

Suresh Kumar v. Bhim Sain (R. N. Mittal, J.)

2. The Tribunal was again right in holding that the assessment of the body of individuals indentified as M/s. Meera and Co. will be made under section 4, read with section 2(31)(v) and not under sections 160, 161 and 166 of the Act.

The parties are left to bear their own costs.

H. S. B.

Before Rajendra Nath Mittal, J.

SURESH KUMAR—*Defendant-Appellant*.

*versus*

BHIM SAIN—*Plaintiff-Respondent*

Regular Second Appeal No. 344 of 1976.

September 14, 1978.

*Haryana Urban (Control of Rent and Eviction) Act (II of 1973)—Section 1 and 12—Haryana Urban (Control of Rent and Eviction) Amendment Act (XVI of 1978)—Section 2—Property exempt from the provisions of the Act—Section 2 of the Amending Act withdrawing the exemption—Whether retrospective—Decree passed by trial Court before the amendment—Appellate Court—Whether bound to take into account the change in law—Jurisdiction of Civil Court to pass decree of ejectment—Whether barred.*

*Held* that by section 2 of the Haryana Urban (Control of Rent and Eviction) Amendment Act, 1978 sub-section (3) of section 1 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, was substituted from the date of enforcement of the parent Act. The said section in unambiguous terms says that the sub-section shall always be deemed to have been substituted. The language of section 2 of the Amendment Act clearly indicates that the amendment has been made with retrospective effect.

(Para 5)

*Held*, that it is a well established principle of law that the hearing of an appeal under the processual law of the country is in the nature of re-hearing and therefore in moulding the relief to be granted in appeal, an appellate court is entitled to take into account even facts and events which have come into existence since the decree appealed

from was passed. In determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered.

(Para 6)

*Held* that after the passing of the Haryana Rent Act, the jurisdiction of the civil court for passing a decree for ejection against tenants with respect to rented buildings and lands governed by the said Act has been taken away.

(Para 8)

*Regular Second Appeal from the decree of the Court of the District Judge, Bhiwani, dated the 23rd day of January, 1976, affirming with costs that of the Senior Sub-Judge, Bhiwani, dated the 12th August, 1975, granting the plaintiff a decree for the possession of the disputed shop with costs.*

*The Lower Appellate Court further ordered that the plaintiff-respondent shall be entitled to recover physical possession of the shop from the appellant defendant forthwith.*

H. L. Sarin, Senior Advocate with C. B. Kaushik, Advocate and C. B. Goyal, Advocate, for the applicant.

G. C. Mittal, with Arun Jain, Advocates, for the Respondent.

#### JUDGMENT

R. N. Mittal, J.—(1) This judgment will dispose of R.S.A. Nos. 344 and 345 of 1976, and R.S.A. No. 1518 of 1977, which involve common questions of law. The facts in the judgment are being given from R.S.A. No. 344 of 1976.

(2) Bhim Sain plaintiff is the owner of the shop in dispute which is alleged to have been constructed in the year 1966. It was leased out to the defendant from April 26, 1967 to April 21, 1968, on a monthly rent of Rs. 100 plus municipal taxes,—*vide* lease deed, dated April 26, 1967. It is further averred that the defendant materially diminished the value and utility of the shop in dispute. He consequently after serving a notice on the defendant, filed a suit for his ejection, pleading that the building was exempt from the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the Haryana Rent Act). The suit was contested by the defendant

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on various grounds. The learned trial Court decreed the suit of the plaintiff. The defendant went up in appeal before the District Judge, Bhiwani, who affirmed the judgment and decree of the trial Court and dismissed it. He has come up in second appeal to this Court.

(3) It is contended by Mr Sarin, learned counsel for the appellant, that the Haryana Rent Act has been amended by the Haryana Urban (Control of Rent and Eviction) Amendment Act, 1978 (hereinafter referred to as the Amendment Act), by virtue of which *inter alia* section 1 of the Haryana Rent Act was amended. The learned counsel further submits that in view of the amendment of section 1, the property in dispute is no longer exempt from the purview of the Haryana Rent Act, and consequently the jurisdiction of the civil Court has ceased to exist for passing a decree for ejection against the appellant. According to the counsel, if it is so, the decree of ejection passed by the civil Court is liable to be set aside on this ground alone.

(4) I have given a thoughtful consideration to the argument of the learned counsel. In order to determine this question it will be relevant to reproduce sections 1 and 13 of the Haryana Rent Act and section 2 of the Amendment Act. Sections 1 and 13 of the Haryana Rent Act are as under:—

1. *Short title and extent:*—

(1) ... ..

(2) ... ..

(3) Nothing in this Act shall apply to—

(i) any residential building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion;

(ii) any non-residential building construction of which is completed after the 31st March, 1962;

(iii) any rented land let out on or after 31st March, 1962.

“13. *Eviction of tenants:*—

(1) A tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of this section.

- (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 application, is satisfied,—

... ..  
 ... .. ” ...

Section 2 of the Amendment Act is as under:—

“2. *Amendment of section 1 of Haryana Act II of 1973,—*

For sub-section (3) of section 1 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the principal Act), the following sub-section shall be substituted and *shall always be deemed to have been substituted*, namely:—

- ‘(3) Nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion.’

From a reading of section 1(3)(ii), it is evident that the Haryana Rent Act did not apply to a non-residential building construction of which was completed after March 31, 1962. Similarly, it was not applicable to rented land let out on or after March 31, 1962. The position was, however, slightly different regarding residential buildings. Exemption was given to those residential buildings from the operation of the Haryana Rent Act, which had been completed on or after the commencement of the Act, for a period of ten years from the date of completion. After lapse of the said period it became applicable to such buildings as well. Sub-section (3) of section 1 of the Haryana Rent Act was amended by section 2 of the Amendment Act, by which no distinction was retained between residential and non-residential buildings and law regarding all buildings was made uniform. According to the new provision, the Haryana Rent Act was made applicable to all the buildings except those completed on or after the commencement of the Act. It was further provided that buildings completed on or after the commencement of the Act would not be governed by the Haryana Rent Act for 10 years from the date of their completion. It

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was also made applicable to rented lands let out whether before or after its commencement.

(5) Now it is to be seen whether the Haryana Rent Act is retrospective in its operation or not? Mr Sarin has forcefully argued that the language of the Amendment Act clearly shows that it was given retrospective effect. On the other hand, Mr. G. C. Mittal contends that it is not retrospective in effect. He referred to a decision of the Supreme Court in *Moti Ram v. Suraj Bhan and others* (1). I am, however, impressed with this contention of Mr. Sarin. The underlined portion (in italics) in Section 2 of the Amendment Act establishes beyond any shadow of doubt that sub-section (3) of section 1 of the Haryana Rent Act was substituted from the date of the enforcement of the parent Act. The said section in unambiguous terms says, that the sub-section shall always be deemed to have been substituted. The important words have been underlined by me in order to lay emphasis on them. No other meaning can be attached to these words except that the original sub-section (3) had been deleted and new sub-section had been substituted from the very inception of the parent Act. The language of the section is clear and no other interpretation can be put to it except the one given above. *Moti Ram's* (supra) case referred to by Mr. Mittal, affirms the view which I have taken. Gajendragadkar, J., speaking for the Court, observed that it is well-settled that where an amendment affects vested rights, the Amendment would operate prospectively unless it is expressly made retrospective or its retrospective operation follows as a matter of necessary implication. In the present case, language of section 2 of the Amendment Act clearly indicates that the amendment has been made with retrospective effect. I, therefore, do not find any substance in this contention.

(6) Now I will advert to the argument of Mr. Sarin as to whether after the amendment of the Haryana Rent Act, civil Court has the jurisdiction to pass a decree of ejectment. It is a well-established principle of law that the hearing of an appeal under the processual law of the country is in the nature of re-hearing and therefore in moulding the relief to be granted in appeal, and appellate Court is entitled to take into account even facts and events which have come into existence since the decree appealed from was passed. In determining what justice does require, the Court is bound to consider any

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(1) A.I.R. 1960 S.C. 655.

change, either in fact or in law, which has supervened since the judgment was entered. (See *Surinder Kumar and others v. Gian Chand and others* (2). The Amendment Act came into force with effect from May 8, 1978, when it was published in the Haryana Gazette (Extra). This Court while deciding the appeals against the decrees passed before that date can take into consideration the provisions of the said Act.

(7) Section 13(1) of the Haryana Rent Act enjoins that a tenant who is in possession of a building or rented land, shall not be evicted therefrom except in accordance with the provisions of that section. Sub-section (2) prescribes the procedure for applying for ejectment. According to the section, a landlord, in order to evict his tenant, has to apply to the Controller for that purpose. The word 'Controller' has been defined in section 2(b) of the Haryana Rent Act and it means any person who is appointed by the State Government to perform the functions of a Controller under that Act. It is further evident that the Controller, before ordering ejectment, has to satisfy himself that the case of the landlord falls under any of the clauses under section 13(2) & (3) of the said Act. From a reading of sub-sections (1), (2) and (3) of section 13, no doubt is left in my mind that the Legislature intended that only the Tribunals provided under the Haryana Rent Act should have the jurisdiction to order ejectment of a tenant. The Legislature can by implication exclude the jurisdiction of a civil Court. It is clear from the language of section 13 of the Haryana Rent Act that the Legislature excluded jurisdiction of the civil Courts by implication regarding cases governed by it.

(8) I also get support for the aforesaid conclusion from a comparison of the said sub-sections with section 13(1) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the E.P. Rent Act) where a different language has been used by the Legislature showing the intention of the Legislature to the contrary. The relevant part of the section is as follows:—

“13. Eviction of tenants.—

- (1) A tenant in possession of a building or rented land shall not be evicted therefrom *in execution of a decree passed before or after the commencement of this Act*

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(2) 1958 Supreme Court Appeals 412.

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or otherwise and whether before or after the termination of the tenancy except in accordance with the provisions of this section, or in pursuance of an order made under section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.

.. .. .

.. .. .

It is provided in section 13(1) of the E.P. Rent Act that a tenant could not be evicted from a building or rented land in execution of a decree passed before or after the commencement of the Act, except in accordance with the provisions of that section. The words "in execution of a decree passed before or after the commencement of this Act" (underlined by me; in italics in report) are significant. These words show that a decree could be passed for ejection by a civil Court after the commencement of the E.P. Rent Act. Thus the jurisdiction of the civil Court for passing a decree in a suit for ejection by a landlord against his tenant regarding any land or rented land, was not taken away by the legislature, by enacting E.P. Rent Act. It is further evident from a reading of section 13(1) that a tenant in possession of a building or rented land cannot be evicted therefrom in execution of such decree. Thus a decree passed by a civil Court has been made inexecutable. The landlord can get possession only if a Rent Controller ordered ejection of the tenant in pursuance of the provision of section 13 of the E.P. Rent Act. In this view I am fortified by the observations of a Full Bench judgment of this Court in *Sham Sunder v. Ram Dass* (3). It was observed by Harnam Singh, J., speaking for the Full Bench that section 13 of the Punjab Urban Rent Restriction Act, 1947, does not oust the jurisdiction of civil Courts to grant a decree for eviction but merely controls the execution of such a decree by prescribing procedure for the eviction of tenants. It will be relevant to mention that language of section 13 of the Punjab Urban Rent Restriction Act, 1947, is *pari materia* with the language of section 13 of the E. P. Rent Act. The observations of the Full Bench are fully applicable in cases of decrees of ejections passed against the tenants after coming into force of the

E.P. Rent Act. The same view was taken by a Division Bench of this Court in *Sadhu Singh v. District Board, Gurdaspur and another* (4). The Division Bench observed that section 13(1) of the East Punjab Urban Rent Restriction Act does not affect the jurisdiction of the Court to pass a decree for ejection. Thus from a comparison of section 13(1) of the Haryana Rent Act and section 13(1) of the E.P. Rent Act, it is evident that in the former case the Legislature has impliedly taken away the jurisdiction of the civil Court, from passing a decree for ejection against a tenant, whereas in the latter case it had not been taken away, but a control was put on the execution of such a decree. From the abovesaid discussion it emerges that after passing of the Haryana Rent Act, the jurisdiction of the civil Court has been taken away for passing a decree for ejection against tenants with respect to the rented buildings and lands governed by the said Act.

(9) Mr. G. C. Mittal then sought to urge that the shop in dispute was constructed in the year 1966 and according to the Haryana Rent Act, as amended, the shop was exempt from the provisions of the Act for a period of ten years from the date of its completion. According to him, the provisions of the Haryana Rent Act did not apply to the shop up to the year 1976. I am not impressed with this contention also. The language of section 1(3) of the Haryana Rent Act as amended, shows that the provisions of the said Act are applicable to a building which was constructed on or after the commencement of that Act for a period of ten years from the date of its completion. The counsel cannot take any benefit of the provisions of unamended section 1(3) of the Haryana Rent Act as the amendment has been given a retrospective effect. After the amendment it will be deemed that the original section 1(3) never came into operation. I, therefore, reject the contention of the learned counsel.

(10) There is no dispute regarding the facts in the present case. The shop in dispute was constructed in 1966. In view of the amendment of section 1(3) read with section 13 of the Haryana Rent Act, the civil Court has no jurisdiction to pass a decree for ejection in a suit filed by the landlord against his tenant. The decree for ejection is, therefore, liable to be set aside.

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(4) 1962 P.L.R. 1.



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R.S.A. No. 345 of 1976.

(11) The facts of R.S.A. 345 of 1976 are similar to those of R.S. / No. 344 of 1976 and consequently the decree in this case is also liable to be set aside.

R.S.A. No. 1518 of 1977.

(12) The brief facts of this case are that the plaintiffs constructed the premises in dispute in January, 1969. They leased it out to the defendant at a rent of Rs. 30/- per mensem with effect from February 1, 1969,—*vide* rent note dated February 2, 1969. They filed a suit for ejectment of the defendant in 1973 after serving a notice on him. The suit was contested by the tenant. The trial Court passed a decree for ejectment against the tenant. He went up in appeal before the Senior Subordinate Judge, Karnal, on July 17, 1976. After the appeal had been filed, the Haryana Urban (Control of Rent and Eviction) Amendment Ordinance, 1977, was promulgated by the Governor of Haryana, on April 27, 1977 and it was published in the Haryana Gazette on April 28, 1977. Section 1(3) of the original Haryana Rent Act was amended by section 2 of the Ordinance. Section 2 of the Ordinance is *pari materia* with section 2 of the Amendment Act and therefore it is not necessary to reproduce it. The first appellate Court while deciding the appeal on July 22, 1977, reversed the decree of the trial Court taking into consideration amended section 1(3) of the Haryana Rent Act. The landlord has come up in second appeal.

This appeal is also fully covered by the observations made in R.S.A. No. 344 of 1976 and liable to be dismissed. It may, however, be relevant to point out that the Haryana Ordinance lapsed in August, 1977. The Amendment Act came into existence on May 8, 1978 when it was published in the Haryana Gazette. This case will now be governed by the Haryana Rent Act as amended by the Amendment Act.

(13) For the reasons recorded above, I accept R.S.A. Nos. 344 and 345 of 1976 and dismiss R.S.A. No. 1518 of 1977. In the circumstances of these cases, I, however, leave the parties to bear their own costs.

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N.K.S.