

## REVISIONAL CIVIL.

Before Bhandari, C. J.

BANARSI LAL TALWAR,—*Defendant-Petitioner.*

*versus*

B. L. VARMA,—*Plaintiff-Respondent.*

Civil Revision No. 410-D of 1954.

1955

Oct., 5th

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Sections 4 and 33—Tenant's application for determination of standard rent barred by time—Suit by landlord for recovery of rent in the Court of Small Causes—Jurisdiction of Small Cause Court to entertain the suit—Whether the Court can grant decree in excess of the standard rent—Jurisdiction to determine standard rent if barred.

*Held*, that a suit for the recovery of arrears of rent for a sum not exceeding Rs. 1,000 can be heard and determined only by a Court of Small Causes.

*Held further*, that when a landlord brings a suit for the recovery of rent and the tenant alleges that the amount claimed is in excess of the standard rent, it is the duty of the Court of Small Causes to determine the standard rent even though the tenant's application for determination of the standard rent is barred by time. Expiry of the period of limitation destroys the remedy of the tenant to claim a determination of the standard rent but does not destroy his right to pay only the standard rent and nothing more.

*Application for revision, under section 25 of the Small Cause Courts Act of the order of Shri B. L. Aggarwal, Judge, Small Cause Court, Delhi, dated the 30th November, 1954, passing a decree for Rs. 320 in favour of the plaintiff against the defendant with costs amounting to Rs. 58-14-0.*

S. D. SURI, for Petitioner.

GAURI DAYAL, for Respondent.

#### JUDGMENT.

BHANDARI, C. J. These two connected petitions raise a common question of law, namely whether the Court of Small Causes at Delhi was competent to determine the standard rent in respect of the premises in question. Bhandari, C.J.

On the 1st April, 1953, Mr. Banarsi Lal rented a house belonging to Mr. B. L. Varma on a rental of Rs. 64-2-0 per mensem. He failed to pay the rent which was due from him and the landlord accordingly brought two suits for the recovery of rent at the contractual rate for two separate periods of occupation. Both these cases were instituted in the Court of Small Causes at Delhi. As soon as the tenant appeared in Court he raised two objections, namely (1) that

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in view of the provisions of section 33 of the Delhi and Ajmer Rent Control, Act, 1952, it was not within the competence of the Court to deal with the case, and (2) that in view of the provisions of section 4 of the said Act the Court was not at liberty to grant a decree for rent in excess of the standard rent. The trial Court overruled these objections and granted a decree in a sum of Rs. 320 in the first case and a decree in a sum of Rs. 193 in the second case. The tenant is dissatisfied with the orders and has come to this Court in revision.

There can be no manner of doubt that a suit for the recovery of arrears of rent for a sum not exceeding Rs. 1,000 can be heard and determined only by a Court of Small Causes. This is clear from the provisions of sections 15(2) and 16 of the Provincial Small Cause Courts Act. The first objection raised by the tenant must therefore be dismissed as wholly untenable.

The question whether the trial Court was at liberty to determine the standard rent in the present case is not entirely free from difficulty. Section 4 of the statute provides that no landlord shall charge rent in excess of the standard rent and declares by implication that the Court shall refrain from passing a decree for rent in excess of the standard rent. If the standard rent has already been determined by the Court under section 8 no difficulty presents itself, for all that the Court is required to do is to calculate the rent in accordance with the standard rent. The difficulty arises only when an application under section 8 for determination of the standard rent is not presented within the period of limitation prescribed by section 11. Had the tenant in the present case applied to a Civil Court for a determination of the standard rent on the date on which the suit was brought against

him, there can be no manner of doubt that his application would have been rejected on the short ground that it was presented after the expiry of the period of limitation; but it is a settled proposition of law that although the expiry of the period of limitation destroys the remedy of the tenant to claim a determination of the standard rent, his right to pay only the standard rent and nothing more still remains (*Gopal Bhaurao Jape v. Jagannath Pandit Vasudeorao Pandit Maharaj* (1), and *Ram Surup v. Ram Chandra* (2)). The tenant in the present case is not endeavouring to obtain a declaration in regard to the standard rent payable by him. He is seeking merely the enforcement of the statute which declares that no tenant shall be required to pay rent in excess of the standard rent. He is asking only for the protection which the statute affords to every tenant. This being so, it was clearly the duty of the trial court to determine the standard rent for the purposes of these two cases and to grant a decree in accordance with the provisions of law. The expression "standard rent" in relation to any premises means—

- (i) Where the standard rent has been fixed by the Court under section 8, the rent so fixed; or
- (ii) where the rent has not been fixed under section 8, the standard rent of the premises as determined in accordance with the provisions of the Second Schedule.

As the standard rent in relation to these premises has not been fixed under section 8, it must obviously be determined in accordance with the provisions of the Second Schedule. Rule 2 of the Second Schedule declares that where the premises in respect of which

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(1) A.I.R. 1935 Bom. 326

(2) A.I.R. 1949 E.P. 29

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rent is payable were let for whatever purpose on or after the 2nd day of June 1944 the standard rent of the premises shall be, so long as the standard rent is not fixed by the Court, the rent at which the premises were first let. It is common ground that the house in question was constructed after the 2nd June, 1944 and that it was let for the first time at the rental of Rs. 64-2-0. This rent must therefore be deemed to be the standard rent in respect of the house in question.

For these reasons I am of the opinion that the decrees passed by the lower Court had been passed in accordance with the provisions of law. The petitions must therefore be dismissed.

In view of the somewhat difficult question of law which has arisen in this case I would leave the parties to bear their own costs.