

be successfully argued that the order passed by the Collector dismissing the application on merits was without jurisdiction because he had exceeded his jurisdiction by making an elaborate inquiry. **Moreover, it will depend upon the language of each statute as to whether the particular order is within the scope of the Act or not, and, therefore, no general rule of law as tried by the learned counsel to be spelled out from the aforesaid Full Bench authority can be laid down.** The Collector in the present case had the authority to make a summary inquiry and on that inquiry, even if it be an elaborate one, an order is passed by him on merits, such an order is well within the scope of the Act and hence within jurisdiction. That being the position of law to get such an order set aside, the suit must be filed within one year of its passing and a suit filed beyond that period will necessarily be barred by time in view of the provisions of Section 12 of the Act read with Article 100 of the Limitation Act.

(8) In this view of the matter the appeal succeeds, the judgment and decree of the lower appellate Court are set aside and that of the trial Court dismissing the plaintiff's suit are restored with costs.

S. P. Goyal J—I agree

N. K. S.

Before J. V. Gupta, J.

UNION OF INDIA AND ANOTHER,—*Petitioners.*

versus

SURINDER CHAND MEHRA AND OTHERS,—*Respondents.*

Civil Revision No. 534 of 1983.

July 16, 1984.

Constitution of India 1950—Articles 299 & 300—Code of Civil Procedure (V of 1908)—Section 79—East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Premises rented out to the Union

Union of India and another v. Surinder Chand Mehra and another (J. V. Gupta, J)

of India—Eviction petition filed by landlord on the ground of non-payment of rent making President of India as co-respondent—President of India alone served for first date of hearing but rent not tendered thereon—Tenant—Whether liable to be evicted—Impleading of the President of India as a party—Whether proper.

Held, that a reading of Article 299 of the Constitution of India would show that an agreement on behalf of the Union of India is executed in the name of the President. Section 79 of the Code of Civil Procedure, 1908 specifically provides that in a suit by or against the Government the authority to be named as plaintiff or defendant as the case may be, in case of a suit by or against the Central Government, will be the Union of India. Article 300 of the Constitution of India further shows that the Government of India may sue or may be used by the name of the Union of India. The cumulative effect of the various provisions would reveal that the President of India could not be made a party in the civil proceeding even though the contracts or agreements are executed on behalf of the Union of India in the name of the President as provided under Article 299 of the Constitution of India. Thus impleading the President as a party was wrong and illegal and any notice served upon him was illegal. In this view of the matter, even though the President stood served for the first date of hearing it would be of no legal consequence and the same could not be said to be the first date of hearing of the case. Thus if the rent is not tendered on that date the tenant would not be liable to eviction under Section 13 of the East Punjab Urban Rent Restriction Act, 1949.

(Paras 3 & 5).

Petition Under Section 15(U) R. R. Act for revision from the order of the Court of Shri M. L. Merchea, Appellate Authority, Amritsar, dated the 19th day of November, 1982 affirming that of Shri S. K. Chopra, Rent Controller, Amritsar, dated the 31st day of March, 1982 accepting the application and the respondents are directed to vacate the demised premises and to hand over its vacant possession to the applicants landlords upto 10th June.

Ashok Kumar, Advocate and D. D. Bansal, Advocate, for the Petitioner.

H. L. Sarin, Advocate with R. L. Sarin, Advocate, for the Respondent.

JUDGMENT

J. V. Gupta, J.

(1) This is tenant's petition against whom ejection order has been passed by both the authorities below.

(2) The demised premises consisting of one Bangalow No. 501-X-III-7, Rattangari Annexe situated on Chattarbhuji Road, Amritsar was given on rent at the rate of Rs. 400 per month to the Military Estate officer, Jullundur Circle from 5th January, 1973. The regular agreement to that effect was reduced into writing. The agreement was entered into in the name of President of India as contemplated under Article 299 of the Constitution of India. The landlord filed the present application for ejection on 17th January, 1981 *inter alia* on the ground of non-payment of arrears of rent from 1st October, 1980 onwards upto the date of this application. The ejection application was filed against the President of India and the Military Estate Officer, Jullundur Circle, Jullundur Cantt. Notice of this application was issued to the respondents for 23rd February, 1981. On that date Government Pleader appeared for respondent No. 1 i.e. the President of India. The learned Rent Controller assessed the costs as Rs. 55. However, it was stated on behalf of the Government Pleader that service on respondent No. 2 i.e. the Military Estate Officer, Jullundur Circle, was not effected and therefore, the learned Rent Controller directed that respondent No. 2 be again summoned through registered post for 3rd March, 1981. On 3rd March, 1981, the arrears of rent were tendered along with costs amounting to Rs. 9341 on behalf of respondent No. 2. Statements of the counsel for the parties were recorded and the case was adjourned for filing the written statement on 13th March, 1981. However, on the pleadings of the parties issues were framed by the Rent Controller. Ultimately eviction order was passed on the ground that the tender of arrears of rent made on 3rd March, 1981 was accepted under protest and since the tenant respondent No. 2 was served for the earlier date i.e. 23rd February, 1981 as was evident from the written statement filed on 13th March, 1981, the tender made on 3rd March, 1981 was not valid. The other pleas taken by the land-lord were negatived. In appeal the learned appellate authority affirmed the said finding of the Rent Controller and thus maintained the eviction order. Dissatisfied with the same, the tenant Union of India has filed this petition in this Court.

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(3) The learned counsel for the petitioners contended that the landlord wrongly impleaded the President of India as party as he was never the tenant and under the law he could not be made a party in any civil proceedings though the agreement on behalf of the Union of India is always executed in the name of the President of India as contemplated in Article 299 of the Constitution of India. According to the learned counsel section 79 of C.P.C. specifically provides that in a suit by or against the Government the authority to be named as plaintiff or defendant as the case may be shall be, in the case of a suit by or against the Central Government, the Union of India. Reference was also made to Article 300 of the Constitution of India to contend that the Government of India may sue or be sued by the name of the Union of India. Thus argued the learned counsel that the service on the President of India for 23rd February, 1981 was no service in the eye of law and as regards the service on respondent No. 2 i.e. the Military Estate Officer, the same was not effected on that date and he was served for 3rd March 1981 on which date the arrears of rent were duly tendered. Thus argued the learned counsel that being the first date of hearing the tender was valid. The approach of the authorities below in this behalf according to the learned counsel was wrong and illegal and thus the finding arrived at was vitiated. It was also contended that the Union of India was the proper party to be made though the premises were let out to the Union of India through the Military Estate Officer, Jullundur Circle.

(4) On the other hand, the learned counsel for the landlord submitted that from the written statement filed on 13th March, 1981 it was quite evident that the Military Estate Officer signed the same on 21st February, 1981 which clearly means that he was served for the date 23rd February, 1981 and therefore, service having been effected for 23rd February, 1981, that was the first date of hearing and as the rent was not tendered on that date, eviction order was rightly passed by the authorities below. According to the learned counsel, impleading the President of India as party may be a technical mistake, but he was duly served and was represented by the Government Pleader on 23rd February, 1981 and under the circumstances that will be deemed to be the first date of hearing for making the tender of the arrears of rent. According to the learned counsel once it is found that the respondent Military Estate Officer had the notice of the date of hearing i.e. 23rd February, 1981 then the Court shall not set aside a decree if passed

ex parte merely on the ground that there has been an irregularity in the service of summons. In this context reference was made to Order 9 Rule 13 C.P.C. as amended.

(5) After hearing the learned counsel for the parties, I find force in the contention raised on behalf of the petitioner. The learned counsel for the landlord was unable to show any provision of the statute under which President of India could be made a party in the Civil proceedings even though the contracts or agreements are executed on behalf of the Union of India in the name of the President as provided under Article 299 of the Constitution of India. Thus impleading the President of India as a party was wrong and illegal and any notice served on him was of no consequence. As a matter of caution, the Courts should be vigilant enough before issuing the summons as to see who are the parties arrayed as respondents or defendants. In this view of the matter, even though the Government Pleader appeared on behalf of the President of India on 23rd February, 1981, but it was of no legal consequence and the same could not be said to be the first date of hearing. The Military Estate Officer in whose occupation the premises were, was not served for that date. The very fact that fresh summons were issued to him for 3rd March, 1981 was sufficient to hold that the Rent Controller was not satisfied that the Military Estate Officer was served for 23rd February, 1981. Admittedly on 3rd March, 1981, the arrears of rent were tendered. Under the circumstances, it could not be held that the first date of hearing will be deemed to be 23rd February, 1981 because in the written statement filed 13th March, 1981 it was found that it was signed by the Military Estate Officer on 21st February, 1981. As a matter of fact once the Court adjourns the case for service on the respondents, then it could not be successfully argued that they would be deemed to have been served earlier for the prior date simply because in the written statement filed subsequently, some prior date had been mentioned therein. The matter might have been different in case respondent No. 2 i.e. Military Estate Officer was proceeded *ex parte* and then an application would have been filed for setting aside the *ex parte* proceedings. In that situation, it might have been argued that since he had the knowledge of the proceedings therefore, irregularity in service was not a sufficient ground for setting aside the *ex parte* order. That is not the situation in the present case. Here the tenant is required to tender the arrears of rent on the first date of hearing and the first date of hearing will

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be the date for which he is served and the Court is satisfied that he was served for that date. As observed earlier, the Rent Controller was never satisfied that respondent No. 2 was served on 23rd February, 1981. If he was satisfied then there was no occasion for adjourning the case for 3rd March, 1981 for service on respondent No. 2. The very fact that the case was adjourned for service for 3rd March, 1981, proved that the respondent was not served for that date. Under the circumstances, the first date of hearing will be 3rd March, 1981 and not 23rd February, 1981 as held by the authorities below. The whole approach of the authorities in this behalf is mis-conceived and is wrong and illegal and thus the finding arrived at is vitiated.

(6) The learned counsel for the petitioner also tried to argue the question of *res judicata* etc. as to the relationship of landlord and tenant between the parties. But in view of the above finding this question does not arise. Consequently the petition succeeds and the orders of the authorities below are set aside and the ejection application is dismissed with no order as to costs.

H. S. B.

Before S. P. Goyal & S. S. Kang, JJ.

JOTI RAM AND OTHERS,—Appellants.

versus

CHAMAN LAL AND OTHERS,—Respondents.

First Appeal from Order No. 536 of 1979.

July 16, 1984.

Indian Succession Act (XXXIX of 1925)—Section 306—Motor Vehicles Act (IV of 1939)—Section 110-A—Accident victim claiming damages under various counts—Such victim dying of other causes during course of trial—Right to continue with the claim petition—Whether survives to the legal representatives of the deceased.

Held, that a reading of section 306 of the Indian Succession Act, 1925 would reveal that action for personal injuries, short of causation, abates with the death of the injured and does not survive to