

The Excise and
Taxation
Commissioner,
Punjab and
another
v.
Shiv Ram and
another

Falshaw, C.J.

It is thus clear that four of the learned Judges of this Court have come to a single conclusion regarding the incorrect interpretation of item 50 and I myself have no doubt that this is the correct interpretation. I am also of the opinion that, as was admitted on behalf of the Department in the case of Messrs Shiv Ram Sant Ram, the substances subsequently enumerated in item 50-A must be regarded as substances ordinarily prepared by Halwais. There is, therefore, no force in these appeals which must be dismissed with costs. Counsel's fee Rs. 50 in each case.

Harbans Singh, J.

HARBANS SINGH, J.—I agree.

K.S.K.

REVISIONAL CIVIL

Before D. Falshaw, C. J., and A. N. Grover, J.

MAM CHAND,—*Petitioner*

versus

CHHOTU RAM AND OTHERS,—*Respondents*

Civil Revision No. 630 of 1962.

1963

Oct. 18th.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(2) (i) proviso—Object of—Punjab Relief of Indebtedness Act (VII of 1934)—S. 31—Deposit of rent made by a tenant under—Whether amounts to tender and sufficiently complies with the proviso.

Held, that the whole object and purpose of the proviso to section 13(2) (i) of the East Punjab Urban Rent Restriction Act, 1949, is to give a final opportunity to a defaulting tenant to save himself from eviction by payment of or tendering the arrears of rent and interest, etc., on the first date of hearing of the application for ejection. It is well settled now that the rent restriction legislation is meant for the benefit of the tenants and this has to be borne in mind while construing the provisions of the Act.

Held, that the language of section 31 of the Punjab Relief of Indebtedness Act, 1934, makes it quite clear that the person who owes money can deposit the same in Court in full or part payment to his creditor. This means that deposit in Court is tantamount to payment having been made to the creditor. Even if no such implied agency can be inferred, the Court is constituted as a statutory agent because the payment made to it is by fiction of law considered to be payment made to the creditor by the debtor and which, in addition, is effective enough to stop the running of interest. Hence a deposit of arrears of rent, etc., by tenant under section 31 of the Punjab Relief of Indebtedness Act for payment to landlord is a sufficient compliance with the proviso to section 13(2) (i) of East Punjab Urban Rent Restriction Act.

Case referred by the Hon'ble Mr. Justice D. K. Mahajan, on 22nd April, 1963, to a Division Bench for decision owing to the importance of the question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Chief Justice Mr. D. Falshaw and the Hon'ble Mr. Justice A. N. Grover, on 18th October, 1963.

Petition under Section 15(5) of Act III of 1949 for revision of the order of Shri Man Mohan Singh Gujral, District Judge, Rohtak, dated the 27th August, 1962, reversing that of Shri P. R. Aggarwal, Sub-Judge Ist Class, Rohtak, and Rent Controller, Rohtak, dated the 4th November, 1961, and ordering the eviction of the tenant from the premises in suit.

Petition for ejectment of the tenant.

J. S. WASU, AND MRS. P. K. WASU, ADVOCATES, for the Petitioner.

G. C. MITAL AND N. C. JAIN, ADVOCATES, for the Respondents.

JUDGMENT

GROVER, J.—This petition for revision has been referred to a Division Bench by Mahajan, J.,—*vide* his

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order dated 22nd April, 1963, on account of the conflict of the view on the point whether the deposit made by a tenant under section 31 of the Punjab Relief of Indebtedness Act, 1934, in Court would be sufficient compliance with the terms of the proviso to section 13(2)(i) of the East Punjab Urban Rent Restriction Act, 1949.

The facts in the present case are that an eviction application had been filed by the landlord against his tenants on a number of grounds one of which was non-payment of arrears of rent. The Rent Controller found that the tenants had deposited a sum of Rs. 247.50 nP. in the Court of the Senior Subordinate Judge because the landlord had refused to accept the money orders which had been sent to him on account of rent. Subsequently on the first date of hearing a sum of Rs. 91.50 nP. was sought to be paid in Court in cash for payment to the landlord which apparently was not accepted. It was not disputed before him nor has it been disputed at any later stage that the total amount of deposit and the payment tendered in Court would be sufficient to satisfy the requirement of the proviso in question with the result that the landlord's petition had to be dismissed in terms of that proviso. That is what the Rent Controller did but on appeal a different view was taken by the Appellate Authority owing to a judgment of Bishan Narain, J., in *Ram Nath v. Girdhari Lal* (1). In that case it had been held that a payment made under the relevant provision of the Punjab Relief of Indebtedness Act as applied to Delhi could not be considered to be payment in Court within the meaning of section 13 of the Delhi and Ajmer Rent Control Act, 1952. The Appellate Authority consequently directed the eviction of the tenants on the ground that they had not paid or tendered the arrears of rent and interest at 6 per cent per annum on the first date of hearing.

(1) 1959 P.L.R. 77.

Before the decisions given by the learned Judges of this Court are considered, it is necessary to set out section 31 of the Punjab Relief of Indebtedness Act:—

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- “31(1) Any person who owes money may at any time deposit in court a sum of money in full or part payment to his creditor.
- (2) The Court on receipt of such deposit shall give notice thereof to the creditor and shall, on his application, pay the sum to him.
- (3) From the date of such deposit interest shall cease to run on the sum so deposited.”

Section 13(2)(i) of the East Punjab Urban Rent Restriction Act, 1949, may also be noticed:—

- “13. (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 applicant, 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 on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest at six per cent per annum on

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such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid.”

In *Dr. Mangat Rai v. Bhana Ram*, Civil Revision No. 228 of 1961, decided by Falshaw, J. (as he then was) on 7th December, 1961, the Rent Controller had declined to treat the deposit made under the Punjab Relief of Indebtedness Act as a tender of rent to the landlord partly because it did not appear that any notice had been sent to the landlord and partly because in the application which had accompanied the deposit it was not specifically stated that it was on account of the rent of the premises in suit. The Appellate Authority, however, had taken the view that there was no other account in which the payment could have been deposited and this view was affirmed by this Court.

In *Ram Chand v. Mst. Sohni Devi*, Civil Revision No. 26 of 1952, decided on 15th April, 1952, by J. L. Kapur, J., the question was whether the amounts paid in the Court of the Administrative Subordinate Judge constituted sufficient compliance with the provisions of section 9 of the Delhi and Ajmer-Merwara Rent Control Act, 1947, and the learned Judge proceeded to observe—

“If any money is due by one person to another, payment can be made into Court under section 31 of the Relief of Indebtedness Act, and in accordance with the provisions of that Act interest is to cease from that date. Therefore, it must mean that the money had been received in Court for payment to the creditor. The position would not be very much different in this

case from payment by the tenant to the landlord of a portion of the rent due. Although it may be that strictly speaking the payment made in this particular case may not fall within the strict interpretation of section 9 of the Rent Restriction Act, yet in the circumstances of this case in my opinion the payment already made, although it may be under some mistaken notion, was for and on account of rent, and it cannot be said that no money was paid before the first hearing."

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It may be mentioned that the proviso to section 9(1) (a) of the Delhi and Ajmer Rent Control Act, 1947, provided that no eviction shall be ordered if the tenant pays in Court on the first date of hearing such arrears of rent together with the cost of the suit. However, in another case, *Battu Missar v. Chheda Lal*, Civil Revision No. 167 of 1961, decided by the same learned Judge on 25th April, 1952, a different view was taken. In that case some amounts had been deposited under the provisions of the Punjab Relief of Indebtedness Act but it was held that the deposit in Court without the landlord knowing anything about it was not tender and could not be regarded to be payment or tender in accordance with section 9 (1)(a), or the proviso to it, of the Delhi and Ajmer Rent Control Act, 1947.

In *Sat Paul v. Mathooram*, Civil Revision No. 357 of 1962, decided on 22nd November, 1962, Mehar Singh, J., examined the matter at great length and agreed with the view of Bishan Narain, J., in *Ram Nath v. Girdhari Lal* (1). The learned Judge appeared to be of the view that although deposit made under section 31 of the Punjab Relief of Indebtedness Act might have the effect of stopping the interest from accruing but it could not wipe out the arrears under section

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13(2)(i). Under that provision the payment or tender has to be made to the landlord and under the proviso the same has also to be made to the landlord but before the Rent Controller. The learned Judge observed:—

“It is conceivable that a payment or tender may be made to the agent of the landlord having authority to receive the same, but section 31 of the Punjab Act VII of 1934 does not make the Court of the Subordinate Judge in which a deposit is made to be the agent of the creditor. The only object, as far as I can understand, of that section is to stop further liability of the debtor from accrual of interest. What is now being contended on behalf of the applicant, the tenant, is that the effect of the section is further as to clear arrears within the scope of section 13(2)(i) and proviso to this section of East Punjab Act III of 1949, and I find that there is no justification for this.”

Now, the whole object and purpose of the proviso to section 13(2)(i) of the East Punjab Urban Rent Restriction Act is to give a final opportunity to a defaulting tenant to save himself from eviction by payment or tendering on the first date of hearing of the application for ejection the arrears of rent and interest, etc. For instance, in the present case if the tenants had paid or tendered on the first date of hearing the total amount of Rs. 339 it is not disputed that the proviso would have been applicable and the eviction could not have been ordered. The question, therefore, is whether by depositing the amount of Rs. 247.50 nP. under section 31 of the Punjab Relief of Indebtedness Act in Court for payment to the landlord and by offering to pay the balance amount of

Rs. 91.50 nP. on the first date of hearing the tenants had deprived themselves of the benefit which the proviso conferred on them. It is apparent that the ultimate result is the same in either event, namely, that on the first date of hearing the landlord is in a position to receive payment of the entire amount due under the proviso though technically the difference is that instead of the total amount being paid or tendered to him personally on the first hearing payment is made in a different manner, i.e., by first making a deposit under section 31 and then tendering payment of the balance on the first date of hearing. Whatever view might have prevailed earlier it is well-settled by now that the rent restriction legislation is meant for the benefit of the tenants and this will have to be borne in mind while construing the provisions of the Act.

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The approach suggested in the judgment of Mehar Singh, J., about examining the matter in the light of law of agency deserves consideration and it has to be seen whether his view that section 31 does not make the Court an agent of the landlord or the creditor can be supported. Mr. Gokal Chand Mital, who appears for the landlord, points out that under section 32 of the Punjab Relief of Indebtedness Act, the State can make rules with regard to determining the Court in which the sum has to be deposited under section 31 and the procedure for keeping accounts of such deposits and the manner in which notices are to be served on creditors and payments made to them. He has placed before us a copy of the Punjab Relief of Indebtedness (Deposit in Court) Rules, 1935, which were published by Punjab Government notification No. 28365-Judicial, dated the 24th August, 1935. Rule 5 is to the effect that deposits may be made either by postal money order or by the debtor in person. Rule 7 says that notices under sub-section (2) of section 31 of the Act shall be served upon the creditor

Mam Chand by registered letter, acknowledgment due, at the ex-
 v. Chhotu Ram and others pense of the debtor.

Grover, J. It is contended that such deposits when made can be entirely without the knowledge of the creditor until he is served by means of a notice sent under registered cover as provided by rule 7. The expenses for the registered letter have to be paid by the person making the deposit. If he fails to pay the expenses, no notice can go to the creditor with the result that the creditor will have no knowledge or notice that any such amount has been deposited in Court under section 31. All this according to him indicates that if any agency is created by operation of law the Court becomes the agent of the person depositing the money for payment to the creditor and can by no stretch of reasoning be regarded as the agent of the creditor. There is no bar to the person making the deposit to withdraw that amount before notice is sent to the creditor under sub-section 2 of section 31.

Mr. J. S. Wasu on the other hand points out that once the money is deposited it remains in custody of the Court for payment to the creditor and the Court on receipt of the deposit is bound to give notice to him and make payment of it on his application. In other words, once the deposit is made the money becomes the property of the creditor to whom alone it can be paid and to no other and if, therefore, such money remains in deposit, the Court holds it on account of or on behalf of the creditor. The money deposited in these circumstances simply remains in the custody of the Court for payment to the creditor who can claim it at any time and who must be paid that amount without any hindrance or obstruction by the other party. In this manner the Court must be regarded as a statutory agent of the creditor so far as the amount deposited is concerned. By way of illustration it may be mentioned that by mutual arrangement between a tenant and a landlord the rent can be deposited in the

account of the landlord with a particular bank. Now, in the present case if there had been any such arrangement and the tenants had deposited a sum of Rs. 247.50 nP. in the bank account of the landlord and then offered to pay the balance of Rs. 91.50 nP. before the Rent Controller on the first date of hearing, could it be said that they did not fulfil the requirements of the proviso which would confer protection on them against eviction on the ground of non-payment of rent? The only difference between a situation like that and the one obtaining in the present case is that the amount of Rs. 247.50 nP. instead of being deposited in the bank account was deposited in Court where it could be deposited under the provisions of section 31 of the Punjab Relief of Indebtedness Act because it is not denied that the landlord would be a creditor and the tenant would be a debtor within the meaning of that section. It is equally clear that a deposit made under section 31 would save the running of interest and that the tenants would be entitled to take the benefit of the provisions contained in section 31 regarding cesser of interest from the date of payment into Court for the purposes of calculating the amount which have to be deposited under the proviso in question to claim protection against eviction. If the money deposited in Court under section 31 is a good payment for the purpose of stopping the running of interest it looks highly problematical that it would cease to be a valid payment to the landlord of rent.

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There is another aspect which needs consideration. Once the amount is deposited by the tenant in Court under section 31, that money would become the property of the creditor and would be attachable at the instance of the landlord's creditor or decree-holder. Once it becomes his property, then the question arises whether it can still be regarded as not having been paid to him. It

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appears to be difficult to give the answer in the negative. There may be cases where the tenant owes money to the landlord not only on account of rent but also on account of some other transactions. In those cases unless it is possible to ascertain precisely the account towards the payment of which the amount has been deposited under section 31, it may not constitute valid payment of rent to the landlord but in a case of the present type where it has not been shown that there was any other account between the landlord and the tenant and the amount was deposited clearly towards payment of rent because the landlord would not accept the money orders which had been previously sent, it is not possible to accept the view that the payment is not being made to the landlord on account of rent. It may well be that the landlord is not inclined to accept that payment but it is for that very purpose that the provision, namely, section 31 of the Punjab Relief of Indebtedness Act, has been enacted.

Coming back to the question whether the Court can be regarded as an agent of the creditor, i.e., the landlord in the present case, some assistance may be derived from the law relating to sending articles to the Post Office. The decisions in *Ex parte Cote* (2), *In re Deveze* (3); and *Thairwal v. Great Northern Railway* (4); show that if there was an express or implied authority to send by post, the post office would be the agent of the addressee; if there was no such authority, the post office would be the agent of the sender. The decision in *The Badische Anilin Und Soda Fabrik v. The Basle Chemical Works, Bind-schedler* (5), supports the same contention in respect of delivery of goods. In the last case, which

(2) (1923) 25 Bom. L.R. 604.

(3) (1873) L.R. 9 Ch. App. 27.

(4) (1910) 2 K.B. 509.

(5) 1898 A.C. 200.

was a decision of the House of Lords, a trader in England had ordered goods from a foreign manufacturer in Switzerland to be sent by post to England. The manufacturer addressed the goods to the trader in England and delivered them to the Swiss Post Office, by whom they were forwarded to England. The goods were manufactured according to an invention protected by an English patent. It was held that since the contract of sale was completed by delivery to the Post Office in Switzerland, and since the Post Office was the agent of the buyer and not of the vendor, the vendor had not made, used, exercised or vended the invention within the ambit of the patent, and that the patentee had no right of action against the vendor for an infringement of the patent. It cannot be said in the present case that there is any express authority on the part of the creditor given to the Court to accept payment on his behalf when an amount is deposited under section 31 of the Punjab Relief of Indebtedness Act. But the question at once arises whether it cannot be legitimately said that the statute itself creates an implied agency in the sense that once the payment is made into Court it is deemed to be a payment to the creditor. The language of section 31 itself is clear that the person who owes money can deposit the same in Court in full or part payment to his creditor. This means that deposit in Court is tantamount to payment having been made to the creditor. Even if no such implied agency can be inferred, the Court is constituted as a statutory agent because the payment made to it is by fiction of law considered to be payment made to the creditor by the debtor and which, in addition, is effective enough to stop the running of interest. At any rate, whether the theory of agency can be imported in the present case or not, it is difficult to hold except as a hypertechnicality that the money deposited in Court under section 31 which

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by the statute is a payment to the creditor and which becomes his property when deposited is not payment to him. If a sum of Rs. 247.50 nP. is to be considered as having been paid to the landlord in the present case, then all that the tenants had to do was to pay or tender the balance amount due in accordance with the proviso to section 13(2) (i) of the Rent Act on the first date of hearing before the Rent Controller and this is what they, in fact, did.

In this view of the matter; this petition must succeed and it is allowed and the order of the Appellate Authority is set aside and the eviction application is dismissed. In the circumstances, there will be no order as to costs.

D. Falshaw, C. J.

D. FALSHAW, C.J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J., and A. N. Grover, J.

ROSHAN LAL,—*Petitioner*

versus

THE REGIONAL TRANSPORT AUTHORITY, PATIALA,
 AND ANOTHER,—*Respondent*

Civil Writ No. 1346 of 1963.

1963
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 Oct. 18th.

Motor Vehicles Act (IV of 1939) as amended by Motor Vehicles (East Punjab Amendment) Act (XXVIII of 1948)—S. 62(d)—Whether to be read ejusdem generis with the clauses preceding it—Transport permit—Whether can be granted more than once extending over a period of more than four months.

Held, that clause (d) added to section 62 of the Motor Vehicles Act, 1939, by the Motor Vehicles (East Punjab