REVISIONAL CIVIL

Before S. K. Kapur, J.

OM PARKASH MONGIA,—*Petitioner*

versus

LEKH RAJ AGGARWAL,—*Respondent*

C. R. 560-D of 1965

1966

February 1st

Code of Civil Procedure (Act V of 1908)—S. 9—Suit for recovery of rent—Whether barred by S. 50 of the Delhi Rent Control Act (LIX of 1958).

Held, that the exclusion of jurisdiction of the Civil Court in not to be readily inferred and the exclusion will be upheld only if there are express provisions in the Act or unmistakeable implied indications. Section 50 of the Delhi Rent Control Act, 1958, neither expressly nor by necessary implication, bars the jurisdiction of the civil Court to try and decide a suit by the landlord against his tenant for the recovery of the arrears of tent. The words "or to any matter which the Controller is empowered by or under this Act to decide" in section 50 must be limited to what the Controller is empowered to decide directly and not incidentally. The question of implied bar really does not arise, because there is no provision in the Act entitling a landlord, not wanting to eject a tenant, to lay a claim before the Controller for rent. Of course, a difficulty may arise where in a suit for rent the tenant raises a plea of the agreed rent being excessive. In that event, there would be nothing to stop the tenant from making an application before the Controller for fixation of standard rent and once it is fixed, the civil Court will have to give effect to the same.

Petition under section 115 *of the Code of Civil Procedure and article* 227 *of the Constitution of India, for revision of the order of Shri Krishan Kant, Sub-Judge, II Class, Delhi, dated* 28*th July,* 1965, *holding that his Court has jurisdiction to entertain the present suit and dismissing the application under section* 151 *C.P.C., dated* 24*th May,* 1965, *regarding want of jurisdiction and directing the defendant to file his written statement on* 5*th August,* 1965.

T. P. S. CHAWLA, ADVOCATE, for the Petitioner.

BIKRAMJIT NAYAR, ADVOCATE, for the Respondent.

JUDGMENT

KAPUR, J.—The respondent, Lekh Raj, brought a suit against the petitioner for recovery of Rs. 1,440 on account of arrears of rent in respect of a part of house bearing No. 974, Punjabee Mohalla, Subzimandi, Delhi. The plaintiff also claimed Rs. 240 on account of electricity and water charges. Kapur, J.

The petitioner filed an application raising a contention that the civil Courts have no jurisdiction to entertain a suit for rent inasmuch as the said jurisdiction is barred by the Delhi Rent Control Act, 1958. The trial Court decided against the petitioner and held that a suit for rent simpliciter is triable by a civil Court. The petitioner has challenged the correctness of the said judgment of the trial Court dated 28th July, 1965. His main contention is based on the language of section 50 of the Delhi Rent Control Act and various other provisions of the said Act have been called in aid for the construction thereof. According to the petitioner, the effect of section 50 is that no civil Court can entertain any suit in so far as it relates to any matter which Controller is empowered by or under the said Act to decide. Principal reliance has been placed on sub-section (1) of section 50 which, when read, is as follows—

> "Save as otherwise expressly provided in this Act, no civil Court shall entertain any suit or proceeding in so far as it relates to the fixation of standard rent in relation to any premises to which this Act applies or to eviction of any tenant therefrom or to any matter which Controller is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Controller under this Act shall be granted by any civil Court or other authority."

The petitioner says that the Court must look at the substance of the suit, which is for recovery of rent, and then find out whether or not the Controller is empowered by or under the said Act to decide the controversy. The procedure suggested by the petitioner is that if rent is due by a tenant, it is open to the landlord to take proceedings under

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clause (a) of the proviso to section 14(1) for ejectment of the tenant and thereupon the Controller will have to make an order under section 15 directing the tenant to pay the rent to the landlord or to deposit the same with the Controller, as provided in the said section 15. It is then said that by reason of section 4 of the said Act, every agreement for payment of rent in excess of the standard rent has to be construed as if it was an agreement for payment of standard rent only and the combined effect of sections 4 and 15(3) is that even when there is a dispute about the amount of rent payable, the Controller has to fix an interim rent, then proceed to determine the standard rent and then direct payment or deposit on the basis of the standard rent so determined. It is pointed out that unless the contention canvassed on behalf of the petitioner is accepted, serious anomalies would arise. One of the principal anomalies suggested is that the civil Court is admittedly not competent to determine the standard rent and yet if a suit is filed for recovery of rent, the civil Court will have to decree the agreed rent without entering upon the question of determination of standard rent. On the other hand, if resort is taken to sections 14 and 15 of the said Act, the Controller will be in a position to give full effect to the letter of section 4 and the spirit of the Act. In the alternative, it is argued that even if section 50 does not expressly bar the jurisdiction of the civil Court, it is impliedly barred, because the said Act is a complete code by itself for adjudication of all rights covered thereby. Strong reliance has been placed on the decision of their Lordships of the Supreme Court in *Rai Brij Raj Krishna and another* v. *Messrs. S. K. Shaw and Brothers* (1), and particularly the following passage—

> "The Act thus sets up a complete machinery for the investigation of those matters upon which the jurisdiction of the Controller to order eviction of a tenant depends, and it expressly makes his order final and subject only to the decision of the Commissioner. The Act empowers the Controller alone to decide whether or not there is non-payment of rent, and his decision on that question is essential before an order can be

(1) A.I.R. 1951 S.C. 115.

passed by him under section 11. Such being the provisions of the Act, we have to see as to whether it is at all possible to question the decision of the Controller on a matter which the Act clearly empowers him to decide.....".

A mention has also been made on behalf of the petitioner of sections 12, 13, 15, 19, 23 and 24, illustrative of the exhaustive provisions made in the Act for resolution of all controversies, which can possibly arise between a landlord and a tenant. Reliance has also been placed on sections 42 and 43 of the said Act. Section 42 confers jurisdiction on the Controller to execute all orders made by him or by the appellate authority in the same manner as a decree of a civil Court. Section 43 clothes all orders, save and otherwise expressly provided in the Act, made by the Controller or in appeal with finality and renders them immune from being called in question in any suit. In short, the argument of the petitioner is that even if a person does not want to evict tenant and wants merely to recover the arrears of rent, his remedy is to file an application for ejectment and for an order for payment and/or deposit of rent and he cannot sue for rent in a civil Court.

On behalf of the respondent, reliance has been placed on *Lachhman Das* v. *Goverdhan Dass* (2), as a judgment concluding the point in his favour. There, while dealing with the provisions of the Delhi and Ajmer Rent Control Act (38 of 1952), a Division Bench of this Court observed:— "This anomaly would be all the more conspicuous under the Delhi Rent Control Act, 1958, which came into force on 9th February, 1959, and repealed the Act, XXXVIII of 1952. In the said Act, the authority to determine the standard rent is vested in a special Tribunal, the Controller, appointed under that Act. The Controller is not authorised to hear and decide a suit for recovery of rent or to make any order in respect thereof.....". The question referred to the Division Bench in that case was whether in a suit, otherwise within the jurisdiction of a Court of Small Causes, the jurisdiction of such Court is ousted by the defendant raising the question of the fixation of standard rent according to the provisions of Act No. 38

(2) 1959 P.L.R 932.

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of 1952, because such a question cannot be decided and disposed of by a Court of Small Causes. It was held that the provisions of the Delhi and Ajmer Rent Control Act did not oust the jurisdiction of the Court of Small Causes, and that court would not become incompetent to try a suit for recovery of rent even if a plea of fixation of standard rent is raised by the tenant. Mr. Chawla, learned counsel for the petitioner, says that that case turned on the peculiar provisions of Act 38 of 1952 and the Provincial Small Cause Courts Act and does not decide the question now raised. It is further argued that under the Act of 1952 the Civil Court was competent to determine the standard rent and there was no conferment of exclusive jurisdiction on any authority specially constituted under the Act. Moreover, according to the learned counsel, by reasons of sections 15(2), 16 and 23 of the Provincial Small Cause Courts Act, the decree for rent could be passed only by a Small Cause Court, if the amount claimed was less than Rs. 500 and by no other. It is pointed out that it was in those circumstances that the observations relied upon by the respondent were made.

Mr. Bikramjit Nayar, learned counsel for the respondent, says that an order made under section 15 would not be executable as only final orders have been made executable and that law cannot be presumed to compel a landlord to take proceedings for ejectment in all cases irrespective of his wishes in the matter. It would be expedient now to refer for a moment to the decision of the Supreme Court in *Rai Brij Raj Krishna's case*. In that case, the appellants before Supreme Court took proceedings for ejectment of the respondents under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, before the House Controller on the grounds of non-payment of rent. The authorities under the Act ordered eviction and thereupon the respondents filed a suit in a civil Court for a declaration that the order of the House Controller was without jurisdiction. The High Court decreed the suit upholding the contention. The main ground of attack against the Controller's order was that, in fact, there was no non-payment of rent and the controversy revolved round the question whether the House Controller was competent to decide whether or not the condition precedent to eviction, namely, non-payment of rent had been

satisfied. The Supreme Court upheld the contention that the House Controller had such jurisdiction.

It is a known rule of law announced not only in a number of authorities, but also supported by its inherent reasonableness, that the exclusion of jurisdiction is not to be readily inferred and the exclusion will be upheld only if there are express provisions in the Act or unmistakable implied indications. About this rule of law, there is no controversy, but the controversy is really about the application of that principle based as it is on the contentions already enumerated. The question has to be answered really on the construction of section 50 and upon the meaning to be given to the words "or to any matter which Controller is empowered by or under this Act to decide". In my opinion, these words must be limited to what the Controller is empowered to decide directly and not incidently. There is a lot of force in what has been said on behalf of the respondent that the legislature could not have intended to compel a landlord to sue in all cases for ejectment irrespective of his wishes in the matter. A landlord would be well within his rights to say, "I will bind a particular tenant to his contract and compel him to carry out his obligations and pay the rent." To take one more example: The cause of action to proceed for ejectment under clause (a) of proviso to section 14(1) of the Delhi Rent Control Act, 1958, arises only where the tenant has neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord. Is it then to be inferred that completely new rights and obligations have been created by the said Act and a landlord must, in all cases, wait till the expiry of two months from the date of the service of notice before suing for rent? In that view even for the rent payable at the end of every month the right of the landlord to file a suit immediately on default would be barred. That would be placing too unreasonable a construction on the provisions of the Act and treating too leniently an erring tenant. The jurisdiction under section 14, conferred on the Controller is to decide whether or not there has been non-payment of rent in violation of the provisions of section 14, but that is not a jurisdiction empowering the Controller to decide

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a claim about rent simpliciter. *In Rai Brij Raj Krishna's case,* their Lordships of the Supreme Court only decided that the Controller had jurisdiction to decide whether the condition precedent to eviction, namely, non-payment of rent, had been satisfied or not. The Supreme Court was not concerned with the question now arising before me. Of course, on the language of section 14 of the said Act, it would be competent for the Controller to decide that controversy, namely, whether or not there has been non-payment of rent. But that does not mean that the Controller should be expressly or impliedly held to be the exclusive authority having jurisdiction to pronounce upon a claim for rent only. I think that controversy legitimately falls within the jurisdiction of civil Courts. Irrespective of the question whether orders under section 15 are executable or not, I would say that those are orders incidental to the proceedings for ejectment and are intended for the benefit of tenants that if they pay the rent in accordance therewith, they may avoid ejectment. I am also not prepared to hold, that the jurisdiction of the civil Courts is barred impliedly. The question of implied bar really does not arise, because there is no provision in the Act entitling a landlord, not wanting to eject a tenant, to lay a claim before the Controller for rent. Of course, a difficulty may arise where in a suit for rent the tenant raises a plea of the agreed rent being excessive. In that event, there would be nothing to stop the tenant to make an application before the Controller for fixation of standard rent and once it is fixed, the civil Court will have to give effect to the same. It really does not call for consideration as to what would happen in case the proceedings for fixation of standard rent are delayed and the civil Court proceeds to decide the suit for recovery of rent. I would rather express no opinion on the same, but I must say that that is not a factor which can persuade me to construe the Act as sought to be construed by the petitioner. In this view, it must be held that the trial Court was right in its opinion. I, therefore, dismiss this revision petition with no order as to costs. The parties will appear before the trial Court on 8th February, 1966.

B. R. T.