Rajinder Nath B. Maira, v. I. N. Chib and others,

Bishan Narain, J.

the Department is not exercising any power in this matter and that it is the auction-purchaser who wants another associate to be accepted by the Department. I see nothing improper or wrong in this offer by the auction-purchaser. After all it is a concession given to the auction-purchaser to pay the purchase money by getting adjusted verified claims of other persons. Essentially the sale is in favour of the auction-purchaser and in my opinion a person who proposes to be associated in the transaction has no right to insist on his remaining so till his claim has been scrutinised by the Department. After the scrutiny it may or may not be open to the auction-purchaser to propose another associate and request the Department to disassociate a previous associate because that question does not arise in the present case. It is clear to me that in the present case at the stage when the differences between the parties took place, the petitioner had no right to get himself associated in the transaction of auction-sale in favour of Shri M. C. Mohan. If he has no such right then he has no grievance in the matter and thus the impugned order has not contravened any right vesting in him.

For these reasons, I dismiss this petition but make no order as to costs.

R. S.

REVISIONAL CIVIL.

Before Shamsher Bahadur, J.

ABID HUSSAIN,— *Petitioner.*

versus

ROSHAN DASS,—*Respondent.*

Civil Revision No. 65-D of 1959.

1960

Sept. 6th.

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Section 13(2)—Arrears of rent—Whether include the

rent due to the previous landlord who sold the premises with right to recover the arrears.

Held, that under the Delhi and Ajmer Rent Control Act, 1952, the tenant is only required to deposit the arrears of rent and the tenancy in respect of which arrears are payable on the first hearing relates to the landlord who has brought the suit for ejectment. The arrears of rent which have been assigned to the landlord are not rent in the strict sense of the term as, after the assignment, they assume a different legal character and complexion. The previous landlord may not have chosen to exercise his right to recover rent or, at any rate, he may not have desired to exercise this right as a weapon for ejectment of the tenant. The assignee landlord cannot, therefore, compel the tenant to pay such arrears to avoid ejectment at his instance.

Petition under section 35 of Act 38 of 1952, Delhi and Ajmer Rent Control Act, for revision of the order of Shri Radha Kishan Baweja, Senior Sub-Judge, Delhi, dated the 6th December, 1958, reversing that of Shri Asa Singh Gill, Sub-Judge, 1st Class, Delhi, dated the 16th January, 1958, and passing a decree for ejectment in favour of the plaintiff, with costs.

D. K. KAPUR, ADVOCATE, for the Petitioner.

R. S. NARULA, ADVOCATE, for the Respondent.

ORDER

SHAMSHER BAHADUR, J.—This petition for revision raises two questions; one of law and the other of fact. The question of law briefly stated is whether the arrears of rent which have to be deposited by a tenant for avoiding a decree for ejectment include the rent dues prior to the period when the present landlord acquired his title in the premises. The question of fact is whether the tenant had sub-leased the suit premises to entitle the landlord to ask for an ejectment decree.

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The dispute has arisen in this way. The respondent, Roshan Dass, acquired by sale the suit premises, of which the petitioner Abid Hussain is a tenant, consisting of a shop and two *balakhanas* in Ward No. 6, in Kucha Rehman, Chandni Chowk Delhi, on 27th of March, 1957, from one Abdul Rashid. It appears that certain rent was due to Abdul Rashid when he sold the suit property to Roshan Dass and the right to recover these arrears was sold to the respondent. These arrears are for a period between 5th of March, 1955 and 27th of March, 1957. Soon after the acquisition of property by him, Roshan Dass brought a suit for ejectment on 10th of June, 1957, on three grounds, namely, (a) non-payment of rent, (b) subletting, and (c) *bona fide* requirement of the landlord. The trial Judge found in favour of the tenant on all the points and dismissed the suit for ejectment. In appeal, however, the lower appellate court, while in agreement with the trial court on the question of the landlord's requirement, has held that the arrears of rent had not been paid by the tenant and the tenant had sublet the premises. The suit has accordingly been decreed.

The tenant has filed a petition for revision and the case for both sides has been argued very fully before me. On behalf of the petitioner, it has been urged that under sub-section (2) of section 13 of the Delhi-Ajmer Rent Control Act, 1952, the tenant deposited in court the sum of Rs. 131 as arrears of rent which were due from him to the present landlord and for this reason no decree for ejectment could be passed against him. Admittedly, the arrears of rent for the period before Roshan Dass acquired a title in the property as a landlord have not been paid. It has been contended that though the landlord had acquired

by purchase the right to recover the arrears which had been subsisting prior to the date of sale, this does not entitle him to demand from the tenant a full payment of them before claiming ejectment. On the first date of hearing on 25th of July, 1957, no payment or deposit was made and an application was made for extension of time under section 13(2) of the Act. The time was extended up to 20th of August, 1957. No payment was made even then and another application for extension was made on 21st of August, 1957. The money was actually deposited on 30th of August, 1957. There was no order for extension of time but it has been rightly held by the lower appellate court that the time must be deemed to have been extended by the trial court as it actually dismissed the suit for ejectment. Although the lower appellate court decided the case against the tenant in appeal, it did not find that there was any default in payment of arrears so far as the sum of Rs. 131 was concerned.

As regards the principal contention of the petitioner it may be ovserved that a similar point has been dealt with by a Division Bench of the Calcutta High Court (S. C. Lahiri and A. N. Ray, JJ.), in *Shrimati Daya Debi* v. *Chapala Debi* (1). Under section 17 of the West Bengal Premises Tenancy Act, 1956, a tenant who pays the arrears of rent under its provisions is protected from an order of ejectment. It was held by the Division Bench as under:—

> "In a proceeding under section 17, West Bengal Premises Tenancy Act, 1956, by the assignee from the landlord of the premises along with arrears of rent, the tenant is not required to deposit

(1) A.I.R. 1960 Cal. 378.

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under section 17(1), the arrears of rent which were transferred by the landlord in favour of the transferee plaintiff. A claim for arrears of rent loses the character of rent as soon as it is assigned. The cause of action for recovery of arrears of rent is completely satisfied as soon as the assignor receives the consideration for which he sells the arrears of rent, and what the assignee purchases is not the cause of action for recovery of arrears of rent, but the right of the assignor to recover those arrears. The right of the assignor to recover arrears of rent is a property and as such it is transferable under the main provisions of section 6 of the Transfer of Property Act and it is not hit by any of the clauses which appear in that section. Such a right can be transferred either in favour of the person who has acquired title to the house itself or in favour of a stranger. The claim for arrears of rent ceases to be a claim for rent and is converted into an actionable wrong as defined by section 3 of the Transfer of Property Act and is assignable in the manner contemplated by section 130 of that Act."

I am in respectful agreement with the decision of the Division Bench of the Calcutta High Court. The tenant under the Delhi-Ajmer Rent Control Act, 1952, is only required to deposit the arrears of rent. The tenancy in respect of which arrears are payable on the first hearing relates to the landlord who has brought a suit for ejectment.

The arrears of rent which have been assigned to the landlord are not rent in the strict sense of the term as, after the assignment, they assume a different legal character and complexion.

In the view which I have taken, it is not necessary to decide the next submission of Mr. Kapur, that the amount claimed to be due as arrears have not been proved. The counsel asserts that a mere mention of the amount in the sale deed is not a sufficient proof for this purpose. I may mention here that the rent Acts have been designed for the protection of tenants who can save themselves from ejectment by prompt payment of arrears. In other words, ejectment is not designed, except for the enumerated purposes, against a tenant who pays the rent regularly or has tendered payment on the first date of hearing.

Mr. Narula, for the landlord, has argued that the authority of the Division Bench of the Calcutta High Court was a decision under the West Bengal Tenancy Act, where arrears due to a previous landlord are not liable to be tendered by the tenant; only the rent which is allowable under the Act has to be tendered. On principle, I do not think that the ruling of the *Calcutta Case* can be distinguished on facts. As in the West Bengal Act, the Punjab Act required the tenant to pay the arrears on the first date of hearing to avoid ejectment. There is no specific mention in the West Bengal Act, that the arrears due to the previous landlord are not to be tendered by the tenant.

It is next urged that the *ratio decidendi* of *Shrimati Daya Debi* v. *Chapala Debi* (1), is opposed to the Full Bench decision of the Calcutta

(1) A.I.R. 1960 Cal. 378.

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High Court in *Srish Chunder Bosh* v. *Nachim Kazi and others* (1), where it was held by the court (Banerjee, J., dissenting) that "a suit brought by an assignee of arrears of rent after they fell due, for the recovery of the amount due, is a suit for rent, and, therefore, excepted from the cognizance of the Court of Small Causes. Now, in that case it fell for determination of the Full Bench whether the assigned arrears of rent retained the characteristic of rent for the purpose of determining the jurisdiction of a Small Cause Court to entertain a suit for "recovery of rent". Under the Delhi and Ajmer Rent Control Act, 1952, and the West Bengal Premises Tenancy Act, 1956, we have to examine the question whether the arrears of rent which had been assigned to the present landlord is to be regarded as arrears of rent in respect of the tenancy under the new landlord. The previous landlord may not have chosen to exercise his right to recover rent or, at any rate, he may not have desired to exercise this right as a weapon for ejectment of the tenant. The assignee landlord cannot, therefore, compel the tenant to pay such arrears to avoid ejectment at his instance. We have to read the provisions of the recent Acts in the context and background of the pervading objective of this legislation, namely, the protection of the tenant from ejectment suits. Mr. Narula has also relied on the decision of Venkataramana, Rao, J., in *Gurpur Vamana Pai* v. *Venkatu Naika* (2), where it was held that the "words 'arrears of rent' are wide enough to cover a rent which is even barred by limitation. Also the word 'lessors' in section 114, Transfer of Property Act, include the transferee of lessor".

(1) I.L.R. 27 Cal. 827,
(2) A.I.R. 1936 Mad. 116.

In my opinion, this decision cannot be used in support of the landlord's contention. After a full consideration of the question, I have reached the conclusion that the tenant-petitioner was not bound to pay the arrears of rent which were due from him before the present tenancy started on 27th of March, 1957.

On the second question, it has been urged by Mr. Kapur, that the lower appellate court has placed undue emphasis on the report of the commissioner who was appointed without notice to the tenant and whose report was made behind his back. Nazir Ahmed has been a member of the family for more than 25 years and, as observed by the learned trial Judge, he cannot be called a sub-tenant. Disregarding the report of the local commissioner, the trial judge came to the conclusion that the evidence was inconclusive to prove the factum of subletting. The lower appellate court, however, relied on the report of the local commissioner, which, in my opinion, cannot be used in evidence. If the report of the local commissioner is excluded, there is no evidence to support the finding of the lower appellate court. In this view of the matter, the finding with regard to sub-tenancy cannot be upheld.

In the circumstances of the case, however, I would remand the case to the trial court for a fresh decision on the question whether an ejectment order could be made on the ground that a sub-tenancy had been created. The parties would be free to lead such further evidence as they desire. The parties have been directed to appear before the trial court on 5th October, 1960. The costs of this revision petition would abide the event.

B.R.T.