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is the first priority in all democratic states, but at the same time it must not be forgotten that setting aside of elections affects the whole constituency, thus before an election is set aside, the tribunal must be fully satisfied that the impugned election has actually been affected by the alleged corrupt practices. Suspicions or surmises or mere possibilities are not enough. I am not unmindful of the observations of A. K. Sarkar, J., in *Dr. Y. S. Parmar* v. *Hira Singh Pal and another* (1), that *Mens rea* or criminal intention is not necessary to establish under the Indian Law relating to corrupt practices, but, in my view, it does not mean that the charges of corrupt practices can be held established without being proved beyond the possibility of a reasonable doubt. The test in weighing the evidence led in such cases is generally similar to the one applied in criminal trials : See *Balwant Rai Tayal* v. *Bishan Saroop* (2).

For the reasons given above, this appeal fails and is dismissed with costs.

FALSHAW, J.—I agree.

B.R.T.

REVISIONAL CIVIL

Before A. N. Bhandari, C. J.

MUKH RAM, *Petitioner.*

versus

SIRI RAM AND OTHERS,—*Respondents.*

Civil Revision No. 506 of 1958.

1959

May, 26th

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2)(i) proviso—Scope of—"Hearing"—Meaning of—Tender of arrears of rent, etc.—Whether must be to the landlord—Challan for deposit made on the day of first

(1) A.I.R. 1959 S.C. 244
(2) F.A.O. 164 of 1958

hearing but amount deposited in the treasury on the following day—Deposit—Whether valid—Amount of costs deposited assessed by the tenant and not by the Controller—Whether proper.

Held, that the expression "hearing" is used to describe whatever takes place before a tribunal clothed with judicial functions at any stage of the proceedings subsequent to its inception. When the Legislature directs that the tenant should tender the arrears of rent on the first hearing of the application it appears to require that the tender should be made at any time on the day on which the application comes up for hearing for the first time. Thus if the tender is made at any time during working hours the provisions of the law are completely satisfied.

Held, that the proviso to clause (i) of Section 13(2) of the East Punjab Urban Rent Restriction Act, 1949, does not require that the amount of rent should be tendered to the landlord himself or to the counsel of the landlord. It declares merely that the tender should be made on the first hearing of the case. The tender would be perfectly valid in the eye of law if it is made either to the landlord or his counsel or agent, or to the Controller for payment to the landlord.

Held, that where the tenant endeavours to deposit the amount on the day of the first hearing but is unable to do so due to the lengthy procedure involved and the deposit is made the following day, the deposit is valid and the provisions of the proviso to clause (i) of Section 13(2) of the East Punjab Urban Rent Restriction Act are complied with. Courts of law usually require a substantial compliance with the provisions of the statute and do not require a literal or strict compliance with the terms thereof particularly when such compliance is impossible. In such cases compliance, as near as can be, has been permitted on the principle that the law does not require impossibilities. A liberal construction ought to be given to the proviso so as not to invalidate a payment made in substantial compliance therewith.

Held, that the deposit of the amount of costs by the tenant on his own determination without getting them assessed by the Controller is in order so long as the

amount deposited is not les than what is subsequently assessed by the Controller.

Petition under Section 15(5) of Act 3 of 1949 for revision of the order of Shri H. S. Bhandari, District Judge, Rohtak, Camp Gurgaon, dated 22nd July, 1958, revising that of Shri Jagdish Parshad, Sub-Judge, Ist Class, Gurgaon, with the power of Rent Controller, Gurgaon, dated 13th March, 1958, and accepting the application for eviction.

H. L. SIBAL AND S. C. JAIN, for Petitioner.

BABU RAM AGGARWAL, for Respondent.

JUDGMENT

Bhandari, C. J.

BHANDARI, C.J.—This petition raises the question whether the learned District Judge was justified in ordering the eviction of the tenant on the ground that the arrears of rent due from him were deposited in the treasury a day after the first hearing of the case.

On the 27th November, 1956, the landlords applied for the eviction of a tenant on the ground that he had failed to pay the rent of the shop let out to him. On the 17th June, 1957, when the case came up for hearing for the first time the landlords were represented by their counsel while the tenant was present in person. A copy of the petition had not been supplied to the tenant and the case was accordingly adjourned to the 3rd July, 1957, for enabling him to file his reply thereto. After the counsel for the landlords had gone away, the tenant presented an application to the Rent Controller for permission to deposit the arrears of rent as well as interest and cost of the application, and the Controller allowed him to make the necessary deposit on his own responsibility. The tenant deposited a sum of Rs. 783-2-0

in the treasury on the following day. The Controller accordingly dismissed the landlords' application under the provisions of the proviso to clause (i) of sub-section (2) of section 13 of the Rent Restriction Act. The learned District Judge to whom an appeal was preferred, set aside the order of dismissal as he was of the opinion that the amount was actually deposited in the treasury on the 18th June, 1957, that is a day after the first hearing of the case had concluded. The appeal was accordingly allowed and an order of eviction was passed against the tenant. The tenant has come to this Court in revision, and the question for this Court is whether the learned District Judge has come to correct determination in point of law.

The proviso to clause (i) of sub-section (2) of section 13 of the Urban Rent Restriction Act is in the following terms : —

"13. * * * * *
* * * * *.

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. B. R. Aggarwal, who appears for the landlords, has endeavoured to support the order of the learned District Judge on two grounds, namely (1) that the arrears of rent were not deposited on the first hearing of the application, and (2) that the cost of the application was not assessed by the Controller.

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Three submissions have been placed before me in support of the contention that the amount in question was not tendered on the first hearing of the application. It is contended, in the first place, that the hearing of a case lasts only for the period during which both the landlords and the tenant are present in Court and that as soon as one of the parties disappears, the hearing ceases and the deposit after the lapse of this period ceases to be a deposit made on the first hearing of the application. This, in my opinion, is too narrow an interpretation of the law. The expression "hearing" is used to describe whatever takes place before a tribunal clothed with judicial functions at any stage of the proceedings subsequent to its inception. When the Legislature directs that the tenant should tender the arrears of rent on the first hearing of the application it appears to require that the tender should be made at any time on the day on which the application comes up for hearing for the first time. It seems to me, therefore, that if the tender is made at any time during working hours the provisions of the law are completely satisfied.

Secondly, it is argued that the amount in question was neither paid nor tendered to the landlords and consequently that there has been no valid tender at all. The law does not require that the amount of rent should be tendered to the landlord himself or to the counsel of the landlord. It declares merely that the tender should be made on the first hearing of the case. I am of the opinion that the tender would be perfectly valid in the eye of law if it is made either to the landlord or his counsel or agent, or to the Controller for payment to the landlord. The tenant in the present case resorted to one of the alternatives mentioned above

and made an application immediately for permission to deposit the amount with the Controller. This permission was granted and the tenant proceeded to deposit the amount in the treasury the same day.

Thirdly, it is contended that the tenant did not deposit the amount in the treasury till the following day and consequently that he is not entitled to take advantage of the benefit conferred by the proviso. This contention, too, appears to me to be devoid of force. The tenant endeavoured to deposit the amount the same day but was unable to do so, for it is a matter of common knowledge that rules in regard to deposits involve a lengthy procedure and that more often than not deposits made one day are not received till the following day. The tenant appears to have done everything in his power to comply with the provisions of the proviso. Courts of law usually require a substantial compliance with the provisions of the statute and do not require a literal or strict compliance with the terms thereof particularly when such compliance is impossible. In such cases compliance as near as can be, has been permitted on the principle that the law does not require impossibilities. I am of the opinion that a liberal construction ought to be given to the proviso reproduced above so as not to invalidate a payment made in substantial compliance therewith. In *Rameshwar Dayal* v. *Pt. Sri Kishan and another* (1), Kapur, J., held that merely because according to the procedure followed by Courts, a person who actually tenders money in Court cannot actually deposit it in the treasury for one day due to peculiar rules will not make the person liable for penalty imposed by law for delay.

(1) A.I.R. 1951 Punj. 359

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Nor is there any substance in the contention that the costs which were deposited by the tenant in the treasury were not assessed by the Controller but were determined by the tenant himself. It is common ground, however, that the actual amount deposited was not less then the amount which was subsequently asessed by the Controller.

I entertain no doubt in my mind that the provisions of the law have been substantially complied with. I would accordingly accept the petition, set aside the order of the learned District Judge and dismiss the landlords' application for eviction. The tenant will be entitled to costs here and below.

B.R.T.

CIVIL WRIT

Before I. D. Dua, J.

AMBALA BUS SYNDICATE PRIVATE LTD.,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 161 of 1959.

1959

May, 26th

Motor Vehicles Act (IV of 1939)—Sections 44 and 64—State Government—Whether competent to issue directions to Regional Transport Authority in respect of issue of permits—Party heard by Regional Transport Authority but not made a party to the appeal—Whether has right to be heard in revision—Powers of revision—Whether arbitrary—Minister-in-charge of Department hearing revision in which State Transport Undertaking is a party—Whether can be said to be a Judge in his own cause—Order passed by the Minister in revision—Whether mala fide *and unconstitutional—Constitution of India (1950)—Article 226—Petition under—High Court—Whether can interfere with the order of the Minister.*