 13 which raises substantially the issues as have been finally decided in a former proceeding under this Act.”

(6) From the perusal of the provisions of Section 14 of the Act, it is apparent that the Rent Controller can summarily reject any application for ejection filed under Section 13 which raises substantially the issues as had been finally decided in a former proceeding of the Act. The order dated August 4, 1999 passed by the learned Rent Controller does show that the merits of the controversy

had not been dealt with and, therefore, it could not be said that the rights of the parties had substantially been decided. Accordingly, provisions of Section 14 of the Act would not be attracted to non-suit the landlords in any manner. The authorities below have placed reliance upon the provisions of Order 23 Rule 1 and Order 9 Rule 9 of the Code of Civil Procedure to non-suit the landlords. I am afraid the aforesaid observations made by the Authorities Below are also not justified.

(7) It is well settled by now that the Rent Control Legislation is a complete Code in itself and the provisions of Code of Civil Procedure are not attracted. Although there is no dispute that certain principles of Code of Civil Procedure would be attracted, but strict provisions of the Code of Civil Procedure being not attracted, the rights of the parties cannot be decided on the basis of the application provisions of the Code of Civil Procedure. Accordingly, provisions of Order 9 Rule 9 of the Code of Civil Procedure, being substantive provisions, cannot be attracted to the proceedings under the Rent Act. The learned counsel for the petitioner has also relied upon a judgment of the Apex Court in **N.R. Narayan Swamy versus B. Francis Jagan (1)**. Specific attention has been drawn to paras No. 6 and 12 of the judgment which read as under :

“In our view, the High Court ought to have considered the fact that in eviction proceedings under the Rent Act the ground of *bona fide* requirement or non-payment of rent is a recurring cause and, therefore, the landlord is not precluded from instituting fresh proceeding. In an eviction suit on the ground of *bona fide* requirement the genuineness of the said ground is to be decided on the basis of requirement on the date of the suit. Further, even if a suit for eviction on the ground of *bona fide* requirement is filed and is dismissed, it cannot be held that once a question of necessity is decided against the landlord he will not have a *bona fide* and genuine necessity ever in future. In the subsequent proceedings, if such claim is established by cogent evidence adduced by the landlord, decree for possession could be passed.”

(1) (2001) 6 S.C.C. 473

“In this view of the matter, in our view it is not necessary to decide the further contention of the learned counsel for the appellant that the Rent Act is a self contained code and the provisions of CPC as a whole are not applicable to the proceedings under the Rent Act.”

(8) From the perusal of the orders passed by the authorities below, it is apparent that both the authorities below have concurrently held that the personal necessity of the landlords is clearly proved. In view of the aforesaid findings, the landlords were obviously entitled to seek the ejection of the tenant.

(9) In view of the aforesaid discussion, the present revision petition is allowed and the orders passed by the Authorities Below are set aside. Consequently, the ejection petition filed by the landlords is also allowed and the tenant is directed to hand over the vacant possession of the premises in dispute to the landlords within a period of three months from today.

R.N.R.

Before S.S. Nijjar, and Nirmal Yadav, JJ.

SUNDRA DEVI,—*Petitioner*

versus

UTTAR HARYANA BIJLI VITRAN NIGAM LTD.

AND ANOTHER,—*Respondents*

C.W.P. No. 10028 of 2004

25th August, 2005

Constitution of India, 1950—Art. 226—Death of husband of petitioner who was working as regular ALM with H.S.E.B.—Claim for family pension—Rejection of—Grant of family pension—Minimum qualifying service for eligibility of pension required is 5 years under Cl.4(i) of the Pension Scheme—Qualifying period of five years was reduced to one year by Notification dated 28th September, 1979—Husband of petitioner rendered 4 years and 1 day service—High Court holding that even less than one year service is enough for the grant of family pension—Petition allowed while directing the respondents to release the family pension alongwith arrears to the petitioner.