

Nunia Mal and
another
v.
Maha Dev
Tek Chand, J.

from the Railway Station. It was also said that the railway track is in a ruined condition and is totally unserviceable and the railway lines are buried under earth, a tree is standing in the middle of the track, and buildings are constructed within the prohibited margin. There is force in this contention.

For the several reasons discussed above, this appeal deserves to succeed. There is no merit in the plaintiff's contentions. The reasoning of the lower appellate Court and also its conclusions are erroneous in law. I, therefore, set aside the judgment and decree passed by the lower appellate Court and restore that of the trial Court. In the result, the appeal is allowed and the plaintiff's suit is dismissed with costs.

K. S. K.

APPELLATE CIVIL

Before D. Falshaw, C.J.

SIRI RAM,—Appellant

versus

DELHI CLOTH AND GENERAL MILLS CO. LTD.—

Respondent.

Regular Second Appeal No. 160-D of 1961

1962
Jan., 10th

Delhi Rent Control Act (LIX of 1956)—Sections 17, 18 and 22—Eviction order passed under section 22 against the tenant and his lawful sub-tenant—Whether enforceable in view of section 18—Section 22—Whether offends Article 14 of the Constitution.

Held, that section 18 of the Delhi Rent Control Act, 1958, does not protect even lawful sub-tenants when an eviction order is passed under section 22 of the Act. Indeed it specifically refers to eviction orders under section 14, whereas the special provisions governing eviction under section 22 specifically exclude the application of the provisions of section 14. The words "the tenant and every other person who may be in occupation thereof" in section 22 include even lawful sub-tenants.

Held, that the exclusion of sub-tenants of a tenant ejected under section 22 of the Act from the protection afforded to lawful sub-tenants under section 18 does not offend the provisions of Article 14 of the Constitution. There is a clear distinction between premises governed by section 22, and in particular residential quarters provided by companies for the housing of their employees, which naturally are required for the housing of other employees when the occupants of such quarters leave the service of the company, and premises in general, and the recognition of this distinction does not in any way run counter to the general purpose of the Act for the protection of tenants.

Regular Second Appeal from the order of Shri Pritam Singh, Rent Control Tribunal, Delhi, dated the 6th September, 1951, confirming that of Shri Brij Lal Mago, Controller, Delhi, dated the 6th September, 1960, ordering eviction against the respondents in favour of the petitioner regarding the premises in dispute under section 22 of the Delhi Rent Control Act, 1958, and leaving the parties to bear their own costs.

P. S. SAFEER, ADVOCATE, for the Appellant.

S. L. SETHI, ADVOCATE, for the Respondent.

JUDGMENT.

FALSHAW, C.J.—These two appeals filed by Falshaw, C. J. Siri Ram and Chandgi Ram have arisen out of applications filed before the Controller under section 22 of the Delhi Rent Control Act of 1958, by the respondent, the Delhi Cloth and General Mills Co. Ltd. In each case an order of eviction passed by the Controller was upheld in first appeal by the Rent Control Tribunal under the Act. These second appeals are under section 39 of the Act which permits a second appeal only where some substantial question of law is involved.

The case of the company was that by virtue of his employment by the company one Jhandu Ram had been allotted one of the quarters erected by the company for the housing of its employees, but Jhandu Ram ceased to be entitled any longer

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to occupy the quarter when he was dismissed from the service of the company on the 19th of December, 1959, and, since the two present appellants were occupying portions of the quarters as sub-tenants of Jhandu Ram, three applications were filed under section 22 of the Act of 1958 for the ejection of Jhandu Ram and his two sub-tenants. Orders of eviction against all three were passed and all their appeals were dismissed, and now only the two sub-tenants have come to this Court in second appeal.

The relevant portions of section 22 read—

“Where the landlord in respect of any premises is any company or other body corporate or any local authority or any public institution and the premises are required for the use of employees of such landlord..... then, notwithstanding anything contained in section 14 or in any other law, the Controller may, on an application made to him in this behalf by such landlord place the landlord in vacant possession of such premises by evicting the tenant and every other person who may be in occupation thereof, if the Controller is satisfied—

(a) that the tenant to whom such premises were let for use as a residence at a time when he was in the service or employment of the landlord, has ceased to be in such service or employment;

.....”

On behalf of the appellants an attempt was made to raise a question of fact as to whether Jhandu Ram had in fact ceased to be in the service of the company. This was challenged before the Controller by Jhandu Ram who alleged in his written statement that the matter was still *sub judice* because an application filed by the company

before an Industrial Tribunal before which a dispute was pending for approval of the order of dismissal still remained undecided. He stated, however, in evidence that the application of the company had been dismissed, but did not even produce any copy of any order. It was, therefore, rightly found that he had been dismissed from the service of the company in December, 1959.

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The main question involved in the appeals is whether Siri Ram and Chandgi Ram, who have been found to be lawful sub-tenants of Jhandu Ram under section 17 of the Act, are entitled to the protection afforded to sub-tenants by section 18, sub-section (1) of which reads—

“Where an order for eviction in respect of any premises is made under section 14 against a tenant, but not against a sub-tenant referred to in section 17 and a notice of the sub-tenancy has been given to the landlord, the sub-tenant shall, with effect from the date of the order, be deemed to become a tenant holding directly under the landlord in respect of the premises in his occupation on the same terms and conditions on which the tenant would have held from the landlord, if the tenancy had continued.”

It appears to me to be quite impossible to contend that this protects even lawful sub-tenants when an eviction order is passed under section 22 of the Act. Indeed it specifically refers to eviction orders under section 14, whereas the special provisions governing eviction under section 22 specifically exclude the application of the provisions of section 14. In the circumstances I have no doubt whatever that the words “the tenant and every other person who may be in occupation thereof” in section 22 include even lawful sub-tenants.

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Although the point was not raised either before the Controller or the Rent Control Tribunal or even in the grounds of appeal in this Court it has been argued that the exclusion of sub-tenants of a tenant ejected under section 22 from the protection afforded to lawful sub-tenants under section 18 offends the provisions of Article 14 of the Constitution. It seems to me, however, that there is a clear distinction between premises governed by section 22, and in particular residential quarters provided by companies for the housing of their employees, which naturally are required for the housing of other employees when the occupants of such quarters leave the service of the company, and premises in general, and the recognition of this distinction does not in any way run counter to the general purpose of the Act for the protection of tenants. The result is that I dismiss the appeals, but leave the parties to bear their own costs.

B.R.T.

APPELLATE CIVIL

Before D. Falshaw, C.J.

KARSON AGENCY (INDIA) AND ANOTHER,—Appellants

versus

M/S BHAJAN SINGH-HARDIT SINGH AND CO,—

Respondents

Regular Second Appeal No. 93-D of 1957

1962
 —————
 Jan., 17th

Limitation Act (IX of 1908)—Articles 115 and 120—Article applicable to a suit for damages arising out of the failure of the buyer to take delivery of the goods—Whether Article 115 or 120—Starting point of limitation—Whether the date on which breach occurred or the date on which the goods were sold.

Held, that the suit by a seller to recover damages from the buyer consequent upon his failure to take delivery of the goods falls under Article 115 of the Limitation Act, 1908, since it cannot possibly be denied that it is a suit for compensation for breach of contract.