Before G. C. Mital, J.

DHANNA RAM,—*Petitioner.*

versus

PANNA LAL,—*Respondent.*

Civil Revision No. 263 of 1979.

July 31, 1979.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Code of Civil Procedure (V of 1908)—Sections 11 and 47—Ejectment sought on the ground of non-payment of rent—Tenant tendering rent on first date of hearing but later admitting it to be short—Ejectment ordered on such admission—Objections by tenant under section 47 challenging the validity of the ejectment order—Tenant filing a suit as well challenging the same order and seeking temporary injunction—Objections dismissed by the executing Court—Temporary injunction also refused—Tenant's revision against the dismissal of his objections rejected by the High Court—Appeal by tenant against the order refusing temporary injunction—Appellate Court—Whether has jurisdiction to set aside the ejectment order—Order dismissing the objections—Whether operates as res-judicata.

Held, that the finding recorded in the execution proceedings between the parties operates as *res-judicata* between them in the suit impunging the executability and the validity of the ejectment order as well as in the application for the grant of a temporary injunction. The appellate Court deciding the appeal from refusal to grant temporary injunction had, therefore, no jurisdiction to take a contrary view, to set aside the ejectment order and order restoration of the ejectment application when the decision of the executing court rejecting the objections of the tenant and the order of the High Court upholding the same had become final between the parties.

(Paras 4 and 9).

Petition under section 115 CPC for the revision of the order of the Court of Sh. M. L. Mirchea, District Judge, Faridkot on 14th December, 1978, reversing that of Shri N. S. Saini, Sub-Judge 1st Class, Muktsar, accepting the appeal and directing the parties to appear before the learned Rent Controller, Muktsar on 1st January, 1979.

D. S. Nehra & Arun Nehra, Advocate with him, *for the Petitioner.*

Ashok Bhan, Advocate, *for the Respondent.*

JUDGMENT

Gokal Chand Mital, J.

(1) Dhanna Ram petitioner filed an application for ejectment on 25th of August, 1974, against his tenant Panna Lal, on the sole ground of non-payment of rent. 16th of December, 1974, was the first date of hearing when the tenant deposited certain amount with costs and interest which was accepted by the landlord under protest on the ground that the tender was invalid. On 23rd of December, 1974, the tenant filed a written statement and a reading of paras 5 and 9 of the same shows that he admitted that the tender was short due to mistake and apprehended danger of ejectment. Besides filing his written statement, he also made a statement before the Court on the same date admitting that the tender was short and prayed for time up to 10th of September, 1977. *Vide* order, dated 23rd of December, 1974, the Rent Controller passed an order of ejectment, the material portion of which deserves to be reproduced below:—

> "On 23rd December, 1974, the respondent made a statement that the tender made by them on 16th December, 1974 was a short tender, therefore, they apprehended their eviction on that and, therefore, they were ready to suffer the order of eviction and that they should be given time to vacate the shop in dispute up till 30th September, 1977 and that the parties be left to bear their own costs. A statement was also made on oath by the applicant after hearing the above statement made by the respondent to the effect that the application be accepted as per the statement of the respondents. It is manifest from the pleadings that the applicant had also claimed the house-tax besides the rent of the shop in dispute which has not been tendered along with the arrears of rent by the respondent and, therefore, they apprehended that the tender made by them was a short one. This fact suggests that the ground of ejectment is made out and in view of the statements of the parties, I accept this application and grant time to the respondent to vacate the shop in dispute till 30th September, 1977. In case of his failure to vacate the shop and deliver the possession of the shop to the applicant till 30th September, 1977, the applicant will have the right to eject the respondent through the process of the Court."

After the expiry of the time allowed by the Rent Controller, when the tenant did not vacate the premises voluntarily, the landlord took out execution. The tenant filed objections against the execution of the decree on the ground that the consent order of ejectment was void being not based on a ground of ejectment contained in the East Punjab Urban Rent Restriction Act, 1949, in view of the Supreme Court decisions in *Parosi Lal Jain* v. *Man Mal and another* (1) and *Smt. Kaushalya Devi and another* v. *K. L. Bansal* (2). The tenant also filed a suit for permanent injunction restraining the landlord-decree-holder from executing the ejectment order on the same grounds and along with the suit, he filed an application for temporary injunction. Both the matters came together for consideration before the same learned Subordinate Judge, who by order, dated 27th of March, 1978, rejected the objections as also the application for temporary injunction filed by the tenant.

2. Against the order of the Subordinate Judge, dismissing the objection petition, the tenant filed C.R. 1297/78 *Panna Lal* v. *Dhanna Ram,* which was dismissed by this Court. Against the order of the trial Court, refusing temporary injunction, the tenant filed an appeal before the District Judge. The learned District Judge, by order, dated 14th of December, 1978, allowed the appeal of the tenant on the findings that there was no *prima facie* satisfaction of the Rent Controller and that with a little application of mind the Rent Controller would have come to the conclusion that the tender was not short but rather in excess and while forming this view he took support from the two Supreme Court decisions, referred to above, and held that the consent order of ejectment was a nullity and while quashing the same directed that the Rent Controller shall proceed with the application for ejectment after reviving the same in accordance with law. Aggrieved against this order, the landlord has come up in revision to this Court.

3. The learned counsel for the petitioner-landlord has seriously criticised the judgment of the learned District Judge and has urged that not only the order is contrary to the two Supreme Court decisions, referred to above, but he had no jurisdiction, on the appeal

(1) A.I.R. 1970 S.C. 794.

(2) A.I.R. 1970 S.C. 838.

before him, to set aside the ejectment order, dated 23rd of December, 1974, and to order the revival of the original ejectment application. Shri D. S. Nehra has further submitted that the objections under section 47 of the Code of Civil Procedure, filed by the tenant, that the decree was inexecutable, null and void, were rejected by the Executing Court which order was upheld by this Court in revision. These orders have become final and operate as *res judicata* between the parties and as such, either in the suit or while deciding the appeal from refusal to grant temporary injunction, the validity of the ejectment order could not be challenged. I find force in all the submissions made by the learned counsel for the landlord-decree-holder.

4. The tenant impugned the executability and the validity of the ejectment order before the Executing Court as well as in the suit. The Executing Court held that the same was executable and was not null and void as the order of ejectment was clearly based on the ground of invalid tender. This order of the Executing Court has been upheld by this Court in revision. These orders have not been challenged by the tenant in appeal before the Supreme Court with the result that they have become final between the parties. The finding recorded in the execution proceedings between the parties, therefore, operates as *res judicata* between them in the suit as well as in the application for the grant of temporary injunction. Consequently, I hold that the learned District Judge had no jurisdiction to take a contrary view and the decision of the Executing Court rejecting the objections of the tenant and the order of the High Court upholding the same operated as *res judicata* between the parties. On this ground alone, the order of the learned District Judge would be liable to be set aside.

5. There is equal merit in the contention of the learned counsel for the landlord that the ejectment order is not contrary to the Supreme Court decisions in *Perosi Lal Jain* v. *Man Mal and another* and *Smt. Kaushalya Devi and another.* v *K. L. Bansal* (supra). A reading of the ejectment order, which has been reproduced in the opening part of the judgment above clearly 'shows that the Rent Controller came to the conclusion that the tender was short as admitted by the tenant in his statement on oath as also from the fact that the tenant had not tendered the arrears of house-tax which were claimed by the landlord. As such, the Rent Controller gave a firm finding that the ground of ejectment is made out. Once it is held that

there was short tender, this is clearly a ground of ejectment under section 13 of the East Punjab Urban Rent Restriction Act and, therefore, it satisfies the requirement of the aforesaid two decisions of the Supreme Court and the order of ejectment cannot be held as null and void not based on any of the grounds under the said Act.

6. After the aforesaid decisions, two more cases came up for consideration before their Lordships of the Supreme Court which are reported as *K. K. Chari* v. *R. M. Seshadri* (3) and *Nagindas Ramdas* v. *Dalpatram Ischaram alias Brijram and others* (4), which have further clarified the scope of the earlier two decisions. In *K. K. Chari's case* (supra), the facts were that the landlord had sought ejectment on the ground of personal necessity and in support thereof produced large volumes of exhibits besides producing oral evidence. The tenant had not chosen to cross-examine the landlord and thereafter both the parties entered into a compromise and one of the important terms of the compromise which requires to be noticed is that the tenant withdrew his defence in the ejectment petition and agreed to a decree for eviction unconditionally. On these facts, their Lordships came to a clear conclusion that the agreed ejectment order was well-based as personal necessity was clearly established from the documents produced which further found support from the fact that the defence was struck off meaning thereby that the tenant accepted the ground of personal necessity. As such, the order of ejectment ultimately was held to be valid by the Supreme Court in that case. As regards *Nagindas Ramdas's case* (supra), the ejectment was sought on the ground of non-payment of rent and *bona fide* requirement. It is not clear from the report as to what proceedings had been taken on the ejectment application, but the parties arrived at a compromise. The agreed terms were that the defendant was to hand over possession by a certain date without objection, the relationship of landlord and tenant between the parties had come to an end and no such relationship was to be created by the compromise and that if the plaintiffs were to get for the defendant lease of other premises, the defendant was to hand over the possession of the suit premises immediately. On these facts, the point arose before the Supreme Court, whether such compromise ejectment order was null and void or not. After

(3) A.I.R. 1973 S.C. 1311.
(4) A.I.R. 1974 S.C. 471.

referring to the aforesaid three decisions of the Supreme Court, it was ruled that the Executing Court was not competent to go behind the decree if the decree on the face of it disclosed some material on the basis of which the Rent Controller could be satisfied with regard to the existence of a statutory ground for eviction. From a reading of the record, their Lordships came to the conclusion that all that has to be seen is whether there was some material on the basis of which the Rent Controller could have—as distinguished from *must* have—been satisfied as to the statutory ground for eviction. It was also held that to allow the Executing Court to go behind that limit would be to exalt it to the status of a super Court sitting in appeal over the decision of the Rent Controller. On facts, they came to the conclusion that since there was a clear admission in the compromise, incorporated in the decree of the fundamental facts which could constitute a statutory ground for eviction, the Executing Court was not competent to go behind the decree and question its validity.

7. From a reading of the last two decisions of the Supreme Court, it will be seen that no statutory ground for eviction was contained in the agreed order of ejectment and from other material on the record, their Lordships came to the conclusion that the ground of ejectment had been established on other material on the record and as such the Executing Court could not go behind the ejectment order. In the present case, the ground of ejectment is contained in the ejectment order itself and that is, making of short tender which is a statutory ground of ejectment. In spite of the mention of the statutory ground of ejectment clearly in the ejectment order, it is surprising how the learned District Judge has gone on to hold that no ground of ejectment was made out and in fact the tender was of an amount more than what was due. This shows that the learned District Judge not only went behind the decree, which was not permissible under law, he sat on the ejectment order as a Court of appeal and went into the record as an appellate court to take a contrary view. This could be done only if the tenant had gone up in appeal before the appellate authority against the agreed ejectment order. Even the Executing Court had no jurisdiction to go either behind the decree or to come to such a conclusion whether the ejectment order passed by the Rent Controller on the statutory ground of short tender was a correct order or not and it could not be challenged even in a separate suit much less in an appeal from an

interim order refusing to grant temporary injunction against the execution of the ejectment order. Accordingly, I hold that the learned District Judge was clearly in error in going behind the ejectment order and in usurping jurisdiction which did not vest in him in examining the ejectment order on merits.

8. For the reasons recorded above, I hold that the ejectment order was not a nullity as a statutory ground of ejectment was clearly made out in the ejectment order passed by the Rent Controller and thus reverse the decision of the learned District Judge to the contrary.

9. As already noticed above, the appeal before the learned District Judge was against the order of the trial Court refusing to grant temporary injunction against the execution of the ejectment order. From a reading of the judgment of the learned District Judge it is apparent that he was probably under the impression as if he was hearing an appeal against the order of the Executing Court rejecting the objections of the tenant whereas the appeal before him was against that part of the order of the learned trial Court by which he dismissed the application for grant of temporary injunction against the execution of the ejectment order by the same order. Even if there was some merit in appeal before the learned District Judge, he had no jurisdiction to set aside the ejectment order and order restoration of the ejectment application, as has been done in this case. All that he could do was to grant a temporary injunction restraining the landlord from executing the ejectment order till the decision of the suit. As such, I find merit in this contention of the learned counsel for the petitioner also.

10. For the reasons recorded above, I allow this revision petition with costs throughout, set aside the order of the learned District Judge and restore that of the trial Court.

N. K. S.

Before S. S. Sandhawalia, C.J. and I. S. Tiwana, J.

RUP CHAND,—*Petitioner.*

versus

STATE OF HARYANA and others,—*Respondents.*

Civil Writ Petition No. 182 of 1978.

August 2, 1979.

Punjab Co-operative Societies Act (XXV of 1961) *(as applicable in the State of Haryana)—Section* 55—*Punjab Co-operative Societies*