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uniform quality. Otherwise the whole value of the check and counter-check is completely lost.

It is not in dispute that the rules framed under the Act, do not provide for any special cases as mentioned in section 11(1)(b), but this is clearly an omission which requires to be rectified without delay. Obviously it is necessary to make some provisions for dealing with articles of food which are packaged in quantities too small to be divided into three parts so that each part will provide the minimum required for analysis in accordance with the provisions of rule 22. In this table aerated water appears at No. 15 and the approximate quantity to be supplied for analysis is there stated to be 20 oz. This figure was apparently substituted for the figure 12 ozs. by a notification, dated the 9th of December, 1958. This rule appears to be almost impossible to comply with properly as regards aerated waters which are not ordinarily sold in bottles containing more than 12 ozs. each and often as in the case of Coca Cola, less and thus the minimum requirement amounts to the contents of more than one ordinary bottle. The sooner this omission in the rules is remedied the better it will be for all concerned.

As matters stand I am of the opinion that the prosecution must fail in this case because the sample was not taken in accordance with the provisions of section 11(1). The result is that I accept the revision petition and acquit the petitioner whose fine, if paid, is to be refunded.

*B.R.T.*

APPELLATE CIVIL

*Before D. Falshaw, C.J.*

CHARAN DASS,—*Appellant.*

*versus*

MOHAN LAL GOELA,—*Respondent.*

**Execution First Appeal No. 69-D of 1959.**

1962

Jan., 25th

*Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Section 33—Disputes between landlords and tenants under the Act—Whether can be referred to arbitration.*

*Held*, that the disputes between the landlords and the tenants cannot be referred to arbitration as they are to be dealt with by the Courts under the provisions of the Delhi and Ajmer Rent Control Act, 1952, and no decrees on the basis of such awards can be passed or executed. The settlement of disputes by arbitration would easily lead to the tenants contracting themselves out of the protection afforded to them by the provisions of the Act and to the passing of decrees on awards in violation of the provisions of the Act.

*Execution First Appeal from the order of Shri Balwant Singh Sekhon, Sub-Judge, Ist Class, Delhi, dated the 25th August, 1959, dismissing the objection of the judgment-debtor.*

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

D. D. CHAWALA AND M. K. CHAWALA, ADVOCATES, for the Respondent.

JUDGMENT

FALSHAW, C.J.—These are three appeals by Charan Das, Tirath Ram and firm Messrs Diwan Chand-Dholan Das & Co., against orders in execution proceedings dismissing their objections to the execution of the decree for possession of the leased premises. Falshaw, C.J.

The facts are that certain premises in Gurr-ki-mandi, Delhi, were leased by Mohan Lal Goela respondent to Charan Das, one of the appellants, at a monthly rent of Rs. 550 and according to the landlord Charan Das, in 1953 sublet parts of the premises to five other persons including the other two appellants with the result that in 1957, six persons were carrying on business in separate parts of the premises and on the 31st of January, 1957, a quit notice was served by the landlord on Charan Das, on the grounds both of subletting and arrears of rent.

According to the documents placed on the file, on the 4th of June, 1957, Mohan Lal Goela

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and the six persons occupying the various portions of the premises executed a document referring their disputes to the arbitration of Mr. H. S. Tyagi, Advocate. On the 6th of June, 1957, the arbitrator delivered his award, which was stated to be on the basis of an agreement between the parties. The gist of this award was that the tenants were to vacate the premises by the 31st of August, 1958, and to pay Rs. 9,950, on account of arrears of rent forthwith, and a further sum of Rs. 6,000 representing the total amount which would become due as rent up to the 31st of August, 1958, when the premises were to be vacated, by the 30th of November, 1957. An application was filed in Court for filing the award without any delay and the parties all appeared and made statements that they had no objections against the award, which was made a rule of the Court, on the 5th of August, 1957.

It is not disputed that the two sums of money mentioned in the award representing arrears and future rent were paid in time, but the occupants of the premises did not vacate them on the date mentioned in the award. On this the landlord filed an execution application in which the execution of the decree was opposed by the three appellants on the ground that the decree which was sought to be executed was a nullity. This objection was overruled by the executing Court and hence these appeals.

At the time when the decree based on the award was passed the Delhi and Ajmer Rent Control Act of 1952 was still in force and the matter is accordingly to be decided in accordance with its provisions and not those of the Act of 1958, which repealed and superseded it. On behalf of the appellants reliance is placed on the provisions of section 13, which forms part of Chapter III, dealing with the control of eviction of tenants. Sub-section (1) opens with the words—

> "Notwithstanding anything to the contrary contained in any other law or any

contract, no decree or order for the recovery of possession of any premises shall be passed by any Court in favour of the landlord against any tenant (including a tenant whose tenancy is terminated):

Provided that nothing in this sub-section shall apply to any suit or other proceeding for such recovery of possession if the Court is satisfied".

Then follows a catalogue of grounds on which a tenant can be evicted and these grounds admittedly include subletting after the commencement of the Act without the consent in writing of the landlord and failure to pay arrears of rent after a notice of demand by the landlord.

It is not in dispute that in view of the provisions of section 33 of the Act, the Court which passed the decree on the basis of the award, which was the Court of a Subordinate Judge, of First Class, was a Court competent to decide a suit, for possession of the premises and competent to hear and decide a suit for ejectment brought under section 13 of the Act, but it is contended that since under section 17 of the Arbitration Act, once an award is filed and the parties appear and state that they do not wish to file any objections to it, ordinarily the only course for the Court is, on the expiry of period of limitation for filing an application to set aside the award, to make the award a rule of the Court and pass a decree based on it, and in such circumstances it cannot possibly be said that the Court was "satisfied" that any of the grounds contained in section 13 for ejectment existed. Indeed, it could only be said that the Court had never even applied its mind to the question. Reliance was placed on my decision in *Maharaj Jagat Bahadur Singh* v. *Badri Parshad Seth* (1) to the effect that a tenant cannot contract himself out of the benefits of the East Punjab Urban Rent Restriction Act of 1949,

(1) 1954 P.L.R. 549: I.L.R. 1955 Punj. 724.

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the main object of which is the protection of tenants against landlords and in fact the primary object of the said Act or any other Acts of this kind is quite clearly to prevent landlords from charging excessive rents and from forcing tenants to pay increased rents by threat of ejectment, the underlying principle apparently being that any contract entered into by a tenant is likely to be made under pressure and that, therefore, the tenants must be protected from its consequences and so to allow a landlord to enforce a contract would be against public policy. The contention was that the whole arbitration proceedings and the decree which followed amounted to no more than a contract between the parties, the tenants agreeing to forego the protection afforded to them by law against ejectment on condition of being allowed more than a year to vacate the premises.

On the other hand reliance was placed by the respondent and also by the lower Court, on the decision of Dua, J. and myself in *Babu Ram Sharma* v. *Bal Singh* (2). Two questions had been referred to a Division Bench in that case, (i) whether on application for ejectment for non-payment of rent, the Rent Controller is competent to pass a compromise decree for payment of the rent by instalments with a default clause, and (ii) whether on default occurring the civil Court is competent to execute that decree and we answered both these questions in the affirmative, the basis of the decision being that the ejectment of the tenant was sought on one of the grounds contained in the relevant section of the Act, and that ground was admitted to exist, and so the fact that the parties had come to a compromise, did not oust the jurisdiction of the Rent Controller to pass a decree.

On the other hand this case was distinguished on the ground that at any rate a regular suit had been instituted under the Act, for the ejectment of the tenant and the Court was considering the question of ejectment as such when it passed the

(2) 1959 P.L.R. 33: I.L.R. (1959) 1 Punj. 184.

decree based on the compromise, whereas in the present case the parties had apparently agreed on certain terms and referred their disputes to an arbitrator with the result that a cut-and-dried case was presented to the Court, which then dealt with the case not on the basis that it was a suit for ejectment, but simply an unopposed application for the filing of an arbitration award.

On behalf of the appellants my attention has been drawn to the decision of Dixit and Vyas, JJ., in *Sabavva Kom Hanmappa Simpiger* v. *Basappa Andaneppa Chiniwar* (3). This case was referred to in one of the judgments under appeal, but only in the form of a brief extract from 1955 N.U.C. Bombay 2315. The full judgments of both the learned Judges are printed in the Bombay Law Reporter and the case deserves consideration as the facts are very similar to those of the present case. A shop was let by the owner to two tenants for a period of one year from the 11th of November, 1949 to the 10th of November, 1950. When the tenants did not vacate the shop on the termination of the lease the parties referred the dispute which arose between them to arbitration on the 16th of November, 1950. The award was delivered the following day holding that the landlord *bona fide* required the premises and fixing certain dates, for payment in instalments of rent and directing the tenants to deliver possession of the shop to the landlord on the 19th of October, 1952. Thereafter an application was made to the Court of the Civil Judge of the town where the shop was situated for filing the award, which was made a rule of the Court on the 31st of January, 1951, when a decree was passed on the basis of it. The tenants apparently did not surrender possession on the date fixed by the award and decree and execution was sought out by the landlord. As in the present case, execution was opposed on the ground that the decree was a nullity and that the tenants were entitled to the protection of the Bombay Rent Control Act as statutory tenants. It would appear from

(3) LVII-Bombay L.R. 261.

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certain remarks in the judgment of Vyas, J., on page 269, that the Court which filed the award and passed a decree on the basis of it would have been a competent court, under section 28 of the Bombay Act, to deal with an ordinary suit by a landlord for the ejectment of his tenant under the Act, and so to that extent, the case is parallel with the present one in which also the decree sought to be executed was passed by a Court which could have passed a decree for ejectment under the Delhi Act. In spite of this it was held by the learned Judges that the decree was without jurisdiction and not capable of execution. The following passage occurs in the judgment of Dixit, J., on page 265:—

> "It is with this background that one has now to consider the effect of arbitration and the award following it which has led to the passing of the award decree. Now, the arbitration took place under the Arbitration Act, 1940, without the intervention of the Court and an award was made by the arbitrators (*Panchas*) and under section 17 the Court has to pass a decree. Section 17 provides that—
>
> 'Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award.'
>
> The only impediment is the one afforded by section 30 and section 30 enumerates the grounds for setting aside the award.

If, therefore, the application for setting aside the award does not succeed or if no application is made, then under section 17, the Court has to proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree is to follow. In the present case, the Court of the Civil Judge, Muddebihal, passed a decree in terms of the award on January 31, 1951, and the decree provided for *inter alia* possession of the property to be given to the plaintiff and by the defendants in circumstances mentioned in clause 1 of the decree. The question which then arises is: is the decree passed by the court a decree passed by it after applying its mind to the provisions of the Act or is it merely a decree following a decision made by an arbitrator? In other words, is it the decision of the arbitrator and not the decision of the Court, which had ended in the decree ? Now, the expression 'no other Court' as occurring in section 28 may either mean that it is any other Court that is prohibited from entertaining a suit or it may mean a Court other than the Court mentioned, which may include an arbitrator..... Mr. Datar contends that the expression 'Court' occurring in 'no other Court' in section 28(1) can only mean the Court as ordinarily understood and will not include an arbitrator. Mr. Jahagirdar contends for the opposite view and he says that although it is not correct to say that an arbitrator is a Court, an arbitrator is for all purposes in the position of a Court. If the expression 'no other Court' as occurring in section 28(1) is construed literally, Mr. Datar would seem to be right. But in this case, we have to answer ourselves a further question which is,

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what is the true effect of section 28(1) when it says that 'no other Court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question'. As I said in an earlier part of this judgment, the intention of the legislature is to constitute certain Courts, which have been given power to deal with certain specified matters as enacted in the Act. If, therefore, it is the exclusive jurisdiction of such Courts to entertain a suit, a proceeding or an application and to deal with any claim or question arising out of the Act, surely it is that special Court and that special Court alone which will have power to deal with these matters, and although section 28(1) does not, in express terms, exclude an arbitrator, it must be held that by necessary implication, an arbitrator is prevented from dealing with matters which arise under the Act.....

If arbitrators appointed by parties decide in a manner contrary to the provisions of sections 12 and 13, the result will be that the provisions of sections 12 and 13 will be rendered nugatory. But that surely is not the intention of the legislature. Mr. Datar also urged that it may result in making the provision contained in Order 23, rule 3 of the Code of Civil Procedure nugatory. In my opinion, Mr. Datar is not right in his contention. In the latter case, the suit will be filed in a Court contemplated by the Act. The Court will have considered whether the terms of compromise are lawful, and if satisfied that they are lawful, then the Court has no option but to pass a decree in terms of the compromise. This is a different thing from

saying that the law of arbitration is not affected by the provisions contained in section 28(1)."

The matter was put in this way by Vyas, J., on page 269:—

"In short, Mr. Datar's submission is that, for the purpose of dealing with and deciding a suit or proceeding under section 28, the law of arbitration is not excluded, abrogated or superseded and arbitration is not forbidden. Therefore, says Mr. Datar, even in the matter of a suit or proceeding relating to recovery of rent or possession of premises to which the provisions of Part II of the Act apply, the parties can go to arbitration, the arbitrators can validly arbitrate and give an award, and when the award is given and a party files a suit or a proceeding to obtain a decree on the basis of it, a Court, under section 28 can competently pass a decree in terms of the award. It is contended that to hold that recourse to arbitration is forbidden or excluded by section 28 is to render nugatory the law of arbitration in matters relating to recovery of rent, ejectments, etc. We are told that the Legislature could not have intended to create such a position. Mr. Datar's contention is opposed to the plain language of section 28, which makes the intention of the Legislature amply manifest. "Section 28 opens with the words 'Notwithstanding anything contained in any law' and there is no doubt that the Legislature intended to include in other laws the law of arbitration when they used the words 'in any law'. These opening words of the section clearly suggest, I think, that though under the law of arbitration, it would be open to parties at dispute regarding rights of a civil nature to refer the

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dispute to an arbitration, so far as the dispute is between a landlord and a tenant and so far as it relates to the recovery of rent or possession of premises to which the provisions of Part II of the Act, apply, the Legislature intended to lay down and in terms laid down that the jurisdiction to decide the dispute shall vest in the Court mentioned in clauses (a) and (b) of the section and in 'no other Court'. When the Legislature creates a special Court for entertaining, dealing with and deciding certain specified matters, the jurisdiction of other Courts, tribunals and bodies of persons, which they might under the ordinary law possess to entertain or deal with the said maters, is ousted or taken away by necessary implication; otherwise, the creation of special Court becomes meaningless; for the parties, if they are inclined to do so, can easily contract out of the provisions of section 28 and can defeat the intention of the Legislature, namely that certain matters shall be entertained and dealt with only by certain Courts, by having recourse for instance to the law of arbitration. In my view, the words 'no other Court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question' exclude resort to arbitration by necessary implication. Notwithstanding the creation of a special Court for the purpose, if landlords and tenants choose arbitrators for dealing with and deciding the disputes regarding recovery of rent and possession of premises, the special Court would become a mere award recording machine. I do not think the Legislature intended to create such a result.

There is no doubt that a reference to arbitration is excluded by section 28 of the Act and that becomes clear in this way also. If arbitration is not excluded, then if parties go to arbitration and if the arbitrators give an award and if the award directs that the tenant must deliver possession to the landlord on or before a certain date and if the Court has to pass a decree in terms of the award, what would happen in a case in which on the very first date of hearing before the Rent Court, before whom the award is filed for obtaining a decree in terms thereof, the tenant tenders rent in Court ? Section 12(3)(d) of the Act provides that—

'No decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tenders in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court.'

If the award directs eviction and if the rent Court is obliged to pass a decree in terms of the award it is clear that the purpose of enacting section 12(3)(d) will be frustrated. The Legislature could not have intended to enact provisions which could be by-passed or easily defeated."

The learned counsel for the landlord sought to distinguish this decision on the strength of the words, which have been stressed by the learned Judges, in section 28 of the Bombay Act, "and no

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other Court", which do not occur in section 33 of the Delhi Act of 1952, which gives any civil Court in Delhi which has jursidiction to hear and decide a suit for recovery of possession of any premises jurisdiction to hear and decide any case under the Act. It is, however, clear that when any competent civil Court is deciding a case under the Act it has to decide matters of ejectment strictly under the provisions of the Act, and in particular the provisions of section 13, which starts with the words 'notwithstanding anything to the contrary contained in any other law of any contract' and requires that a Court shall be satisfied on one or more of the grounds of eviction contained in the section before a decree for eviction is passed. I, therefore, do not consider that the absence of the words 'no other Court' in section 33 is of very much importance, and I am of the opinion that the provisions of the Act as a whole were clearly intended to exclude the reference of disputes between landlords and tenants triable by a Court under the Act from settlement by arbitration, which could easily lead to the tenants contracting themselves out of the protection afforded to them by the provisions of the Act, and to the passing of decrees based on awards in violation of the provisions of the Act. Furthermore, I do not consider that the mere fact that in the present case, the recitals in the deed of reference to arbitration, and in the arbitrator's award, reveal grounds on which a decree might have been obtained in a suit filed under section 13 of the Act detracts in any way from the general validity of the decision that such disputes cannot be referred to arbitrators. The question of non-payment of rent has been referred to in the Bombay case and it may be mentioned that there is a similar provision in the Delhi Act that a decree for ejectment on grounds of non-payment of rent cannot be passed where the tenant on the first day of hearing of the suit deposits in Court, the arrears of rent then due together with the costs of the suit. As regards the other ground in the present case, namely subletting of parts of the premises without the written consent of the landlord after the

commencement of the Act of 1952, it is contended that in fact the statements made in the reference to arbitration regarding the tenancy of Charan Das having commenced in 1953, after the commencement of the Act and of sublet thereof are incorrect and obviously, since the proceedings were allowed to go through without any opposition at any stage, this may be true. However, in the light of my remarks above to the effect that references by landlords and tenants to arbitration of disputes which can only be dealt with by the Courts under the provisions of the Act are illegal, it must be held that it would make no difference even if the statements made by the parties in the reference agreement and award were correct. The result is that I accept the appeals and hold that the decree being passed by the Court, without jurisdiction is not executable.. In the circumstances, I leave the parties to bear their own costs.

*B.R.T.*

REVISIONAL CIVIL

*Before Tek Chand and S. B. Capoor, JJ.*

ADARSH INDUSTRIAL CORPORATION,—
*Appellant.*

*versus*

THE MARKET COMMITTEE, KARNAL,—*Respondent.*

**Civil Revision No. 213 of 1961.**

1962

Jan., 29th

*Punjab Agricultural Produce Markets Act (V of 1939)—Section 31—Whether authorises recovery of dues from licencees to Markets Committees as arrears of land revenue—Punjab Agricultural Produce Markets Rules, 1940—Rule 51—Whether* ultra vires—*Maxim* "Expressio unius est exclusio alterius"—*Applicability of—Jurisdiction of Civil Courts to entertain suit for perpetual injunction against the Market Committee restraining it from recovering the amount levied as fee on the ground that levey is void, illegal, unjust,* ultra vires, *etc.—Whether barred.*

*Held,* that under section 31 of the Punjab Agricultural Produce Markets Act, 1939, the recovery of sums as arrears of land revenue was confined to the amounts which were