

*Before Rakesh Kumar Garg, J.*

**MANOJ JAIN AND OTHERS—Petitioners**

*versus*

**RAJESH KUMAR AND OTHERS—Respondents**

**C.R. No. 4205 of 2013**

September 4, 2013

*Haryana Urban (Control of Rent and Eviction) Act, 1973 - S. 13(2) - Code of Civil Procedure, 1908 - O.XV Rl. 5 - Application filed by landlord to strike off defence of tenant on ground that he failed to tender arrears of rent beyond 3 years - Order challenged - Held, harmonious construction of the aforesaid two provisions i.e. Section 13(2)(i) of Rent Act and Order XV Rule 5 CPC can be made applicable in rent proceedings only if the rent which is legally due, is not tendered - Defence of tenant cannot be struck off for the reason that they failed to tender rent for the period beyond 3 years - Petition dismissed.*

*Held*, that a careful reading of the aforesaid provisions along with its explanation would show that defence of the tenant can be struck off if "the entire amount admitted by him to be due", is not deposited on the relevant date of hearing. The interpretation of the aforesaid expressions cannot be stretched to say that even the rent, which could not be recovered under the statute itself, can be said to be the amount admitted to be due. Therefore, a harmonious construction of the aforesaid two provisions i.e. Section 13(2)(i) of the Rent Act and Order XV Rule 5 CPC, will be that the provisions of Order XV Rule 5 CPC can be made applicable in rent proceedings only if the rent, which is legally due, is not paid.

(Para 10)

*Further held*, that keeping in view the bar to claim rent for more than three years, this Court is of the view that defence of the tenants cannot be struck-off for the reason that they have failed to tender the rent for the period beyond three years.

(Para 13)

Petition Dismissed.

Mani Ram Verma, Advocate, for the petitioners.

**RAKESH KUMAR GARG, J. (ORAL)**

(1) This is landlords' revision petition challenging the impugned order dated 30th April, 2013 whereby prayer of the petitioner-landlords to strike-off the defence of respondent-tenants, on the ground that the tenants have failed to tender arrears of rent beyond the period of three years i.e. with effect from 1st February, 2005 upto 31st August, 2006, has been dismissed.

(2) After noticing the contentions raised on behalf of the petitioner-landlords, this Court passed the following order on 17th July, 2013 :

*"Counsel for the petitioners contends that it is well settled that the principles of the Code of Civil Procedure are applicable to the proceedings before the Rent Controller and therefore, the same were applicable for the purpose of striking off the defence of the tenant in the instant case, as admittedly, the tenant was in arrears of rent for more than three years whereas he has not tendered the rent beyond the period of three years preceding the date of application for eviction.*

*According to the learned counsel for the petitioners, even if there was a bar under second proviso as provided under Section 13(2) to claim rent for more than three years, the same shall not be applicable for the purpose of striking off the defence of the respondent-tenant.*

*Counsel for the appellants seeks short adjournment to enable him to support the aforesaid contention by citing the case law.*

*Lit on 4th September, 2013."*

(3) Learned counsel for the petitioners has vehemently argued the Limitation bars the remedy but does not extinguish the right which still exists and the arrears of rent are still due and the term 'due' as used under Order XV Rule 5 of the CPC has no reference to the time of payment or fulfillment of an obligation, thus, bar under Section 13(2) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as, 'the Rent Act') to claim rent for more than 3 years shall not be applicable for the purpose of striking off the defence of tenants.

(4) I have heard learned counsel for the petitioners.

(5) In the eviction petition filed on 1st January, 2009, the landlords claimed rent with effect from 1st February, 2005 upto 31st August, 2009 and the tenants tendered rent for 3 years preceding the filing of eviction petition keeping in view the second proviso of Section 13(2)(i) of the Rent Act. After accepting the rent, as tendered, petitioners moved an application under Order 15 Rule 5 CPC for striking off the defence of the respondent-tenants alleging that a default has been made by the tenants in not making the payment of entire rent as claimed, i.e. the period beyond 3 years and further that they have failed to make the payment for the period subsequent to the filing of the petition.

(6) However, it is a matter of record that tenants have paid the rent for the period subsequent to filing of the instant eviction petition in separate proceedings initiated by the petitioner-landlords treating the same as separate cause of action; thus, the grievance in this revision petition remains only to the extent of alleged default committed by the respondent-tenants by the making payment of rent for the period beyond 3 years preceding the filing of eviction application, as claimed.

(7) At this stage, it is useful to refer to the second proviso to Section 13(2) of the Rent Act, which reads thus :

*“13. Eviction of tenants*

*(2) A landlord who seeks to evict his tenant shall apply to the Controller, for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied—*

*(i) that the tenant has not paid or tendered the rent due by 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 :*

*Provided that if the tenant, within a period of fifteen days of the first hearing of the application for ejectment after due service, pays or tenders the arrears of rent and interest, to be calculated by the Controller, at eight per centum 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 provisions of this Act;”*

(8) A perusal of the aforesaid provisions of the Rent Act would clearly show that the landlord is entitled to evict his tenant in case he has not tendered the rent due against him for the demised premises and further a bar has been created by the statute itself disentitling the landlord to claim arrears of rent for a period exceeding three years immediately preceding the date of application under the provisions of this Act. Thus, the aforesaid provisions of the Rent Act mean that rent payable by the tenant beyond three years is not the rent due under the statute.

(9) At this stage, it is also useful to refer to the provisions of Order XV Rule 5 CPC, which read thus:

*“Order XV, Rule 5 CPC*

*(1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit or the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may, subject to the provisions of sub-rule (2) strike off his defence.*

*Explanation 1 : The expression ‘first hearing’ means the date for filing written statement or for hearing mentioned in the summons or where more than one of such dates are mentioned, in the last*

*of the dates mentioned.*

*Explanation 2 : The expression 'entire amount admitted by him to be due' means the entire gross amount whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears, after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account and the amount, if any, deposited in any Court.*

*Explanation 3 : The expression 'monthly amount due' means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account.*

*(2) Before making an order for striking off defence, that Court may consider any representation made by the defendant in that behalf provided such representation is made within ten days of the first hearing or, of the expiry of the week referred to in sub-Section (1) as the case may be.*

*(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff :*

*Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited.*

*Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same. "*

(10) A careful reading of the aforesaid provisions along with its explanation would show that defence of the tenant can be struck off if "the entire amount admitted by him to be due", is not deposited on the relevant date of hearing. The interpretation of the aforesaid expressions cannot be stretched to say that even the rent, which could not be recovered under the statute itself, can be said to be the amount admitted to be due. Therefore,

a harmonious construction of the aforesaid two provisions i.e. Section 13(2)(i) of the Rent Act and Order XV Rule 5 CPC, will be that the provisions of Order XV Rule 5 CPC can be made application in rent proceedings only if the rent, which is legally due, is not paid.

(11) At this stage, it is relevant to mention that in the reply, the tenants have specifically denied the averments made in this regard by the petitioner-landlords. The respondent-tenants have specifically raised the bar of second proviso to Section 13(2)(i) of the Rent Act, further explaining that they are liable to pay only that rent which is legally recoverable.

(12) In view of the aforesaid stand taken, it cannot be said that the respondent-tenants have admitted their liability to pay the rent, which could not be legally claimed by the petitioner-landlords.

(13) Thus, keeping in view the bar to claim rent for more than three years, this Court is of the view that defence of the tenants cannot be struck-off for the reason that they have failed to tender the rent for the period beyond three years.

(14) Thus, there is no merit in this petition.

(15) Dismissed.

---

*M. Jain*