

F. Nanak Chand-  
Ramkishan Das  
of Hodel  
and others  
v.  
Lal Chand  
and others  
Chopra. J.

of dishonour is given carry on business or live (as the case may be) in different places, such notice is regarded as having been given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour. Section 30 is to be read as subject to these provisions which relate to the mode or manner in which the notice has to be given.

I would, therefore, dismiss this appeal and leave the parties to bear their own costs throughout. The cross-objections also are dismissed.

B.R.T.

REVISIONAL CIVIL

Before Mehar Singh, J.

SUNDER LAL JAIN,—Defendant-Petitioner

versus

SHRIMATI LAJWANTI DEVI,—Plaintiff-Respondent

Civil Revision No. 48-D of 1957.

1958

Jan., 13th

*Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Section 13(5)—Statute fixing exact date for deposit—Courts, whether can extend time—General Clauses Act (X of 1897)—Section 10—Effect of—Date fixed by a statute for deposit—Courts closed on the date—Deposit made on the first day of the opening of the Court—Such deposit, whether valid—Party appearing in Court on the statutory date with the amount of deposit—Deposit not made on that date for no fault of the party—Such date whether can be considered the date of deposit.*

*Held*, that when a statute fixes exact date for deposit, the Courts have no power to extend time for making the deposit against the terms of the Statute.

*Held*, that under section 10 of General Clauses Act, a party has a right to make the deposit on the first day of the opening of the Court, if on the date fixed by a Statute for

deposit, the Court is closed. There is no question of extension of time for a right is given by the section to do the act on the opening of the Court, after it had been closed for some time. It is not the Court that, in such circumstances allows extension of time for making the deposit, but it is the Statute that does.

*Held also*, that if a party on the statutory date appears in Court with the amount of the deposit, he has done all that is humanly possible for him to make the deposit and it is in the hands of the others to see that all steps are taken in time for the deposit to become effective. If the others are lax in the matter so that it becomes impossible for the party to make the deposit on the statutory date, then the deposit must be taken to have been made as soon as the party appeared with the amount of the deposit in the Court and was ready to do so. His subsequent difficulty in making the deposit actually in the office or place where he is directed to make the deposit under the orders of the Court, not arising out of his conduct but from the handling of the matter by the Court cannot obviously affect his right when all that was required of him has been done by him.

*Petition under Sections 13(5) and 35 of Act 38 of 1952 for the revision of the order of Shri Jawala Dass, P.C.S., Additional District Judge, Delhi dated the 21st December, 1956, reversing that of Shri Gian Chand Jain, Sub-Judge, 1st Class, Delhi, dated the 5th May, 1956, accepting the appeal with costs and striking out the defendant-respondent's defence against ejection and ordering that he be placed in the same position as if he had not defended the claim to ejection.*

BISHAMBAR DAYAL and KESHAV DAYAL, for Petitioner.

HANS RAJ SAWHNEY, for Respondent.

#### JUDGMENT

MEHAR SINGH, J.—There is only one question Mehar Singh, J. for consideration in this revision application and that is whether the order, dated December, 21, 1956, of the appellate Court (the First Additional District Judge of Delhi) striking out the defence

Sunder Lal  
Jain  
v.  
Shrimati  
Lajwanti Devi  

---

Mehar Singh, J.

of the defendant, in the suit against him for ejection and recovery of arrears of rent, under section 13(5) of the Delhi and Ajmer Rent Control Act (Act No. XXXVIII of 1952), is sound in law? The facts are as given below.

The plaintiff, Lajwanti, has brought a suit against defendant Sunder Lal Jain for arrears of rent and ejection under section 13 of the Act. The suit is still pending in the trial Court. On an application by the plaintiff, the trial Court made an order, within the terms of subsection (5) of section 13 of the Act, ordering the defendant to deposit a certain rent within 15 days of the date of its order and thereafter to continue to deposit it by the 15th of the next following month. The tenant-defendant was to deposit rent for the month of August, 1955, by September 15, 1955. The civil Courts in Delhi, including the Court trying this suit, were closed for vacation during the month of September, 1955, and they opened on October 1, 1955. The defendant had not deposited rent for the month of August by September 15, 1955, and on October 1, 1955, he made an application to the trial Court for permission to deposit rent for the month of August on that date explaining that he could not make the deposit on September 15, 1955, because the Court was closed for the month of September, 1955, because of vacation. On that application the trial Court passed an order on the same day directing the deposit of rent for the month of August. But the defendant did not make the deposit on that day. October 2, 1955, was a Sunday. The defendant deposited the amount on October 3, 1955.

The plaintiff thereafter made an application to the trial Court that, the defendant not having deposited rent for the month of August, 1955, by September 15, 1955, his defence be struck off

under section 13(5) of the Act. This application was resisted by the defendant. He explained that he could not deposit rent in September because the Court was closed for vacation. He made application for the deposit on the first day of the opening of the Court which was October 1, 1955, but the order on his application was passed so late in the day that by the time he was given the application with the order the Treasury had closed and it had become impossible for him to make the deposit on that day. The following day was a public holiday being a Sunday. He actually deposited the amount on October 3, 1955. The learned trial Judge was of the opinion that in the circumstances of the case the defendant had substantially complied with the provisions of section 13(5) of the Act and dismissed the application of the plaintiff. The plaintiff went in appeal against the order of the trial Court and the appeal was heard by the First Additional District Judge of Delhi. The learned District Judge was of the opinion that a definite date for the deposit of rent is fixed by section 13(5) of the Act and it being a date fixed by statute the Court has absolutely no power to extend the time for making the deposit and that no excuse, however valid, availed the defendant for he had no choice but to make the deposit by the date as required by the statute. The appeal was accepted ordering the striking out of the defence of the defendant and the case was remitted to the trial Court for proceeding with the trial in the circumstances. It is the order of the appellate Court of which revision is sought in this application. The part of subsection (5) of section 13 of the Act that is relevant for the purpose reads—

“If the tenant contests the suit as regards the claim for ejection, the plaintiff-landlord may make an application at

Sunder Lal  
Jain  
v.  
Shrimati  
Lajwanti Devi  
Mehar Singh, J.

Sunder Lal  
Jain  
v.  
Shrimati  
Lajwanti Devi  

---

Mehar Singh, J.

any stage of the suit for an order on the tenant-defendant to deposit month by month rent at a rate at which it was last paid and also the arrears of rent, if any, and the Court, after giving an opportunity to the parties of being heard, may make an order for the deposit of rent, if any, and on the failure of the tenant to deposit the arrears of rent within fifteen days of the date of the order or to deposit the rent at such rate for any month by the 15th of the next following month, the Court shall order the defence against ejectment to be struck out and the tenant to be placed in the same position as if he had not defended the claim to ejectment;—.”

The statute thus fixes exact date for the deposit of future rent month by month under the orders of the Court on an application of the plaintiff-landlord. It is obvious that against the terms of the statute the Court has no power to extend time for the making of the deposit. However, in the present case, I agree with the learned counsel appearing for the applicant, that there is no question of extension of time by the Court and it is a misconception to say that, in the circumstances of this case, deposit made on the first day after the opening of the trial Court after vacation, is a deposit made on extension of the time, under the order of the Court, provided in section 13(5) of the Act. It is not a case of extension of time and the defendant does not seek to justify the extension of time on any ground. The position taken on behalf of the defendant is that he is under the law entitled to make the deposit on October 1, 1955. This position is taken on his behalf relying

on Section 10 of the General Clauses Act, 1897, and subsection 1 of that section, which is relevant here, reads—

“Section 10(1). Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.”

Sunder Lal  
Jain  
Shrimati  
Lajwanti Devi  
Mehar Singh, J.

It is immediately clear that as the trial Court was closed for vacation in September, 1955, Section 10, as above, comes into play and applies to the circumstances of this case. The date for the deposit is provided by the Act and the deposit was to be made on a date when the Court was closed and, it appears to me to be definite that under Section 10, as above, the defendant had a right to make the deposit on the first day of the opening of the Court. There is no question of extension of time for a right is given to the defendant by Section 10 of the General Clauses Act, 1897, to do the act on the opening of the Court, after it had been closed for some time. It is not the Court that, in such circumstances, allows extension of time for making the deposit but it is the statute that does. The only answer to this which the learned counsel for the plaintiff has given is with reference to section 38 of the Act and that section says—

“Section 38. The provisions of this Act and of the rules made thereunder shall have

Sunder Lal  
Jain  
v.  
Shrimati  
Lajwanti Devi  

---

Mehar Singh, J.

effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.”

The learned counsel for the plaintiff contends that this section of the Act excludes application of Section 10 of the General Clauses Act, 1897, to the present case, but it is rather difficult to appreciate how Section 38 of the Act comes in the way of the application of section 10 of the General Clauses Act, 1897. The last provision is not inconsistent with any provision in the Act; all that it provides is a rule of interpretation and gives relief to a party in circumstances in which it is impossible for a party to do an act required by law to be performed by it within a certain period because of the closing of the Court in which the act is to be done. This argument is patently without force.

The learned Judge of the appellate Court was of the opinion that no provision in the Act requires an application to be made by a defendant, as in this case, to make a deposit under section 13(5) of the Act. In my opinion the learned Judge is in the wrong. A tenant-defendant cannot just appear in the room and leave the money in the Court room and say that the amount has been deposited. He can only do so in one of the two ways: one way is to deposit the amount directly in the Court, if there is an arrangement for such deposit, and the other way is that he can deposit the amount in the Government Treasury obviously under an order of the Court for the Treasury will not accept deposit from anybody and everybody. In either case an order of the Court is apparently necessary for the making of the deposit whether in Court or under the orders of the Court in the Government Treasury. It is true that such an order may be

obtained on an oral application, but I do not see what is wrong in a tenant-defendant making a written application as has been done by the defendant in this case. The deposit could not be made without the order of the Court. So the learned Judge in the appeal was not right in saying that no application on the part of the defendant or an order on the part of the Court was required for making the deposit. Section 13(5) of the Act does not say how the deposit is to be made and with whom the amount is to be deposited. But I should consider it obvious that the amount is to be deposited with the Court and it is for the Court to say whether it will accept the deposit straightaway in its own office or direct the party to deposit the amount in the Government Treasury.

Sunder Lal  
Jain  
v.  
Shrimati  
Lajwanti Devi  
Mehar Singh, J.

The result is that, in the circumstances of the case, the defendant was entitled to make a deposit of rent for the month of August, 1955, on October 1, 1955, because in September, 1955, the trial Court was closed for vacation. If he had succeeded in making the deposit on October 1, 1955, that would have settled the matter. But he actually made the deposit on October 3, 1955. The question whether he was able to make the deposit on October 1, 1955, or not is a question of fact that can only be decided upon evidence led. That has not been done in this case. The defendant has made certain allegations of fact explaining why it became impossible for him to make the deposit on October 1, 1955, and why he, therefore, made it on October 3, 1955. That, as stated, can only be decided after evidence has been led upon this matter. I have said that the tenant-defendant under section 13(5) of the Act is to make the deposit in Court and it is for the Court either to accept the deposit in its office or to direct the deposit to be made under its order in the treasury. If the tenant-defendant



Sunder Lal  
Jain  
v.  
Shrimati  
Lajwanti Devi  
Mehar Singh, J.

on the statutory date appears in Court with the amount of the deposit and the Court passes order in due time so that it is physically possible for the tenant-defendant to deposit the amount on that particular date according to the order of the Court and he fails to do so, it is obvious that he commits default. But if he appears in Court with the amount of the deposit and he has done all that is humanly possible for him to make the deposit and it is in the hands of the others to see that all steps are taken in time for the deposit to become effective and those others are lax in the matter, so that it becomes impossible for the tenant-defendant to make the deposit on the statutory date, then the deposit must be taken to have been made as soon as the tenant-defendant appeared with the amount of the deposit in the Court and was ready to do so. His subsequent difficulty in making the deposit actually in the office or place where he is directed to make the deposit under the orders of the Court not arising out of his conduct but from the handling of the matter by the Court cannot obviously affect his right when all that was required of him has been done by him. This again, in the present case, raises questions of fact. Those questions can only be settled after the parties have produced all the evidence on the record and they cannot be settled without the parties having had opportunity to provide the facts relevant.

In consequence, this revision petition succeeds and the order of the appellate Court is set aside, and the case is remitted to it with the direction that it will keep the appeal of the plaintiff on its file but will send the case back to the trial Court for obtaining a finding on the following facts—

- (a) Whether the tenant-defendant made his application on October 1, 1955, in the

first hours of the opening of the Court and the order on his application was passed so late in the day that he could not make the deposit in the Treasury on that day, and

Sunder Lal  
Jain  
v.  
Shrimati  
Lajwanti Devi  
Mehar Singh, J.

- (b) whether the tenant-defendant had the amount in Court on October 1, 1955, and was immediately ready and willing to deposit the amount had he not been delayed because the Court did not pass an order for the deposit within time,

and having obtained the findings on these matters, the appellate Court will then proceed to dispose of the appeal of the plaintiff in the light of what has been said above. There is no order as to costs in the revision petition.

K.S.K.

FULL BENCH

Before Bishan Narain, Chopra and Gosain, JJ.

FIRM GAURI LAL GURDEV DAS,—Appellants

versus

JUGAL KISHORE SHARMA AND ANOTHER,—Respondents

E.S.A. 14-P of 1954.

*Code of Civil Procedure (V of 1908)—Sections 2(5), 2(6) and 13(a)—Foreign judgments—Judgments rendered by Courts of Part A States after the coming into force of the Constitution and before the applicability of the Indian Code of Civil Procedure to Part B States—Whether foreign judgments—Law applicable thereto—Such judgments—Whether can be enforced in Part B States by execution—Judgment-debtor—Whether entitled to object to execution on ground of lack of jurisdiction in the Court passing the decree—Section 13—Whether applicable to execution proceedings—Constitution of India (1950)—Article 261(1) and (2)—Scope of—Full faith and credit clause—Meaning and*

1958

Jan., 16th