

## REVISIONAL CIVIL.

*Before Mehar Singh, J.*RALA RAM,—*Petitioner.**versus*SULTAN SINGH,—*Respondent.*

Civil Revision No. 174-D of 1957.

*Delhi and Ajmer Rent Control Act (XXXVIII of 1952)*  
*—Section 13(5)—Tenant failing to deposit rent as ordered*  
*by the Court—Defence to be struck out—Whether defence*  
*to ejection or all defences to the suit are to be struck out.*

(1) A.I.R. 1957 S.C. 232.

(2) A.I.R. 1955 Punjab 125.

1958

March, 24th

Held, that if a defendant-tenant fails to comply with the order of the trial court for deposit of rent according to subsection (5) of section 13 of the Delhi and Ajmer Rent Control Act, 1952, the Court has the power to strike out all the defences raised by the defendant-tenant, whether under the provisions of the said Act or under the general law, to the claim of the plaintiff-landlord for his ejection. Once the Court reaches a stage where it is compelled to pass an order against the defendant-tenant striking out his defence, then the defence must be struck out as a whole and not only partially.

*Petition for revision of the order of Senior Sub-Judge, Delhi, with Enhanced Appellate Powers, dated the 20th May, 1957, affirming that of Shri K. K. Gujral, Sub-Judge, 1st Class, Delhi, decreeing the plaintiff's suit ex parte against defendant with costs.*

PRITAM SINGH, SAFEER, for Petitioner.

B. DAYAL, for Respondent.

#### JUDGMENT.

Mehar Singh, J.

MEHAR SINGH, J.—This revision application arises out of a suit by the respondent, filed on 31st August, 1954, for ejection of the applicant, from the premises in suit, on the ground that the applicant is the tenant of the respondent and he is liable to ejection for reasons stated in the plaint, which reasons are said to be within the scope of proviso to subsection (1) of section 13 of the Delhi and Ajmer Rent Control Act (No. XXXVIII of 1952). It is, however, not necessary for the present purpose to go into the details of the reasons upon which the respondent sought ejection of the applicant.

The plaint having been presented on 31st August, 1954, the applicant put in his written statement on 8th November, 1954. Among other pleas in defence he also took the plea that the suit was barred under Order II, rule 2 of the Code of Civil

Procedure, and because of the principles of *res judicata* and estoppel. He of course, denied the grounds of ejection as urged by the respondent within the scope of the proviso to subsection (1) of section 13 of Act No. XXXVIII of 1952.

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On 4th April, 1955 an application was made by the respondent under section 13(5) of the Act for payment of arrears of rent and future rent by the applicant according to that provision and on that application an order was made on 8th June, 1955, within the meaning and scope of section 13(5). The applicant paid the arrears, and correctly, on 21st June, 1955. After that the parties went into arbitration on 1st August, 1955 and the case remained pending before the arbitrator for some time when in the end he refused to arbitrate. On the case coming back before the trial Court the arbitration was superseded on 31st October, 1955. The applicant did not deposit rent according to the order under section 13(5) for the period of the arbitration and also from the date of the supersession of the arbitration to 22nd November, 1955. In the Courts below there were some arguments whether the order of the trial Court under section 13(5) remained operative and effective for the period during which the case was before the arbitrator, but ignoring that aspect of the case for the moment, it is clear that the applicant should have deposited rent after 31st October, 1955, on which date the arbitration was superseded by the order of the Court, by 15th November, 1955. He did not do so till 22nd November, 1955. Obviously there was not compliance with the order of the Court under section 13(5) of the Act. The result was that on 22nd November, 1955, the learned trial Judge, again in accordance with section 13(5), struck off the defence of the applicant.

After that the suit of the respondent was decreed on 28th February, 1956. An appeal against

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the decree to the Senior Subordinate Judge of Delhi failed on 20th March, 1957. This is a revision application by the defendant against the appellate decree.

The learned counsel appearing for the applicant has urged only one ground in this application, not relying upon any other ground, and that ground based on a particular interpretation of subsection (5) of section 13 of Act No. XXXVIII of 1952, which the learned counsel puts upon it. Subsection (1) of that section prohibits a Court from passing a decree or order for recovery of possession of any premises in favour of a landlord and against a tenant. Then follows a proviso to this subsection in which grounds are enumerated and exception is provided that if one or more of those grounds are proved, the Court may proceed to pass a decree or order, as the case may be, for the ejectment of the tenant. Subsection (5) of that section is in these words:—

“Section 13(5). If the tenant contests the suit as regards the claim for ejectment, the plaintiff-landlord may make an application at any stage of the suit for an order on the tenant-defendant to deposit month by month rent at a rate at which it was last paid and also the arrears of rent, if any, and the Court, after giving an opportunity to the parties to be heard, may make an order for the deposit of rent at such rate month by month as it thinks fit and the arrears of rent, if any, and on the failure of the tenant to deposit the arrears of rent within fifteen days of the date of the order or to deposit the rent at such rate for any month by the 15th of the next following month, the court shall order the defence against ejectment to be struck out and the

tenant to be placed in the same position as if he had not defended the claim to ejectment; and the landlord may withdraw the amount of money in deposit without prejudice to his claim to any decree or order for recovery of possession of the premises."

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What the learned counsel contends is that under subsection (5) of Section 13 the defendant-tenant contests the claim for ejectment by a plaintiff-landlord and if defendant-tenant fails to comply with the order of the trial Court for deposit of rent according to that subsection, then the Court has power to strike out the defence of the defendant-tenant against the claim of the plaintiff-landlord for his ejectment, and that defence is limited to denial of the grounds upon which ejectment can be decreed or ordered by the Court. If the defendant-tenant takes any other ground of defence to the suit, for instance, that the suit is barred by any of the provisions of the Code of Civil Procedure, or for want of payment of proper court fee, or on the ground of want of jurisdiction in the trial Court, or some such similar other defence which goes to the root of the case, then such defence is not a defence against the claim of the plaintiff-landlord to eject the defendant-tenant within the scope of section 13 of the Act, and, therefore, such defence cannot be struck out according to section 13(5) of that Act. He seems to say that the defence of the defendant-tenant, in the contingency stated, can, in a particular suit, be struck out only partially and not wholly. The reply of the learned counsel for the respondent is that all defences, whether raised by the defendant-tenant having regard to the provisions of Act No. XXXVIII of 1952, or under the general law, are in fact defences to the claim of the plaintiff-landlord for his ejectment, and once the Court

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reaches a stage where it is compelled to pass an order against the defendant--tenant striking out his defence then the defence must be struck out as a whole and not only partially.

I am disposed to agree with what the learned counsel for the respondent contends. All that section 13(5) says is that in the contingency arising as stated therein and the Court passing an order for striking out the defence of the defendant-tenant, the defence as such is struck out and there is no justification for reading into the meaning of the subsection that the defence may, in a given case, be only partially struck out. This would mean that while the defendant-tenant may be prohibited from resisting the claim for his ejection by the plaintiff-landlord on the grounds stated in section 13 of the Act, he can still defeat the claim of the plaintiff-landlord for ejecting him on other grounds, which, the learned counsel for the applicant appears to think, cannot be struck out. I see no sound reason for so reading subsection (5) of section 13 of the Act. This ground fails.

There is no other ground that requires consideration and has been urged and the application is dismissed, but in the peculiar circumstances of the case, there is no order as to cost.

B.R.T.

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