

Before G. C. Mital, J.

WARYAM SINGH,—Petitioner.

versus

SHAM DASS,—Respondent.

Civil Revision No. 2866 of 1983

March 27, 1984

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(1)—Application filed by the landlord for the eviction of the tenant on the ground of non-payment of rent—Eviction ordered by Rent Controller—Compromise before appellate authority between parties—Tenant agreeing to pay the arrears failing which the appeal before the appellate authority to be dismissed—Compromise also creating a fresh tenancy at a higher rent—Tenant refusing to pay arrears—Landlord—Whether entitled to seek eviction of the tenant in terms of compromise.*

*Held*, that the tenant did not comply with the terms of the compromise order as the arrears of rent were not paid. The net result was that the appeal stood dismissed and the ejection order passed by the trial Court remained operative. However, in the compromise a new tenancy was created by the landlord in favour of the tenant. By ejection order, the earlier tenancy came to an end and the tenant could be ejected under the old tenancy in pursuance of the ejection order passed by the Rent Controller and maintained by the appellate Court. The tenancy could be brought to an end on one of the grounds shown in section 13 of the East Punjab Urban Rent Restriction Act, 1949 and in no other manner. The words 'a tenant in possession of a building shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy except in accordance with the provisions of this Act' in the opening part of section 13(1) of the East Punjab Urban Rent Restriction Act, 1949 containing the *non obstante* clause, go to show that the tenant could be evicted only on one of the grounds contained in the Act. It is true that the earlier ejection order was also passed on one of the grounds contained in the Act but that related to earlier contract of tenancy and after coming into force of the new contract of tenancy, the earlier ejection order became infructuous because the execution became incapable in view of the new contract of tenancy.

(Para 3).

Waryam Singh v. Sham Dass (G. C. Mital, J.)

*Petition Under Section 115, C.P.C. for revision of the order of the Court of Shri Mohinder Singh, P.C.S., Sub-Judge, 1st Class, Barnala, dated 7th November, 1983, dismissing the objection petition with costs.*

Malkiat Mann, Advocate, *for the Petitioner.*

J. R. Mittal, Advocate, *for the Respondent.*

JUDGMENT

*Gokal Chand Mital, J.:*

(1) Waryam Singh was tenant of Sham Dass at the rental of Rs. 100 per month. The landlord sought ejection of the tenant on the ground of non-payment of rent since May, 1979. Since no tender was made before the Rent Controller on the first date of hearing and the tenant was found to be in arrears of rent, the order of eviction was passed on 16th May, 1983. The tenant went up in appeal and before the Appellate Court, compromise took place. The landlord made the following statement on 10th June, 1983:—

“I have compromised with Wariam Singh. According to the compromise I admit the appellant to be my tenant over the premises in question at the rate of Rs. 200 per mensem with effect from 1st June, 1983, though the appellant shall be liable to pay arrears of rent up-to-date, i.e., 31st May, 1983 at the rate of Rs. 100 as found by the Rent Controller. The said amount shall be paid/deposited before the Rent Controller on or before 31st August, 1983 failing which this appeal shall be deemed to be dismissed. My application for eviction pending before the Court of Shri Mohinder Singh, Rent Controller will be got dismissed as withdrawn.”

(2) The tenant accepted the statement. In pursuance of the statement, the appeal was disposed of. In terms of the compromise, the tenant was to pay arrears of rent due up to 31st May, 1983 at the rate of Rs. 100 per month on or before 31st August, 1983 and in case he did not pay by the due date, it was to be deemed that the appeal filed by him before the Appellate Authority stood dismissed. The tenant did not pay the arrears of rent by the due date. Thereafter, the landlord took out execution which was opposed by the tenant. The Executing Court dismissed the

objection petition of the tenant by order, dated 7th November, 1983. The tenant has come to this Court against the aforesaid order.

(3) After hearing the learned counsel for the parties, I am of the view that this revision deserves to succeed. It is true that the tenant did not comply with the terms of the compromise order as he did not pay the arrears of rent due up to 31st May, 1983 at the rate of Rs. 100 per month. The net result was that the appeal stood dismissed and the ejectment order passed by the trial Court remained operative. If the matter remained up to this level, there would have been no merit in the objections of the tenant. In the compromise a new tenancy was created by the landlord in favour of the tenant which is clear from the following lines in the statement of the landlord:

“—I admit the appellant to be my tenant over the premises in question at the rate of Rs. 200 per mensem with effect from 1st June, 1983 though the appellant shall be liable to pay arrears of rent up to date, i.e., 31st May, 1983 at the rate of Rs. 100 as found by the Rent Controller.”

While creating a new tenancy at the rate of Rs. 200 with effect from 1st June, 1983, the liability of the tenant to pay the arrears of rent up to 31st May, 1983 was at the rate of Rs. 100 per month. By ejectment order, the earlier tenancy came to an end and the tenant could be ejected under the old tenancy in pursuance of the ejectment order passed by the Rent Controller and maintained by the Appellate Court. On peculiar facts of this case, the ejectment was not possible since the landlord created new tenancy with effect from 1st June, 1983 at double the rate of rent. Therefore, at the time execution was sought to be taken out, the earlier ejectment order had become infructuous inasmuch as that could not operate beyond 31st May, 1983, as from 1st June, 1983 the tenant continued in possession under the new contract of tenancy and that contract could be brought to an end on one of the grounds shown in section 13 of the East Punjab Urban Rent Restriction Act, 1949, and in no other manner. The words “a tenant in possession of a building shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy except in accordance with the provisions of this Act” in the opening part of section 13(1) containing the *non obstante* clause, go to show that the tenant could be evicted only on one of the grounds contained in the Act. It is

Krishan Lal v. Gulab Ram (R. N. Mittal, J.)

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true that the earlier ejection order was also passed on one of the grounds contained in the Act but that related to earlier contract of tenancy and after coming into force of the new contract of tenancy, the earlier ejection order became infructuous because the execution became incapable in view of the new contract of tenancy.

(4) If the landlord had not entered into a new contract or tenancy, but had merely allowed some time to the tenant to vacate the premises, then certainly the landlord would have been entitled to take out the execution on the expiry of the time because such an agreement would not have created a new tenancy.

(5) For the reasons recorded above, this revision is allowed, the order of the Executing Court is set aside and it is held that the execution proceedings have become infructuous in view of the new contract of tenancy. The remedy of the landlord to recover arrears of rent due up to 31st May, 1983, on the basis of compromise arrived at between the parties on 10th June, 1983, would be elsewhere but not in these proceedings. However, the parties are left to bear their own costs.

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