REVISIONAL CIVIL

Before S. B. Capoor, J.

MADAN LAL SONDHI,—*Petitioner*

versus

JAGGAN NATH PURI,—Respondent.

Civil Revision No. 781 of 1960.

1961

Nov., 6th

East Punjab Urban Rent Restriction Act (III of 1949)—Section 8(1)—Rent in excess of standard rent paid by tenant—Whether can be adjusted when depositing arrears of rent in Court.

Held, that if a tenant has paid rent in excess of the standard rent fixed by the Court, he is entitled to claim adjustment at the time of depositing arrears of rent on the first hearing in an application for eviction against him filed by the landlord. The tenant is also entitled to refrain from paying rent for the period till the excess paid by him has been adjusted.

Petition under section 15(5) of the East Punjab Urban Rent Restriction Act, for revision of the order of Shri Sant Ram Garg, Appellate Authority, under East Punjab Urban Rent Restriction Act, Ambala, dated 6th October, 1960, affirming that of Shri Jagwant Singh, Rent Controller, Rupar, dated 26th December, 1960, accepting the application and directing the tenant to deliver possession of the disputed premises to the landlord on or before 6th December, 1960.

J. N. SETH, ADVOCATE, for the Petitioner.

S. K. JAIN AND R. N. MITTAL, ADVOCATE, for the Respondent.

JUDGMENT

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CAPOOR, J.—This is a revision petition by the tenant, Madan Lal, against the order made in

appeal by Shri Sant Ram Garg, Appellate Authority under the East Punjab Urban Rent Restriction Act, 1949 (Act No. 3 of 1949), hereinafter to be referred to as the Act, whereby the order of the Rent Controller, Rupar, made on the application of the landlord Jagan Nath Puri directing the eviction of the tenant, was confirmed.

The revision petition raises an interesting point as to the interpretation of the provisions of sub-section (1) of section 8 of the Act. The admitted facts are that the landlord, who is a resident of Ambala, owns a house at Rupar, which was being occupied by Madan Lal as a tenant, the contractual monthly rent being Rs. 20. Madan Lal applied to the Rent Controller, Rupar, under section 4 of the Act for determination of the fair rent of the premises. The Rent Controller by his order dated the 9th June, 1958, fixed the fair rent at Rs. 10 per mensem with effect from the 23rd March, 1957, which was presumably the date of the tenant's application under section 4. The landlord appealed to the Appellate Authority, Ambala, which by its order dated the 16th August, 1958, dismissed the appeal. The landlord then on the 11th June, 1959, gave an application—which gave rise to the present petition under section 13 of the Act asserting that the tenant was for the period from 1st April, 1958, to the 31st May, 1959, in arrears of rent to the extent of Rs. 140 on the basis of rent of Rs. 10 per mensem and was, therefore, liable to eviction. The tenant on the first date of hearing tendered Rs. 100 as arrears of rent together with the costs of application and interest. The counsel for the landlord did not accept the tender on the ground that a sum of Rs. 140 was due from the tenant. The tenant in his written statement had pointed out that on the 22nd March, 1958 (that is, during the pendency of his application for fixation of fair rent) he had deposited a sum of Rs. 60 as rent for the months of December, 1957, January and February 1958, at the rate of Rs. 20 per mensem. Thereafter for the month of March, 1958, a sum of Rs. 20 was remitted on the 1st April, 1958, by money order to the landlord.

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By virtue of the order of the Rent Controller as confirmed by the Appellate Authority the monthly rent payable was only Rs. 10 per mensem and accordingly there had been an excess payment of Rs. 40 which under the provisions of sub-section (1) of section 8 could be adjusted by the tenant against the future rent. By money order dated the 27th September, 1958, the tenant remitted a sum of Rs. 20 to the landlord as rent for August and September, 1958, after adjusting the excess payment of Rs. 40 towards the rent for the period from 1st April to 31st July, 1958. This was so mentioned at the foot of the money order form. It appears that the landlord did not accept this remittance. Thereafter the tenant was regularly remitting the rent at Rs. 10 per mensem month by month, but, these remittances were not accepted and the money order forms were returned to him.

These facts are not disputed on behalf of the landlord and as a matter of fact no oral evidence was led by the parties. It is conceded that if the excess payment of Rs. 40 could be legally adjusted under the provisions of sub-section (1) of section 8, the tender of Rs. 100 made by the tenant at the first hearing in the petition giving rise to this appeal, covered all the arrears, the interest as well as the costs and complied with the proviso to clause (i) of sub-section (2) of section 13 of the Act, the consequence being that the application for the eviction of the tenant was liable to be dismissed. Accordingly, the only material issue is "whether the respondent was entitled to adjust Rs. 40 in the rent of the period from 1st April, 1958, to 31st July, 1958".

For the proper interpretation of the provisions of sub-section (1) of section 8 of the Act, it is necessary to consider the purpose and the scheme of the Act. The long title of the Act is as follows:—

> "An Act to restrict the increase of rent of certain premises situated within the limits of urban areas. and the eviction of tenants therefrom."

The purpose of the Act was, therefore, to give some security of tenure to the tenants in these days of scarcity of accommodation in urban areas and the tenants could be liable to be evicted only if the conditions laid down in sub-section (2) of section 13 of the Act were fulfilled Section 4 of the Act lays down the procedure and the principles for the fixation of fair rent by the Controller. Where the fair rent had been fixed the landlord could not claim anything in excess of the fair rent as provided in sub-section (1) of section 6 which is as follows:—

"6 (1) Save as provided in section 5, when the Controller has fixed the fair rent of a building or rented land under section 4—

(a) the landlord shall not claim or receive any premium or other like sum in addition to fair rent or any rent in excess of such fair rent, but the landlord may stipulate for and receive in advance an amount not exceeding one month's rent;

(b) any agreement for the payment of any sum in addition to rent or of rent in excess of such fair rent shall be null and void."

The next relevant provision is sub-section (i) of section 8, which is produced below:—

"8. (1) Where any sum has, whether before or after the commencement of this Act, been paid which sum is by reason of the provisions of this Act irrecoverable, such sum shall, at any time within a period of six months after the date of the payment, or in the case of a payment made before the commencement of this Act, within six months after the commencement thereof, be recoverable by

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the tenant by whom it was paid or his legal representative from the landlord who received the payment or his legal representative, and may without prejudice to any other method of recovery be deducted by such tenant from any rent payable within such six months by him to such landlord."

The sole ground on which the eviction of the tenant in the instant case was sought was that he was in arrears of rent and the relevant provisions are given below:—

"13(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied—

(i) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable:

Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid."

Mr. J. N. Seth, on behalf of the tenant, has laid emphasis on the words in sub-section (1) of section 8 "where any sum has . . . . been paid

which sum is by reason of the provisions of this Act irrecoverable . . . " and he points out that the rent in excess of Rs. 10 per mensem became irrecoverable only after the order of the Rent Controller dated the 9th June, 1958, fixing this sum as the fair rent. It is further pointed out that during the pendency of the appeal by the landlord the tenant could not be sure as to what would be the fair rent which was finally settled by the order of the Appellate Authority dated the 16th August, 1958. Within two months of the order of the Appellate Authority, the tenant claimed the adjustment and Mr. Seth's argument is that the period of limitation should be reckoned from the date of the order of the Appellate Authority. He further argued that if the view of the Courts below viz. that the period of limitation runs from the date of the payment of the excess claimed—is upheld, there would be an obvious anomaly. For instance, if the proceedings for the fixation of the fair rent remained pending before the Rent Controller for a year or more and during this period the tenant is making payments monthly of the contractual rent but ultimately the rent is reduced, he would not be able to adjust the excess amount paid beyond the period of six months even though such excess would be irrecoverable by the landlord under clause (a) of sub-section (1) of section 6 of the Act. Thus the anomaly is there but at the same time I find it difficult to accept Mr. Seth's argument that the period of six months mentioned in sub-section (1) of section 8 is to be reckoned not from the date of the payment as laid down therein but from the date of the order of the Rent Controller or, as the case may be, of the Appellate Authority. However, I do not feel called upon to give any firm opinion on the matter as in my view the question of limitation hardly arises in the instant case.

The approach of the Courts below is that since Rs. 60 as rent for the months of December, 1957, January, and February, 1958, were paid on the 22nd March, 1958, the adjustment of the excess payment of Rs. 30 towards the rent for the

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period 1st April, 1958, onwards could only be made during the period of six months, that is, by the 22nd September, 1958, and that is how the Courts below held that the respondent was not entitled to adjust the sum of Rs. 30 in the rent for the period from the 1st April, 1958. Sub-section (1) of section 8 of the Act does not however, deal with the period within which the fact of making the adjustment is to be communicated to the landlord. All that it provides is that within six months after the date of the payment the tenant should either start the recovery proceedings against the landlord or his legal representative or he may deduct the excess amount paid from any rent payable within a period of six months next after the payment. The rent for the period and up to including the month of March, 1958, had been duly paid and the tenant was entitled to refrain from paying the rent for the subsequent period until the excess had been adjusted. In view of the provisions of sub-section (1) of section 6 and sub-section (1) of section 8 of the Act, no rent was payable by the tenant for the months of April, May and June, 1958. In the sum of Rs. 20 as paid on the 1st April, 1958, for the month of March, there was again an excess of Rs. 10 and so there was no liability on the tenant to pay the rent for July, 1958, also. As a matter of fact, in view of the provisions of sub-section (1) of section 6 of the Act, the landlord could neither claim nor receive rent for the months of April, May, June and July, 1958.

The rent for the months of August and September was sent by money order dated the 27th September, 1958, and I do not see how the landlord was in the circumstances justified in declining the money order and accordingly the rent for the these months must be deemed to have been duly paid by the tenant to the landlord. There does not appear to have been any delay even in the payment of the rent for the month of August, 1958 because under clause (i) of sub-section (2) of section 13, the tenant was required to pay or tender the amount due by the last day of the month

next following that for which the rent was payable. But even if there was any delay, the remedy of the landlord could only be to make an application under sub-section (2) of section 13. In that event, the tenant could evade the liability of eviction by making the deposit of money under the proviso to clause (i) of sub-section (2) of section 13. The landlord, however, went on declining to accept the money orders which were regularly sent in respect of the monthly rent to him by the tenant and it is fairly clear that he was just trying to manufacture some ground for the eviction of the tenant.

Thus in the circumstances of this case, to hold that the tenant was liable to eviction, would be tantamount to saying that the landlord was entitled to receive payments in excess of the fair rent which are not only irrecoverable under sub-section (1) of section 6 but the acceptance of which may render the landlord liable to penal action under sub-section (2) of section 19 of the Act. The Act under consideration is a piece of social legislation and the Courts will certainly not interpret it in such a way as to enable a landlord to secure eviction of his tenants on account of not paying rent which was irrecoverable under the statute.

The Courts below in interpreting sub-section (1) of section 8 have been misled by certain observations made in *Mahipatram Dolatram* v. *Bai Anjwali Sabur* (1), which were in turn based on the observations of Chagla C.J., as he then was, in *Karamsey Kanji and others* v. *Velji Virji* (2). The learned Judges of the Saurashtra High Court were interpreting the provisions of section 20 of the Saurashtra Rent Control Act (Act No. 22 of 1951), which are almost similar to those of sub-section (1) of section 8 of the East Punjab Act No. 3 of 1949 and corresponded to section 20 of the Bombay Rent, Hotel and Lodging House Rates Control Act (Act No. 57 of 1947). The difference between the Bombay and Saurashtra Acts and the

(1) A.I.R. 1956 Saurashtra 87 at page 88.
(2) I.L.R. 1954 Bom, 1056 at page 1064.

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East Punjab Act No. 3 of 1949 was that so far as deduction by the tenant of the excess rent out of the rent payable by him to the landlord in future was concerned, the time limit of six months was not mentioned though in the corresponding provision in an earlier Act (under section 14(1) of the Act of 1939) the time limit of six months within which the deduction could be claimed was stated. In arguments before Chagla C.J. this omission was emphasised and the learned Chief Justice held that the change was not intended to mark a change of policy and that if a tenant could not recover any excess paid by him beyond six months from the date of the payment and if such amounts became irrecoverable, it is difficult to understand how a tenant could deduct what he could not recover and what was irrecoverable in law. The point did not directly arise in the case before Chagla C.J. which was decided on other considerations in favour of the tenant. His observations were, however, relied upon by the learned Judges of the Saurashtra High Court in the case before them. The facts there were that the payments made in excess of the standard rent were sought by the tenants to be adjusted when the plaintiffs brought proceedings for the recovery of rent at the contractual rate (which was in excess of the standard rent) and these proceedings were brought more than six months after the excess payment had been made. In those circumstances it was held that the bar of limitation as laid down in section 20 came in the way of the tenants and the adjustments were not allowed. The facts in the case before this Court, are however, entirely different and for the reasons given above I am clearly of the view that the adjustments of the excess amounts paid are not hit by anything contained in sub-section (1) of section 8 of the Act.

The revision petition is, therefore, accepted and the orders of the Courts below set aside. The application of the present respondent, that is, the landlord, for eviction of his tenants is dismissed with costs throughout.

R.S.