

Held further, that the bunch of sections 100 to 110-F of the Motor Vehicles Act do not in any way override the Law of Torts.”

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Learned counsel for the appellant submitted that in this authority, the learned Judge had not discussed the provisions of sections 94 and 95 of the Motor Vehicles Act and if the same had been considered, the decision might have been otherwise. I have already referred to these two provisions in detail and am of the view that they do not, in any way, support the contention of the appellant.

Pandit, J.

In the present case, since I have already held that this accident was not due to any rash or negligent act of the driver, therefore, the appellant is not entitled to claim any compensation for the injuries received by him.

In the result, this appeal fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs in this Court as well.

B.R.T.

CIVIL MISCELLANEOUS

Before Tek Chand, J.

DHANNA,—Petitioner.

versus

SIRI PARKASH AND OTHERS,—Respondents.

Civil Miscellaneous No. 3744 of 1961.

Punjab Security of Land Tenures Act (XI of 1953)—Section 14A(ii)—Time fixed for depositing arrears of rent by tenant—Whether can be extended by Revenue Court—Code of Civil Procedure (Act V of 1908)—Section 148—Whether applicable.

1962

May, 23rd.

Held, that a landowner desiring to recover arrears of rent from the tenant has to apply under section 14A(ii) of

the Punjab Security of Land Tenures Act, 1953, to the Assistant Collector, II grade, having jurisdiction, who shall issue notice in Form 'N' to the tenant. The period granted according to Form 'N' is statutory and cannot be extended by the Court as it is not open to the Court to extend a period fixed by the Act. To these proceedings, the provisions of section 148 of the Code of Civil Procedure are not attracted. There is no provision in the Punjab Security of Land Tenures Act which empowers the Assistant Collector or the Collector to extend the time for the payment of the rent which has fallen in arrears and thus help the tenant.

*Petition under Article 227 of the Constitution of India.*

H. L. SARIN AND K. K. CUCCURIA, ADVOCATES, for the Petitioner.

J. N. KAUSHAL, ADVOCATE, for the Respondents.

#### ORDER

Tek Chand, J. TEK CHAND, J.—This order will dispose of civil Miscellaneous petitions Nos. 3744 and 3745 of 1961, filed under Article 227 of the Constitution, as the facts are common.

The petition in C. M. 3744 of 1961, is a tenant of respondent No. 1, Sri Parkash. The Financial Commissioner and the Assistant Collector, II Grade, Hissar, are impleaded as respondents Nos. 2 and 3. The landlord had moved the Assistant Collector, II Grade, under section 14(A) of the Punjab Security of Land Tenures Act (10 of 1953) against the petitioner for the recovery of rent for the harvest Kharif 1959. On 9th January, 1961, the Assistant Collector, II Grade, passed an order directing the petitioner to pay a sum of Rs. 350.02 nP. to respondent No. 1 within a period of one month from the date of the order failing which the tenant would be rendering himself liable to ejectment.

This amount, however, was not paid by the tenant by 10th February, 1961. The tenant filed appeal to the Collector on 22nd February, 1961. He

also applied for an *ad interim* order for stay of dis-  
 possession. On 13th March, 1961, the eviction was  
 ordered to be stayed. On 13th June, 1961, the appeal  
 was dismissed by the Collector but an order was  
 passed requiring the tenant to pay the rent found  
 due within ten days on pain of eviction which runs  
 as under—

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“The appellants (the tenants) should deposit  
 the amount within ten days failing which  
 they will be liable for eviction from the land  
 under their tenancy.”

An appeal was taken by the landlord to the Com-  
 missioner seeking revocation of the order granting  
 the extension of ten days to the tenant. The Com-  
 missioner expressed the view that in view of the  
 clear language of section 14(A)(ii) of the Punjab  
 Security of Land Tenures Act, the Collector had no  
 jurisdiction to pass an order extending the period for  
 payment of the rent and thus to avert eviction.  
 Reliance was placed on two orders passed by the  
 Financial Commissioners in *Sham Dass v. Mange and  
 others* (1), and *Kulu Ram v. Ujagar Singh* (2). The  
 tenant's revision was dismissed by the Financial  
 Commissioner which has given rise to this petition.

Section 14(A)(ii) of the Punjab Security of  
 Land Tenures Act, 1953, provides that a landowner  
 desiring to recover arrears of rent from a tenant shall  
 apply in writing to the Assistant Collector, II Grade  
 having jurisdiction, who shall thereupon send a  
 notice, in the form prescribed, to the tenant either to  
 deposit the rent or value thereof, if payable in kind  
 or give proof of having paid it or of the fact that he  
 is not liable to pay the whole or part of the rent, or  
 of the fact of the landlord's refusal to receive the  
 same or to give a receipt, within the period specified  
 in the notice. Where, after summary determination  
 as provided in sub-section (2) of section 10 of this  
 Act, the Assistant Collector finds that the tenant has  
 not paid or deposited the rent, he shall eject the

(1) 1959 L.L.T. 49.

(2) 1960 L.L.T. 65.

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tenant summarily and put the landowner in possession of the land concerned. In this case notice in accordance with form 'N' was given to the tenant. The notice gave one month to the tenant for compliance and provided that if there was failure to comply with the orders the tenant would be ejected summarily from the land. The first argument advanced before me is that after the statutory notice is given, it is not open to the Collector or the Assistant Collector to extend any further time as has been done in the case. This, according to the learned counsel for the respondent, was the first error committed by the Collector when by his order, dated 13th June, 1961, he extended the period for paying Rs. 350.02 nP.

It is then urged that within a month the order was not complied with. The appeal was filed on 22nd February, 1961, when an application for stay was made and the attention of the Collector was not drawn to the period of one month having already expired. In any case, it is contended that the Collector when dismissing the appeal could not, under any provision of law, extend the time for depositing the rent which had become overdue. The view taken by the Financial Commissioner in his order reported in *Sham Dass v. Mange and others* (1), was that the period in the notice given under section 14(A) was prescribed under the statute and this statutory limitation could not be extended by the Court under any powers which might be said to inhere in it or under section 148 of the Code of Civil Procedure which did not apply. The other Financial Commissioner who decided the case reported in *Kulu Ram v. Ujagar Singh* (2), expressed the similar view. In this case, the inescapable fact is that the period of one month given by the Assistant Collector, II Grade, had expired on 10th February, 1960, twelve days before the institution of the appeal to the Collector. The Collector was not moved to accept the appeal, but he allowed ten days' time to deposit the amount,—*vide* his order, dated 13th June, 1961.

Mr. Harbans Lal Sarin, learned counsel for the tenant-petitioner, drew my attention to a decision of the Supreme Court in *Mahanth Ram Dass v. Ganga Dass* (3). In that case a Bench of a High Court while deciding an appeal in favour of the appellant had passed peremptory order fixing the period for payment of deficit court-fee. In that case, the appellant had made an application for extension of time before the time fixed had run out. When the application came up for hearing before a Division Bench after the period had run out, the High Court felt it was powerless to enlarge the time. The Supreme Court held that the High Court was not powerless to extend the time even though it had peremptorily fixed the period for payment. Section 148, of the Code of Civil Procedure, in terms, allowed extension of time, even if the original period fixed had expired, and section 149 was equally liberal. The Supreme Court held that *a fortiori* section 148 could be invoked by the applicant when the time had not actually expired. An order extending time for payment, though passed after the expiry of the time fixed, could operate from the date on which the time fixed expired. The decision of the Supreme Court does not appear to me to be applicable to the circumstances of this case. In this case the period granted according to form 'N' was statutory. This period could not be extended by the Court. In other words, it is not open to the Court to extend a period fixed by the Act. To these proceedings, the provisions of section 148 of the Code of Civil Procedure are not attracted. There is no provision in the Punjab Security of Land Tenures Act which can come to the assistance of the tenant and empowers the Assistant Collector or the Collector to extend time for payment of the rent which has fallen in arrears. The scope of proceedings under Article 227 of the Constitution is very narrow. Even if it be assumed that the Commissioner and the Financial Commissioner had committed an error which in my view they had not, this Court, within its narrow ambit under Article 227, cannot disturb such a decision. No error is apparent and it cannot be said that either the Commissioner or the Financial Com-

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(3) A.I.R. 1961 S.C. 882.

**Dhanna** missioner acted outside the scope of their respective  
**v.** jurisdiction  
**Siri Parkash and** For reason stated above, I am not satisfied that  
**others** petition under Article 227 is competent. I would  
**Tek Chand, J.** therefore, dismiss the petition, but in the circum-  
 stances leave the parties to bear their own costs.

R.S.

APPELLATE CIVIL

*Before Daya Krishan Mahajan and Prem Chand Pandit, JJ.*

PUNJAB STATE,—Appellant

*versus*

ATMA SINGH,—Respondent.

**Regular First Appeal No. 272 of 1957.**

1962  
 May, 24th, *Code of Civil Procedure (Act V of 1908)—Order 22*  
*Rule 3—Two appeals out of same suit—One by plaintiff*  
*and the other by defendant—Defendant's appeal abating*  
*for failure to bring legal representatives of the respondent*  
*on record within time—In plaintiff's appeal legal repre-*  
*sentatives of the appellant brought on record within time—*  
*Abatement of defendant's appeal—Whether can be set aside.*

*Held*, that where two appeals are independently filed and arise out of the same suit and where one is filed by the plaintiff in the original suit and the other by the defendant and where the appeal by the defendant-appellant has abated as he has not added the legal representatives of the deceased respondent in time, the defendant-appellant cannot claim the benefit of the fact that the legal representatives of the deceased appellant in the appeal filed by the plaintiff-appellant had been added within time and, therefore, say that it should be taken that those legal representatives have also been added in place of the deceased respondent in his appeal. The analogy of an appeal and memorandum of cross-objections in the same appeal does not hold good in the present case and hence the abatement cannot be set aside.

*Regular First Appeal from the order of Shri Murari Lal Puri, District Judge, Patiala, dated the 16th July, 1957,*