

Messrs Padam Parshad-Rattan Chand of Delhi
 v.
 Commissioner of Income-tax, Delhi, Ajmer
 ———
 Falshaw, J.

accordingly of the opinion that when a deed or instrument of partnership is presented for registration under section 26A, even where the partnership is alleged in the deed to have existed previously on the same terms, this should not be a bar to the registration of the firm, and it should be treated as constituted under the instrument as from the date of the instrument. I would accordingly answer the question framed for our decision in the affirmative, but since the answer to the question can make no difference to the assessment of firm Padam Parshad-Rattan Chand for the year 1948-49 out of which it has arisen, I would order that the parties be left to bear their own costs.

BHANDARI, C.J.—I agree.

APPELLATE CIVIL

Before Harnam Singh, J.

SHRI B. D. MEHTA AND OTHERS,—Defendants-Appellants

versus

SHRI F. M. DEBOO,—Plaintiff-Respondent

Regular Second Appeal No. 258 of 1953

1953

Dec. 4th

The East Punjab Urban Rent Restriction Act (III of 1949)—Sections 8 and 13 (2) (1)—Payment into Court of arrears of rent under section 13 (2) (1)—Whether such payment is payment to the landlord within the meaning of section 8—Interpretation of statutes—Construction by introducing fiction of law—Whether permissible.

Held, that payment of arrears of rent under the proviso to section 13 (2) (i) of the Act is not for all purposes and all occasions a payment to the landlord. Payment into Court under section 13 (2) (1) is not payment to him within the meaning of section 8 of the Act until he receives the payment.

Held also, that in construing statutes the Court would not endure that a mere form or fiction of law introduced for the sake of justice should work a wrong contrary to the real truth and substance of the thing.

Sain Dass v. Darbari Lal (1), dissented from.

Second Appeal from the decree of the Court of Shri J. S. Bedi, District Judge, Ambala, dated the 3rd day of January 1953, affirming that of Shri J. N. Kapur, Senior Sub-Judge, Simla, dated the 27th March 1952, granting the plaintiff a decree for Rs. 1,188-3-0 with costs.

D. N. AGGARWAL, for Appellants.

YASHPAL GANDHI, for Respondent.

JUDGMENT

HARNAM SINGH, J. In order to appreciate the point of law that arises for decision in Regular Second Appeal No. 258 of 1953, the facts of the case may be set out in some detail. Harnam Singh,
J.

On the 9th of April 1951, Shri F. N. Deboo, instituted Civil Suit No. 31 of 1951, under section 8 of the East Punjab Urban Rent Restriction Act, 1949, hereinafter referred to as the Act, for the refund of the rent which should not have been paid.

Defendants resisted the suit *inter alia*, on the ground that the suit was not instituted within six months of the date of the payment.

In deciding the suit the Court of first instance found that the amount in suit was paid to Shrimati Thakar Devi on the 26th of October 1950. On that finding the Court found the suit to be within time. In the result the Court passed decree for rupees 1,188-3-0, with costs against defendants Nos. 1 and 2.

From the decree passed in Civil Suit No. 31 of 1951, Shrimati Thakar Devi appealed under section 96 of the Code of Civil Procedure.

In deciding the appeal the District Judge has affirmed the judgment passed in Civil Suit No. 31 of 1951, on the point of limitation and dismissed the appeal with costs.

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others

Shrimati Thakar Devi appeals under section 100 of the Code of Civil Procedure from the decree passed on appeal.

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Section 8 of the Act provides *inter alia*, that where any sum after the commencement of the Act has been paid which sum is by reason of the provisions of the Act irrecoverable, such sum shall within a period of six months after the date of payment be recoverable by the tenants by whom it was paid from the landlord who received the payment.

Admittedly, the landlady received the payment on the 26th of October 1950, though the amount was deposited to the credit of the landlady on the 30th of August 1950. On the last-mentioned date the tenant had deposited rupees 2,718-8-0, in proceedings under section 13 of the Act.

Basing himself upon the provisions of the proviso to section 13(2)(i) of the Act Mr. Dwarka Nath Aggarwal urges that the deposit of rupees 2,718-8-0 on the first hearing of the application for the ejectment of the tenant should be deemed to be payment to the landlady on that day. That proviso enacts 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 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 was payable*. In my judgment, payment of arrears of rent under the proviso to section 13(2)(i) of the Act is not for all purposes and all occasions a payment to the landlord.

Now, first of all I come to that conclusion upon the language of section 8(1) and section 13(2)(i) of the Act. Section 8(1) of the Act provides that

proceedings for the recovery of the rent which should not have been paid may be initiated within six months from the date of payment. In section 8(1) of the Act the claim for refund is stated to be against the landlord who *received* payment.

Section 8 of the Act corresponds to section 7 of the East Bengal Premises Rent Control (Temporary Powers) Act, 1948, hereinafter referred to as the Bengal Act. Section 7 of the Bengal Act provides, *inter alia*, that where any sum has been *paid or deposited* on or after the date of the commencement of that Act on account of rent which is by reason of the provisions of that Act irrecoverable the Controller may, on application made to him at any time within a period of six months from the *date of such payment or deposit* by the tenant by whom such payment or deposit was made, order the landlord by whom such payment was received or to whose credit such deposit was made to refund such sum to such tenant. In section 8 of the Act the word 'deposit' appearing in section 7 of the Bengal Act does not occur. In case the Legislature desired to enact that deposit of arrears of rent within the proviso to section 13(2)(i) of the Act was to be deemed payment to the landlord for the purposes of section 8(1) of the Act the Legislature should have used appropriate language to attain that end.

In support of the argument raised Mr. Dwarka Nath Aggarwal cites *Sain Das v. Darbari Lal* (1), decided on the 3rd of June 1952. With profound respect I think that there are two obvious objections to the construction placed upon section 13(2)(i) of the Act by Weston, C. J., in deciding *Sain Das v. Darbari Lal*, (1). In the first place that construction requires us to read into the proviso to section 13(2)(i) of the Act words which are not to be found there and in the second place the fiction that is invoked is contradictory to the actual facts. In construing statutes the Court would not endure that a mere form or fiction of law introduced for the sake of justice should work

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(1) C.R. 457 of 1951

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a wrong, contrary to the real truth and substance of the thing. For authority on this point *Butler and Baker's case* (1) may be seen.

For the foregoing reasons, I find that it is not permissible to read the words 'for all purposes' after the word '*shall*' and before the words 'be deemed' occurring in the proviso to section 13(2)(i) of the Act.

In the result, I dismiss with costs Regular Second Appeal No. 258 of 1953.

CRIMINAL WRIT

Before Bhandari, C.J., and Falshaw, J.

SHRI RATILAL M. NANAVATI AND OTHERS,—*Petitioners*

versus

STATE OF DELHI,—*Respondent*

Criminal Writ No. 149-D of 1953

1953
 ———
 Dec. 8th

Criminal Law (Amendment) Act (XLVI of 1952)—Section 7—Power to transfer a case allotted to one Special Judge to another Special Judge—Whether vests in the High Court or State Government.

Held, that the power to transfer a case from one Special Judge to another vests exclusively in the High Court as according to the general scheme of the Criminal Law (Amendment) Act, 1952, the court of a Special Judge is a court subordinate to the High Court.

Held further, that section 7 of the Act was enacted with the object solely of enabling Government to declare, where there are more Special Judges than one for a particular area, which particular offence shall be tried by which particular Judge. This section empowers Government to allot a particular case to a particular Judge in the first instance; it does not empower Government to transfer a pending case from one Judge to another. In other words, the power of allotment cannot be said to include the power of transfer. Indeed, it is contrary to the policy of the law that a pending case should be transferred by an order of the Executive Government.

(1) 76 E.R. 614 (K.B.)