the University authorities, disaffiliation thereof would be withdrawn.

14. The appeal is disposed of in these terms. In view of the fair stand taken by both the parties we leave them to bear their own costs.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., D. S. Tewatia and J. V. Gupta, JJ.

KALU RAM,—*Petitioner.*

versus

GONDA MAL,—*Respondent.*

Civil Revision No. 919 *of* 1979.

December 3, 1979.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2) (i) Proviso—Ejectment sought on the ground of non-payment of rent for a certain period—Rent not tendered on the first date of hearing—Landlord filing another application for ejectment for non-payment of rent for a period including that mentioned in the first application—Entire rent tendered on the first date of hearing in the second application—Ground for ejectment in the first application—Whether survives—Landlord—Whether entitled to claim ejectment in the first application.

Held, that the scheme of the East Punjab Urban Rent Restriction Act 1949 is that the tenant is to pay the rent regularly either within 15 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 date of the month next following that for which the rent is payable. In case the tenant fails to pay the rent as provided, he incurs the liability for ejectment under the Act. By adding proviso to sub-section (2) of Section 13, a further opportunity has been given to the tenant to pay all the arrears due on the first date of hearing of the application for ejectment with interest

and costs of the application, as assessed by the Controller and if this payment is made on the first date of hearing, then by fiction the tenant is deemed to have duly paid or tendered the rent within the time aforesaid. If once the tenant fails to pay the rent on the first date of hearing, any payment made subsequently to the landlord will not entitle him to get the application for ejectment dismissed on the ground that the rent had been paid. Under the Act, this is the only safeguard provided for the benefit of the landlord, i.e. regular payment of the rent has been secured by the provisions of the Act. If a tenant fails to make the payment as provided under the Act, he is liable to ejectment, though he might pay arrears due from him subsequent to the first date of hearing. The right to receive rent from the tenant is different from the right to secure ejectment under the provisions of the Act. If once the tenant fails to pay the rent in accordance with the provisions of sub-section (2) of Section 13 of the Act, any payment of the arrears made by him subsequently, will not entitle him to get the application for ejectment dismissed on the ground that the rent had been paid. It is not the payment of the arrears alone but to pay the same by the statutory date which is most material in order to save ejectment under the Act. It is the rent due from the tenant which is to be paid or tendered on the first date of hearing. The second application filed by the landlord, of course, while claiming the rent due, may include the period for which the rent had been claimed in the first application as well, if the tenant had failed to pay the arrears on the first date of hearing in the first application. That being so, it cannot be said that the rent was not due for that period as well which was the subject matter of the first application. The second application for ejectment on behalf of the landlord on the ground of non-payment of rent which had become due for the period subsequent to the filing of the first application, is maintainable. Inclusion of the first period in the subsequent application in no way disentitles the landlord to seek ejectment in the first application on the ground of non-payment of rent due at that time, i.e. at the time of the first application. The rent claimed therein being due at that time could be deemed to have been paid within time if the payment had been made on the first date of hearing. Having failed to avail of the opportunity provided under the Act, the tenant is debarred to claim that the said rent having been paid by him in the subsequent application on the first date of its hearing, the ground of ejectment on the basis of non-payment of rent in the first application, is no more available to the landlord or the arrears paid by him subsequent to the first date of hearing are deemed to have been paid on the first date of hearing of the first application. Subsequent payment on the first date of hearing in the second application cannot be deemed to be payment on the first date of hearing of the first application. There cannot be two dates for "the first date of hearing" in one application in the absence of any deeming provision in the Act. The only provision relevant is the

proviso to sub-section (2) (1) of Section 13 of the Act. The arrears due are to be seen in the application in which the ejectment is sought. Every application for ejectment on the basis of non-payment of rent has a separate cause of action and is to be decided as such. The landlord's right to seek ejectment on the ground of non-payment of rent is a statutory one ; whereas his right to receive rent is inherent because of the relationship of landlord and tenant, though the statute gives a right to the tenant to make the payment of the arrears due on the first date of hearing in order to save his ejectment. This payment on the first date of hearing is for the purposes of saving him from ejectment on that ground ; otherwise payment of the rent due is obligatory upon him, it being the right of the landlord to receive the same. Thus, any payment of arrears made after the first date of hearing does not save the tenant from ejectment on that ground.

(Paras 6, 7 and 8).

Messrs Bagarian Armoury v. *Rakha Ram,* 1966 P.L.R. 847.

Rattan Chand vs. *Jagmohan Singh,* A.I.R. 1972 Pb. & Hy. 153

OVERRULED.

Case referred by Hon'ble Mr. Justice D. S. Tewatia, on 17th April, 1979 to a larger Bench, in view of the conflict between the two Division Benches, Rattan Chand v. *Jagmohan Singh,* 1971 *All India Rent Control Journal* 741 *and Mulkh Raj* v. *Onkar Singh,* 1974 *P.L.R.* 192. *The larger Bench consisting of The Hon'ble the Chief Justice Mr. S. S. Sandhawalia. The Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice J. V. Gupta, finally decided the case on merits on 3rd December,* 1979.

Petition Under Section 15(5) *of Act III of* 1949 *for revision of the Order of Shri Sarup Chand Gupta, Appellate Authority, Faridkot, dated 16th March,* 1979 *affirming that of Shri J. C. Aggarwal, Rent Controller, Faridkot, dated 20th March,* 1978 *ordering the respondent to vacate the demised premises within one month from today i.e. 20th March,* 1978 *and deliver the possession thereof to the petitioner failing which, the petitioner shall be entitled to obtain the possession of the premises, through the court by the execution of this Order. The respondent shall also pay the costs of the petitioner. (The Appellate Authority gave one months' time to vacate the premises).*

H. L. Sarin, M. L. Sarin & R. L. Sarin, Advocates, *for the Petitioner.*

S. C. Goyal, with Mr. O. P. Goyal, Advocates, *for the Respondent.*

JUDGMENT

J. V. Gupta, J.

(1) This case was admitted to the Full Bench in view of the conflict between the two Division Bench judgments of this Court, reported as *Kattan Chand* v. *Jagmohan Singh* (1), *and Mukh Raj and others* v. *Onkar Singh* (2).

(2) The landlord respondent filed an application for ejectment of the tenant-petitioner from the *Chobara* in question on 8th January, 1975, on the ground of non-payment of rent for the period, 1st January, 1973 to 31st December, 1974, amounting to Rs. 240. (Rent being Rs. 10 per month), in addition to Rs. 21.60 Paise as house-tax. The tenant-petitioner did not appear on the first date of hearing in spite of service, and was proceeded *ex parte* ,—*vide* order, dated 1st February, 1975, of the Rent Controller. The application of the tenant for setting aside the *ex parte* proceedings was dismissed and the same order was maintained up to the High Court. The High Court dismissed the revison petition of the tenant on 15th November, 1976. Meanwhile, the landlord-respondent filed another application on 24th August, 1976, in which one of the grounds for ejectment was also the non-payment of rent for the period, 1st December, 1972 to 30th August, 1976, amounting to Rs. 450 plus the house-tax. This amount of the rent, house-tax, as well as the interest and the cost assessed by the Court, was tendered by the tenant on the first date of hearing, which was accepted by the landlord under protest. The copies of the subsequent application filed on 24th August, 1976, Exhibit R. 1, and the statement of the landlord receiving the amount under protest. Exhibit R. 3, were filed by the tenant-petitioner in the present case, on the basis of which he submitted that since the arrears for the period claimed in the first application have been paid in the second application, the ground of ejectment viz; non-payment of arrears of rent on the due date, is no more available to the landlord-respondent. This argument did not find favour with the Rent Controller and as such he ordered the ejectment of the tenant,—*vide* his order, dated 20th March, 1978, and the same was maintainied by the Appellate Authority in appeal. Against the said order of ejectment, the tenant-petitioner has come up in revision to this Court.

(1) A.I.R. 1972 Pb. and Haryana 153.

(2) 1974 P.L.R. 192.

(3) Mr. Sarin, learned counsel for the petitioner, argued that the landlord-respondent in the second application filed by him had also claimed the arrears for the period for which they were claimed in the first application and since the said amount of arrears have been paid under proviso to Section 13(2)(i) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act), the ground of ejectment on the basis of non-payment of rent is no more available to the landlord, and therefore, the application is liable to be dismissed. In support of his contention, he relied upon a judgment of this Court delivered by Hon'ble Chief Justice Mehar Singh (as he then was), reported as *Messrs Bagarian Amoury* v. *Rakha Ram* (3), which was approved by the Division Bench in *Rattan Chand' case* (supra). He also cited Supreme Court authority reported as *Maharaj Jagat Bahadur Singh* v. *Badri Parshad Seth* (4), and *J. G. Kohli* v. *The Financial Commissioner, Haryana, Chandigarh and another,* (5). He has also cited for consideration *Mulkh Raj and others* v. *Onkar Singh* (6), in which a contrary view is said to have been taken.

(4) On the other hand, the learned counsel for the landlord-respondent argued that if once the tenant has failed to pay or tender the arrears of rent and interest as contemplated under proviso to Section 13(2)(i) of the Act, on the first date of hearing, any payment made subsequently and even accepted by the landlord does not entitle the tenant to claim that the arrears of rent have been paid in accordance with law. According to the learned counsel. If the tenant has once failed to avail the opportunity is contemplated by sub-section (2) of Section 13, any amount accepted subsequently by the landlord does not amount to waiver of his right to eject the tenant on the ground of non-payment of rent. In support of his argument, he relied upon *Bhaiya Punjalal Bhagwanddin* v. *Dave Bhagwatprasad Prabhuprasad and others* (7). *Mangilal* v. *Sugan Chand Rathi,* (8), *and Mrs. Manorama S. Masurekar* v. *Mrs. Whanlaxi G. Shah and another* (9). He also relied upon a judgment of the Supreme Court in

(3) 1966 P.L.R. 847.
(4) 1963 P.L.R. 452.
(5) A.I.R. 1976 Pb. and Haryana 107.
(6) 1974 P.L.R. 192.
(7) A.I.R. 1963 S.C. 12.
(8) 1964 (5) S.C.R. 239.
(9) A.I.R. 1967 S.C. 1078.

Gajanlal Dattatrya v. *Sherbanu Hosano Patel and others* (10), for the proposition that once a default is committed, the tenant is liable to eviction like the tenant in this Supreme Court judgment where his liability to eviction arose once the fact of unlawful subletting was proved. The learned counsel also tried to distinguish the judgments of this Court in *Messrs. Bagarian Armoury's scae* (supra) and in *Rattan Chand's case* (supra) on which the other side has mainly placed strong reliance.

(5) I have gone through the authorities cited by the learned counsel for both the sides. As regards *Messrs. Bagarian Armoury's case* (supra), the learned Chief Justice took the view that:

> "In my opinion, the first eviction application was rendered infructuous by the decision of the second eviction application, the conduct of the landlord estopped him from pursuing his first application and in any case from the totality of the circumstances it is almost an unequivocal inference that the landlord walved his claim under the first eviction application".

It may be pointed out that in that case in the second application filed by the landlord the period for which the arrears were claimed in the first application were also included, and he got his eviction application dismissed after the payment of arrears of rent on the first date of hearing. The learned Chief Justice has mainly considered the question of waiver from which it was inferred that by virtue of the decision of the second application, his first application was rendered infructuous. This judgment was subsequently followed by a Division Bench in *Rattan Chand's case* (supra). In that case, the second application filed by the landlord on the basis of non-payment of rent also included the period for which the arrears were claimed in the first application and as the arrears were paid on the first date of hearing, along with interest and costs the same was dismissed by the Rent Controller. On the basis of this payment made subsequently, the tenant took the plea that he could not be ejected in the first application for non-payment ofrent as the said amount had been paid bv him subsequently. This plea of the tenant was accepted by the High Court, on the basis of the earlier judgment in *Messrs. Bagarian*

(10) 1975 R.C. 672.

Armoury's case (supra). An additional ground of *res judicata* on the basis of the provisions of Section 14 of the Act, was also taken into consideration and it was observed:—

> "In the presnt case the decision of the Rent Controller in the second application having become final would operate as *res judicata* so far as the appeal in the first application is concerned. On this ground also the presnt petition must succeed."

This view was not accepted in the subsequent case, i.e., *Mulkh Raj's case* (supra). The earlier case was sought to be distinguished on the ground that the second application was filed when the first application had already been decided and the order of ejectment against the tenant had already been passed. This event, though subsequent, could not be used for any purpose to determine the fate of the appeal lodged against the order in the first application. In that case, an order for eviction of the tenant was passed on the ground that the tenant was in arrears of rent and the order was under appeal. Meanwhile, the landlord had filed second application for ejectment on the basis of non-payment of rent, including the arrears for the default of which the first application had ben allowed. This application was dismissed as withdrawn as the amount claimed therein was paid by the tenant on the first date of hearing. In my opinion, there was not much distinction in principle in the said two cases decided by the Division Bench, reported as *Rattan Chand's case* (supra) and *Mulkh Raj's case* (supra).

(6) It will be relevant to reproduce Section 13(2), which is to the following effect:—

> "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 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 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 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."

The Scheme of the Act is that the tenant is to pay the rent regularly either within 15 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 date of the month next following that for which the rent is payable. In case the tenant fails to pay the rent as provided, he incurs the liability for ejectment under the Act. By adding proviso to sub-section (2) of Section 13, a further opportunity has been given to the tenant to pay all the arrears due on the first date of hearing of the application for ejectment with interest and costs of the application, as assessed by the Controller and if this payment is made on the first date of hearing, then by fiction the tenant is deemed to have duly paid or tendered the rent within the time aforesaid. It is not disputed by the learned counsel for the tenant-petitioner that if once the tenant fails to pay the rent on the first date of hearing, any payment made subsequently to the landlord will not entitled him to get the application for ejectment dismissed on the ground that the rent had been paid. Under the Act, this is the only safeguard provided for the benefit of the landlord, i.e., regular payment of the rent has been secured by the provisions of the Act. If a tenant fails to make the payment as provided under the Act, he is liable to ejectment, though he might pay arrears due from him subsequent to the first date of hearing. The right to receive rent from the tenant is different from the right to secure ejectment under the provisions of the Act. If once the tenant fails to pay the rent in accordance with the provisions of sub-section (2) of Section 13 of the Act, any payment of the arrears made by him subsequently, will not entitle him to get the application for ejectment dismissed on the ground that the rent had been paid. It is not the payment of the arrears alone but to pay the same by the statutory date which is most material in order to save ejectment under the Act. It is the rent due from the tenant which is to be paid or tendered on the first date of hearing. In the second application filed by the landlord of course, claiming the rent due, it may include the period for which the rent had been claimed in the first application as well, if the

tenant had failed to pay the arrears on the first date of hearing in the first application. That being so, it cannot be said that the rent was not due for that period as well which was the subject-matter of the first application.

(7) It is also not disputed that the second application for ejectment on behalf of the landlord on the ground of non-payment of rent which had become due for the period subsequent to the filling of the first application, is maintainable. Inclusion of the first period in the subsequent application in no way disentitles the landlord to seek ejectment in the first application on the ground of non-payment of rent due at that time, i.e., at the time of the first application. The rent claimed therein being due at that time could be deemed to have been paid within time if the payment had been made on the first date of hearing. Having failed to avail of the opportunity provided under the Act, the tenant is debarred to claim that the said rent having been paid by him in the subsequent application on the first date of its hearing, the ground of ejectment on the basis of non-payment of rent in the first application, is no more available to the landlord or the arrears paid by him subsequent to the first date of hearing are deemed to have been paid on the first date of hearing of the first application. In my opinion, both these contentions are misconceived. The first contention is of no avail because of the Supreme Court Authorities on the question of waiver, referred to earlier. The learned counsel for the petitioner has not been able to point out that on what principle other than waiver, the tenant is entitled to take the plea of subsequent payment, whether outside the Court or inside the Court in a regular suit for the recovery of the amount of arrears or in a subsequent application for ejectment before the Rent Controller. In law, there is no difference whether the amount is accepted outside or inside the Court. What is material, is the date on which the amount of arrears is to be paid and not the amount itself.

(8) The other contention that the subsequent payment on the first date of hearing be deemed to be payment on the date of hearing of the first application, is wholly untenable. There cannot be two dates for "the first date of hearing" in one application in the absence of any deeming provision in the Act. The only provision relevant is the proviso to sub-section (2)(i) of section 13 of the Act The arrears due are to be seen in the application in which the ejectment is sought. Every application for ejectment on the basis of

non-payment of rent has a separate cause of action and is to be decided as such. The landlord's right to seek ejectment on the ground of non-payment of rent is a statutory one; whereas his right to receive rent is inherent because of the relationship of landlord and tenant, though the statute gives a right to the tenant to make the payment of the arrears due on the first date of hearing in order to save his ejectment. This payment on the first date of hearing is for the purposes of saving him from ejectment on that ground; otherwise payment of the rent due is obligatory upon him, it being the right of the landlord to receive the same. Thus, any payment of arrears made after the first date of hearing does not save the tenant from ejectment on that ground.

(9) If this contention of the learned counsel for the tenant that by accepting the rent in the subsequent application for ejectment on the ground of non-payment of rent, including the earlier period as well, the landlord has forfeited his right in the earlier application to the ejectment of the tenant, is a valid one, then the landlord will be indirectly debarred from making any subsequent application on the ground of non-payment of rent for the subsequent period for which he has admittedly a separate cause of action. Every application for ejectment on the basis of non-payment of rent being an independent one and having a separate cause of action, i.e., non-payment of rent due at the relevant time, is to be decided as such. Admittedly, any payment made after the first date of hearing does not save the tenant from ejectment. That being so, it is immaterial if such a payment of arrears due is made in a subsequent application on the first date of its hearing as it is essential for the tenant to make payment on the first date of hearing to save himself from ejectment in the given application. The payment of arrears to defeat the ejectment application has the nexus to the date on which the application comes up for hearing on the first date. In each application cause of action being separate and distinct one and so being the 'first date of hearing,. Thus each application has to be dealt with Independently.

(10) The learned counsel for the tenant has next argued that the ground of ejetment is to be seen at the time of the passing that order. It, too, has no force. Once it is held that any payment of arrears made subsequently, i.e,, after the first date of hearing is no valid payment in the eye law and does not save the tenant from

ejectment under sub-section 2 of Section 13 of the Act, this argument is not available to the tenant and deserves to be rejected as such.

(11) The judgment of the Supreme Court in *Maharaj Jagat Bahadur Singh's case* (supra) and of this Court in *J. G. Kohli's case* (supra), relied upon by him, are not at all applicable to the facts of the present case. It will depend in each case with reference to the ground on which the ejectment of the tenant is being sought. In *Maharaj Jagat Bahadur Singh's case* (supra), the ejectment was being sought on the ground that the building was unfit for human habitation; whereas, the Executive Engineer of the Municipal Committee under direction from the Court had reported that satisfactory repairs had been done, but the same had not been taken into consideration by the Rent Controller at the time of passing the order of ejectment. The appellate Authority reversed the order holding that it was open to the Court to take into consideration facts which had come into existence after the filing of the application. The decision was upheld by the Supreme Court and the appeal of the landlord was dismissed. Similarly, in *J. G. Kohli's case* (supra), the landlord sought ejectment on the ground of his personal necessity, and, therefore, it was held that the existence of the need is not to be seen at the time of filing of the application alone and the Rent Controller and the Appellate Authority could legitimately take into consideration any change in the circumstances regarding the requirement of the landlord on the date when the order of ejectment is passed or affirmed. On the other hand, in the case reported as *Gajanan Datlatraya's case* (supra), it has been held that a tenant is disentitled to any protection under the Act. If he has once sublet the building and his liability to eviction arises once the fact of unlawful subletting is proved, in asmuch as if at the date of the notice, it is proved that there was unlawful subletting the tenant is liable to be evicted. On the same analogy if once it is proved that a tenant has failed to pay the arrears on the first date of hearing, he is liable to ejectment, though he might have paid the said arrears subsequently to the landlord, which he was entitled to recover under all eventualities. It does not lie in the mouth of the tenant to say that since the payment of the arrears had been made, therefore, the ground of non-payment of rent is not available to the landlord at the time of the order of ejectment.

(12) In this view of the matter, with due respect to the learned Judges, it is held that the law laid down in *Rattan Chand's case*

(supra), and in *M/s. Bagarian Armoury's case* (supra), is not good law and the same are over-ruled. Also in view of what has been said above the distinguishing feature of *Mulkh Raj's case* (supra) that the first application had already been decided before the payment in the second application was accepted, loses all significance.

(13) For the reasons recorded above, this petition fails and is dismissed with no order as to costs.

S. S. Sandhawalia, C.J.—I agree.

D. S. Tewatia,—J.

N.K.S.

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