

Before J. V. Gupta, J.

HARI KISHAN DASS,—Petitioner.

versus

SMT. DALJIT KAUR AND OTHERS,—Respondents.

Civil Revision No. 1527 of 1985.

October 10, 1985.

Haryana Urban Control of (Rent and Eviction) Act (XI of 1973)—Section 13(2)(v)—Evidence Act (1 of 1872)—Section 20—Ejectment sought on the ground that the tenant ceased to occupy the premises for a continuous period of four months without sufficient cause—Tenant denying the allegations—Counsel for parties agreeing for the appointment of a referee for determining the issue—Referee finding that the premises had not been occupied for a long time—Tenant filing objections against the report of the referee—Filing of objections—Whether warranted—Rent Controller—Whether should have passed the ejectment order forthwith on receipt of the report of the referee.

Held, that the statement of the counsel for the parties is to be read with the allegations made in the ejectment application and the written statement filed by the tenants. The landlord pleaded in the ejectment application that the tenants had ceased to occupy the premises for a continuous period of four months without sufficient cause. The tenants denied the allegations in the written statement. In view of these pleadings the counsel for both the parties made a statement for the appointment of a referee to report whether the tenants were residing in the house in dispute. The report of the referee is quite specific and it had been found that the house in question was not being used for residence for a long period. In view of the report of the referee there was no option for the Rent Controller but to pass the ejectment order forthwith. Allowing the parties to file objections, if any, to the said report of the referee was uncalled for. The referee was appointed as contemplated under section 20 of the Indian Evidence Act and, therefore, the question of filing any objections to the said report did not arise and if at all filed, were not warranted. In view of the pleadings of the parties and the statement made by their counsel and the report of the referee, it is evident that the ground of eviction mentioned in section 13(2)(v) of the Haryana Urban Control of (Rent and Eviction) Act, 1973 was duly proved and the ejectment order should have been passed straightaway by the Rent Controller.

(Para 5).

Petition under Article 227 of the Constitution of India read with Section 15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1976, praying that civil revision be allowed, impugned orders passed by the learned Rent Controller, directing the parties to adduce evidence in the case be set aside and the order of ejectment be passed against the respondents.

C. B. Goel and L. N. Jindal, Advocates, for the Petitioner.

Shri R. S. Cheema and Shri Umesh Wadhawa., Advocates, for the Respondent Nos 1 to 3.

JUDGMENT

J. V. Gupta, J.

(1) The brief facts, giving rise to this revision petition are that the petitioner, Harikishan Dass, landlord, filed an ejectment application before the Rent Controller on August 11, 1982, against the respondents for their ejectment from the demised premises. Their ejectment therefrom was sought *inter alia* on the ground that the tenants had shifted to the village and the building, in question, was lying closed for about a year and, thus, they had ceased to occupy the same for a continuous period of more than four months without sufficient cause. Surprisingly enough, the tenants could not be served for a long time. Written statement was filed in December, 1983. In reply to the said allegation, in paragraph 2(b), the plea taken was that the allegation of the landlord that the tenants had shifted to the village and that the house, in question, was lying closed for about a year and thus they had ceased to occupy the same for a continuous period of four months without sufficient cause was incorrect and baseless. The house, in question, was being used by them for residential purposes and that they were residing in the said house up-till that day. There was no occasion to say that they had ceased to occupy the same. Replication dated January 28, 1984, was filed on behalf of the landlord and the allegations made in paragraph 2(b) of the ejectment application were reiterated. On March 23, 1984, both the counsel for the parties made the following statement:

“Both counsel for parties state that some counsel should be appointed as referee to report whether some one is residing in the house, in dispute, at present. If he will report

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that none is residing in the house, in dispute, ejection order should be passed against the respondent and if some one is residing in the house, then, petition should be treated as dismissed. Petitioner and Manjit Singh, respondent, both will visit the spot today along with the referee, R.O. & A.C.

Sd/- Manjit Singh;

Sd/- Mohinderjit Singh, Advocate;

Sd/- R. R. Gupta, Advocate.

Sd/- Rent Controller,
23rd March, 1984."

In view of the said statement, the Rent Controller passed the following orders on March, 23, 1984,—

"One AW present but he is deferred. Both the counsel for parties made the statement that some referee should be appointed in order to report whether some one is residing in the house in dispute at present or not. Shri R. R. Sharma, Advocate, who is present in the Court is appointed as referee in this case and both the counsel for parties agreed that Shri R. R. Sharma, Advocate, should be appointed as referee. Referee will visit the spot today and will report whether some one is residing in the house, in dispute, at present or not. He will give reasons in detail for his opinion. His fee is assessed Rs. 150. Petitioner will bear the fee of the referee. Petitioner and respondent Manjit Singh who is present in the Court will go along with referee on the spot today. Now to come up for report on 27th March, 1984."

The said referee made his detailed report dated March 23, 1984, wherein it was concluded,—

"In my opinion, keeping in view the circumstances and conditions prevailing in the disputed house at present the house, in question, is not being used for residing purposes for a long period."

On March 27, 1984, the case was adjourned to March 31, 1984, for filing objections, if any, to the said report of the referee. Objections thereto were filed by the tenant. On March 31, 1984, the case was

adjourned to April 12, 1984, for reply, if any, and consideration. Thereafter the case went on being adjourned from time to time. On August 16, 1984, the Rent Controller framed the following issue:

“Whether the report of the local commissioner is liable to be set aside? OPA Objector.”

No evidence was led by the tenants on the said issue. The case was again got adjourned for arriving at a compromise from time to time. Ultimately,—*vide* order dated May 31, 1985, the Rent Controller adjourned the case to August 31, 1985, for evidence of the petitioner on payment of costs of Rs. 60. From the interim orders passed by the Rent Controller from time to time, it could not be pointed out as to how the order dated May 31, 1985, passed by the Rent Controller was justified. Meanwhile, the landlord filed the present petition under Article 227 of the Constitution on April 29, 1985, challenging the order of the Rent Controller dated August 16, 1985, directing the objector to adduce evidence on the issue framed by him.

3. The learned counsel for the petitioner contended that in view of the statement made by the counsel for the parties on March, 23, 1984, before the Rent Controller, no objections, if any, were maintainable against the report of the referee. According to the learned counsel, after the said report was made by the referee that no one was residing in the house, in dispute, the ejection order should have been passed against the tenants by the Rent Controller on the basis of the said report and in view of the said statement of the counsel for the parties. Thus, argued the learned counsel, inviting the objections and allowing the parties to lead their evidence was uncalled for and the disposal of the ejection application has been delayed unnecessarily by the tenants by using delaying tactics. In support of the contentions, the learned counsel relied upon *Tulsi Dass v. Sonu Ram* (1); *Flerabel Skinner v. J. B. K. Ram Lila Mandal, Hissar* (2); *Bishamber Dayal v. Kishan Chand* (3) and *Joginder Singh v. Bahadur Singh* (4). According to the learned counsel, since the conclusion of the referee that the house, in question, was not being used for residence for a long period, was a ground for ordering the ejection of the tenants there from as provided under section 13 of

(1) 1985 Haryana Rent Reporter 407.

(2) A.I.R. 1980 Punjab and Haryana 284.

(3) A.I.R. 1983 Punjab and Haryana 445.

(4) 1978(2) R.L.R. 708.

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the Haryana Urban (Control of Rent and Eviction) Act, 1973, (hereinafter called the Act), the ejection order should have been passed by the Rent Controller against them on the basis of the report of referee itself. In support of the contention, the learned counsel relied upon *Shiv Dayal v. Kewal Verma* (5). On the other hand, the learned counsel for the tenants submitted that even if the report of the referee be accepted at its face value, no ejection order could be passed on its basis unless a case thereto was made out under section 13 of the Act. According to the learned counsel, there is no finding by the referee in his report that the tenants ceased to occupy the building, in dispute, for a continuous period of more than four months without sufficient cause. Thus, argued the learned counsel, in the absence of any such finding by the referee therein, no ejection order could be passed against the tenants. Therefore, the Rent Controller rightly directed the parties to lead their evidence on the issue framed. In support of the contention, the learned counsel relied upon *Jai Gopal v. Om Parkash*, (6). The learned counsel also contended that the petition under Article 227 of the Constitution was not maintainable and in any case, it suffered from laches and delay as the order passed as far back as August 16, 1984, was being challenged in this Court by filing this petition on April 29, 1985. In support of this contention reliance was placed by the learned counsel on *Kishan Swarup v. Kishan Dei*, (7).

(4) I have heard the learned counsel for the parties and have also gone through the case law cited at the bar.

(5) The statement of the counsel for the parties dated March 23, 1984, is to be read with the allegations made in the ejection application and the written statement filed by the tenants. Admittedly, in the ejection application, the landlord did plead in paragraph 2(b) that the tenants had shifted to the village and the house, in question, was lying closed for about a year and that the tenants had ceased to occupy the same for a continuous period of four months without sufficient cause. The position taken by the tenants in the written statement in that behalf was that the said allegations were wrong and that the house, in question, was being used by them for residential purposes as they were residing therein till then. In view

(5) 1982(1) Rent Law Reporter 402.

(6) 1979 Current Law Journal 559.

(7) 1972 Rent Control Reporter 417.

of these pleadings, the counsel for both the parties made the statement on March 23, 1984, re-produced in the earlier part of this judgment. The report of the referee is quite specific and it has been found therein that at present, the house, in question, is not being used for residence for a long periods. Thus, the ground of ejection alleged by the landlord was within the ambit of section 13 of the Act. The report of the referee was also to the same effect when read with the allegations made in the ejection application and the written statement and the statement of the counsel for the parties made before the Rent controller on March 23, 1984. In these circumstances, in view of the said report of the referee, there was no option for the Rent Controller but to pass the ejection order forthwith. Allowing the parties to file objections, if any, to the said report of the referee was uncalled for. The report was made on March 23, 1984, and by delaying tactics adopted by the tenants, the proceedings have been delayed for such a long time. It is not disputed that Shri R. R. Sharma, Advocate, was appointed as a referee as contemplated under section 20 of the Indian Evidence Act. That being so, the question of filing any objections to the said report of the referee did not arise and if at all filed, were not warranted. Under section 13 of the Act, it is one of the grounds of ejection that the tenant is liable to be ejected if he has ceased to occupy the premises for a continuous period of four months without any sufficient cause. As stated earlier, in view of the pleadings of the parties and the statement made by the counsel for the parties before the Rent Controller on March 23, 1984 and the report of the referee, it is evident that the said ground of eviction was duly proved and the ejection order should have been passed straight away by the Rent Controller.

(6) As regards the alleged laches on the part of the petitioner at the time of the motion hearing, he was directed to file an affidavit as to the progress of the proceedings before the Rent Controller after the passing of the impugned order. Affidavit dated August 1, 1985, in that behalf, was filed by the petitioner wherein it was stated that after the passing of the impugned order on August 16, 1984, the case has been adjourned for one reason or the other and that the next date fixed therein by the Rent Controller was August 31, 1985. This version in the affidavit is supported by the record summoned from the Rent Controller by this Court. Under the circumstances, the question of laches does not arise in this case. The authorities relied upon by the learned counsel for the respondents have no applicability to the facts of the present case.

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(7) Consequently, this revision petition succeeds and is allowed with costs. The impugned order dated August 16, 1984, passed by the Rent Controller is set aside. He is directed to pass necessary orders in view of the report of the referee dated March 23, 1984. The parties have been directed to appear before the Rent Controller on 4th November, 1985. The records of the case be sent back forthwith.

N.K.S.

Before M. M. Punchhi, J.

FOOD CORPORATION OF INDIA AND OTHERS,—*Petitioners.*

versus

M/S GURU HARKISHAN RAI RICE MILLS,—*Respondents.*

Civil Revision No. 2016 of 1985.

October 15, 1985.

Arbitration Act (X of 1940)—Section 34—Arbitration clause in an agreement—One party instituting proceedings in the Civil Court—Application by the other party for stay of proceedings—Intention of the applicant to invoke the arbitration clause—Whether to be manifested in any particular form or manner—Filing of an application under section 34—Whether by itself an indication that the applicant was ready and willing to have the matter decided by arbitration.

Held, that a plain reading of section 34 of the Arbitration Act 1940 makes it clear that when any legal proceedings have been commenced by whichever party, any party to such legal proceedings may, at any time before filing a written statement (not necessarily by him) or taking any other steps in the proceedings (which means proceedings after the commencement of the suit) apply to the judicial authority before which the proceedings are pending to stay the proceedings. Now this stay is dependent on the judicial authority being satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains ready and willing to do all