REVISIONAL CIVIL

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

JAGAT RAM,—*Petitioner.*

versus

SHANTI SARUP,— *Respondent.*

Civil Revision No. 477 of 1963.

1964

November, 5th

East Punjab Urban Rent Restriction Act (III of 1949)—Proviso to S. 13(2)(i)—"Due Service"—Meaning of—Whether means service of summons along with copy of application—Ex parte order made against a tenant set aside—First hearing in such a case—Whether the date on which the ex parte order is set aside—sufficient cause for setting aside of an ex parte order—whether includes the proof of sufficient funds with the tenant to clear off the arrears of rent in addition to the sufficient cause for inability to appear.

Held, that in the context of the proviso to section 13(2)(i) of the East Punjab Urban Rent Restriction Act, 1949, the words "due service" mean "service of the summons along with the copy of the

application". Any hearing after this service would be the first hearing. The mere service of summons will not make the hearing a first hearing, unless the summons have been served with the copy of application and the appearance of the tenant in response to them will not make that hearing the first hearing. The only meaning that can be given to the word 'due' is that the tenant is made aware of what he is to answer in response to the service of the summons. Otherwise the word 'due' would become superfluous, and in the context in which it appears, it cannot be held that the word 'due' was superfluously used. It is essential that either the purport of the application is made known to the tenant or a copy of the application is served on him. If the tenant has either not been conveyed the purport or the copy of the application but he appears before the Rent Controller, it would be appearance in response to service of summons but not 'due service of summons'. In other words it will be a hearing but not the 'first hearing'.

Held, that if an *ex parte* order made on the first hearing by the Rent Controller against a tenant is set aside the first hearing will not be the first hearing, but the first hearing in this situation will be the day on which the *ex parte* order is set aside and the tenant is entitled to participate in the proceedings. If a party is prevented by sufficient cause from appearing on the date specified in the summons, the day so specified is not the 'first hearing'. But if the failure is not for sufficient cause, the date fixed for appearance will still remain the first hearing, provided the summonses were duly served.

Held, that while setting aside the *ex parte* order the Rent Controller has not merely to go by the fact that the tenant was prevented by sufficient cause from attending the hearing, but also whether on that date the tenant had the funds to clear the arrears of rent. It is the tenant who is in arrears of rent and who wants to avoid his eviction under the proviso after having incurred the forfeiture of his tenancy by non-payment of rent. It is, therefore, for him to prove not only that he was prevented by sufficient cause from not attending on the date fixed but also that he had the means to meet that liability.

Case referred by the Hon'ble Mr. Justice Inder Dev Dua on 17th December, 1963 to a larger Bench for decision of an important question of law involved in the case and the case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice D. K. Mahajan, on 5th November, 1964.

Petition under section 15 *of Act* 3 *of* 1949 *for revision of the order of Shri C. G. Suri, Appellant Authority, Ludhiana, passed on* 22*nd July,* 1963. *affirming that of Miss Harmohinder Kaur, Rent*

Controller, Ludhiana dated 8th April, 1963, passing an order of ejectment against the respondent.

Y. P. GANDHI, ADVOCATE, for the Petitioner.

B. R. AGGARWAL AND S. S. DHINGRA, ADVOCATES, for the Respondent.

JUDGMENT

Mahajan, J. MAHAJAN, J.—This is a petition for revision under the East Punjab Urban Rent Restriction Act and has been referred to a larger Bench for decision by my learned brother, Dua, J., by his order dated the 17th of December, 1963.

The facts of the case and the matters in controversy which require determination are fully set out in the referring order. It is, therefore, not necessary to cover that ground. The referring order should be read as part of this order.

The question that requires determination is one but it has two aspects. The question is whether on the facts of this case the deposit of arrears of rent made on the 15th of February, 1963, was a deposit made at the first hearing. In other words the true scope and effect of the proviso to Section 13(3)(2) (i) of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act No. III of 1949) (hereinafter referred to as the Act) falls for determination. The proviso is in these terms:—

> "Provided 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 the time aforesaid".

A tenant who is in arrears of rent incurs a forfeiture of the tenancy. This enables the landlord to bring an application for his eviction under section 13(2) (i) of the Act. However, the tenant can escape eviction by recourse to the proviso. The proviso operates only if at the *first hearing* of the application for ejectment after *due service* the rent in arrears is paid or tendered with six per cent per annum interest and costs as assessed by the Controller.

The Act contemplates framing of rules for carrying out all or any of the provisions of the Act (Section 20). There is no procedure prescribed in the Act for determination of the applications under section 13 of the Act. The applications lie not to a Court but to a Controller and the appeals from the orders of the Controller lie to an appellate authority. Both the Controller and appellate authority are *persona designata* and are not strictly Courts as defined in the Punjab Courts Act,—*vide Pitman's Shorthand Acadamy* v. *M/s. B. Lila Ram & Sons* (1), though the persons who have been appointed as Controllers or appellate authorities are Subordinate Judges and District Judges. The provisions of the Code of Civil Procedure are applied to a very limited extent, namely for the purpose of summoning and enforcing the attendance of witnesses, and compelling the production of evidence (Section 16). The provisions of the Code of Civil Procedure with regard to the summoning of a party are even not made applicable. In this situation when the question arose in this Court as to what procedure the authorities under the Act had to follow in determining the application under section 13, Bhandari, C. J., in *Mathra Das* v. *Om Parkash and others* (2), observed as follows:—

> ".....a Rent Controller or a District Judge acting under the provisions of the Rent Restriction Act is at liberty to follow any procedure that he may choose to evolve for himself so long as the said procedure is orderly and consistent with the rules of natural justice and so long as it does not contravene the positive provisions of the law. The elementary and fundamental principles of a judicial enquiry should be observed but the more technical forms discarded."

In another case where the question arose whether the Rent Controller or the District Judge could set aside the *ex parte proceedings*, Bhandari, C.J., observed in *Manohar Lal v. Mohan Lal* (3), as follows:—

> "The Rent Controller has inherent power to set aside an *ex parte order* passed by himself."

(1) I.L.R. 1949 Punjab 606=1950 P.L.R.I.
(2) I.L.R. 1957 Punj. 611=1957 P.L.R. 45.
(3) I.L.R. 1957 Punj. 305=1957 P.L.R. 38.

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No discordant note has been struck in this Court against the aforesaid propositions laid down by the learned Chief Justice. They seem to be fully justified by the observations of the Supreme Court in *Sangram Singh* v. *Election Tribunal, Kotah* (4), wherein Bose, J. held as follows:—

> ".....Our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them."

These authorities have been referred to with a purpose, namely, whether this Court would be justified in drawing inspiration from the Code of Civil Procedure while interpreting certain terms used in the proviso, which falls for our consideration.

The first question that has to be tackled is what is the meaning of the phrase 'due service' in the proviso. The contention on behalf of the tenant is that 'due service' means service of summons along with the copy of the petition under section 13. Whereas according to the landlord 'due service' merely means service of summons. If the landlord's contention is correct, the word 'due' seems to be superfluous in the proviso. It is a settled rule of law that legislature does not waste words and that every word in an enactment has to be given a meaning. With reference to the context of a statute certain words may have to be treated as superfluous or redundant, but that is an exception and not the rule. 'Due service' is followed by what the tenant is to do to get the benefit of the proviso, namely, to pay or tender the arrears of rent in accordance with the proviso. In case the tenant is merely sent a notice to appear, he will be totally oblivious as to the reason why he has been called upon to appear. How then could he be expected, when he appears, to tender the arrears of rent? The answer may be that the tenant would know why he has been called upon to appear, and, therefore, he must go to the Rent Controller with the arrears

(4) A.I.R. 1955 S.C. 425.

of rent, because what is due from him is within his personal knowledge. This consideration is off-set in cases where a landlord makes an exaggerated claim against a tenant or even a false claim. Morevore, it is not obligatory on the landlord to take the ground on the basis of the tenant's default in payment of rent. But on the other hand if a false claim is made regarding tenant's default, would it be a relevant consideration in interpreting the language of the proviso ? If he is not in arrears, he is not required to make a deposit. If he is in arrears, he is not bound to make a deposit as soon as he appears for the first time in response to summons if he wants to avoid eviction under Section 13(2) (i). One cannot lose sight of the fact that we are dealing with a provision which gives additional benefit to the tenant even when he has incurred forfeiture. That benefit is only available if he clears up his dues with interest and costs and that too at the first hearing. The first hearing is qualified by the phrase 'due service'. Thus a hearing to be a first hearing has to be one after 'due service'. If one refers to the summonses that are issued by the Rent Controller, one finds that they provide for the copy of the application to be served along with the summonses. Thus, from this fact it may be assumed that the Rent Controllers have devised the procedure for summoning the tenant and that procedure is that the summonses must be accompanied by a copy of the application and if the copy of the application is not served alongwith the summonses, there is no 'due service'. There are a number of decisions of this Court which have taken the view that service is effective for the purposes of the proviso even if the summonses have been served without the copy of the application. The basic decision is by Khosla, C.J., in *Mela Ram* v. *Kundan Lal* (5), wherein it is held as follows:—

> "The hearing does not cease to be a hearing, because the defendant has not been supplied with a copy of the plaint."

The learned Chief Justice placed reliance for this proposition on the decision of Kapur, J. (as he then was) in *Hira Lal v. Gian Singh and Co., and others* (6), wherein the learned Judge had observed—

> "In my opinion the words 'first day of hearing' must mean the day when the defendant appears in

(5) I.L.R. (1961) 2 Punj. 797.
(6) A.I.R. 1951 Punj. 441.

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answer to the summons and the Court takes up the case in accordance with the Civil Procedure Code."

The facts of the above case do not show, that, when in response to summons the tenant appeared for the first time before the Rent Controller and prayed for an adjournment to file the written statement, he had not been served along with a copy of the application. The indications are to the contrary, namely, that he had been served with a copy of the application. Therefore, this authority does not furnish the basis for the proposition that mere service of summons without a copy of the application is 'due service'. The first hearing, according to the proviso, can only be a hearing after 'due service'.

The next decision on which Khosla, C.J., relied in *Mela Ram's case* is the judgment by Bhandari, C.J., in *Mukh Ram* v. *Siri Ram and others* (7). In this case again it was held that the deposit was made on the first hearing and no question arose as to 'due service' before the first hearing. The only question that was seriously debated before the learned Chief Justice was that the amount having been produced and ordered to be deposited on the first hearing could not be so deposited on that very day because the treasury had closed down at 2 P.M. The amount was consequently deposited in the treasury the next day. It was held by the learned Chief Justice in this situation that the amount was deposited on the first day of hearing and there was full compliance with the proviso.

The decision of the learned Chief Justice in *Mela Ram's case* was followed by Falshaw, C.J., in *Shri Sushil Kumar* v. *S. B. Atma Singh,* Civil Revision No. 60 of 1962, decided on the 14th of August, 1963, and by Gurdev Singh, J., in *Mukandi Lal* v. *Ghanya Lal,* Civil Revision No. 491 of 1962, decided on the 17th May, 1963. An examination of these decisions discloses that no notice was taken of the word 'due' before service. The basic decision of Khosla, C.J. in *Mela Ram's case* proceeded on the basis that once summonses were served on the tenant and he appeared in response to them, the hearing did not cease to be a hearing because the tenant was not supplied with a copy of the petition. Thus, the hearing in this situation was held

(7) I.L.R. 1959 Punj. 2102=1959 P.L.R. 561.

to be a first hearing—it being first in point of time. There can be no quarrel with this proposition to this limited extent that in point of time it is indeed the first hearing. But the question still remains, is it a hearing after due service? The expression 'due service' is used in the Civil Procedure Code and there is no reason why the same meaning should not be attached to that expression when it is used in the proviso to section 13(2) (i) of the Act. It is a well known canon of construction that where a certain expression is used in a statute and has acquired a certain meaning and that expression is again used in a subsequent statute, the Legislature must be presumed to have used it to denote the same meaning which it had acquired in the earlier statute. Moreover, the expression 'due service' is used in a procedural statute (Code of Civil Procedure) which according to their Lordships of the Supreme Court in *Sangram Singh's case* is a statute embodying the rules of natural justice. See also in this connection the observation of Panigrahi, J., in *Nimi Charan* v. *Sham Mohan* (8). Therefore, there is no reason why the expression 'due service' should not be understood in the same manner as it is understood in the Civil Procedure Code, though the provisions of the Code of Civil Procedure have not been made specifically applicable to the proceedings under the Act.

The case, which has taken the contrary view, namely, first hearing is only that hearing which is after the summonses have been served with a copy of the application, is *Ram Chand* v. *Mathra* Das (9), a decision by Mehar Singh, J. It is no doubt true that section 17 of the Pepsu Urban Rent Restriction Ordinance (No. VIII of 2006 Bk) makes the provisions of the Code of Civil Procedure with regard to the summoning and enforcing the attendance of parties and witnesses applicable to proceedings before a Controller, but in our view in principle that will not make any difference, as will be presently shown. This decision was noticed by Khosla, C.J., in *Mela Ram* v. *Kundan Lal*, Civil Revision No. 582 of 1959, decided on the 29th of March, 1961, and while dealing with it the learned Chief Justice observed as follows:—

> "....but since there is this conflict between the decision of the Pepsu High Court and the Punjab

(8) A.I.R. 1953 Orissa 254.
(9) I.L.R. 1955 Patiala 388.

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High Court, I, feel that I should follow the rule of this Court rather than that of another Court". It was not disputed by the learned counsel for the parties that under the Code of Civil Procedure, 'due service' would be service only after the summonses have been served with a copy of the plaint. We see no reason to depart from this interpretation of the words 'due service' so far as the Act is concerned. In our view the decision of Khosla, C.J., and the other decisions which follow the same do not lay down the correct rule of law for they have ignored the word 'due' before 'service' in the proviso to section 13(2) (i) of the Act.

It will also be proper at this stage to notice the decision of the Bombay High Court in *K. M. Dhotre* v. *A. L. Mashalkar* (10), relied upon by the petitioner's counsel. This decision, in our opinion, goes too far and we will rest content in quoting the passage from *Mela Ram's case* where the learned Chief Justice has fully dealt with the same. The reasoning of the learned Chief Justice commends itself to us and we are in respectful agreement with the same. While dealing with *Mela Ram's case*, the learned Chief Justice observed as follows:—

> "The reason given by Tendolkar, J. does not, however (and I say this with great respect to the learned Judge) appeal to me. He has sought to distinguish between the phrases 'the first day of hearing' and 'the first day fixed for hearing'. The reason he gives is that a hearing takes place on several days and so the first day of hearing must be the day when something is done, and if it was intended that the first day of hearing was referred to in the provision, then the expression 'fixed for hearing' would have been used. This is how the learned Judge argues the matter.
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> "Secondly, if by 'the first day of hearing' was to be meant the returnable date that comes only once in the course of a given suit, that is, the hearing that cannot repeat itself, then what was more easy for the Lagislature than to say 'on the day

(10) A.I.R.1959 Bom. 471.

fixed for hearing?' 'On the first day of hearing' imports also the idea that there will be other hearings of the type which we refer to here, but it is only the first of them that is to be taken into account. In other words, the quality of hearing referred to is such that it is capable of being repeated from time to time in that suit and it is not a mere fixed point, like giving a notice which will never occur again in the same suit, that could accurately be described as 'the first day of hearing of the suit.' There is then no first day and no last day; the day fixed for hearing would both be the first and the last because that day cannot repeat itself."

With great respect to the learned Judge, the reasoning does not appear to me to be very logical and an enquiry into semantics is hardly likely to prove helpful in a case of this type, because when there is a day of hearing, the day of hearing is fixed and, therefore, whether it is the first day of hearing which is fixed or the second day of hearing which is fixed, would make no difference at all to the case. A day fixed for hearing can apply to every day fixed for hearing and not only the first one. Therefore, the distinction sought to be made by the learned Judge is illusory and not real. It seems to me to be far more logical to hold that the first day of hearing is the day upon which the matter comes before the Court and the case can be heard, because the defendant appears and the plaintiff is also present. If the defendant asks for an adjournment on some ground, that surely does not deprive that day of its quality of being a day of hearing."

Therefore, we are clearly of the view that in the context of the proviso to section 13(2) (i) of the Act, the words 'due service' must mean 'service alongwith the copy of the application'. Any hearing after this service would be a first hearing. The only difference in the view that we have taken of the matter and the one that was taken by Khosla, C.J., is that mere service of summonses will not make the hearing a first hearing; unless the summonses have been served with a copy of the application, the appearance of the tenant in response to them will not make that hearing a first hearing. After giving the matter our

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careful consideration, we are of the view that the only way in which meaning can be given to word 'due' is that the tenant is made aware of what he is to answer in response to the service of summons. Otherwise the word 'due' would become superfluous, and in the context in which it appears, it cannot be held that the word 'due' was superfluously used. It is essential that either the purport of the application is made known to the tenant or a copy of the application is served on him. If the tenant has either not been conveyed the purport or the copy of the application but he appears before the Rent Controller, it would be appearance in response to service of summons but not 'due service of summons'. In other words it will be a hearing but not the 'first hearing.'

This brings us to the second aspect of the matter. What would be the first hearing where *ex parte* proceedings are taken against a tenant and are set aside. This Court has consistently taken the view that if an *ex parte* order is made on the date of the first hearing and that order is set aside, the first hearing will not be the first hearing, but the first hearing in this situation will be the day on which the *ex parte* order is set aside. It may be mentioned that there is no bar to a tenant appearing at a hearing after the *ex parte* proceedings have been taken against him. He can participate in those proceedings after that date, but that will not enable him to set at nought the proceedings of the day on which an *ex parte* order was made against him or of the hearing following that hearing. But if he applies for setting aside of the *ex parte* order and the Controller finds that there is sufficient cause for the non-appearance of the tenant on the first hearing and he sets aside the *ex parte* order, its effect would be that the first hearing when the *ex-parte* order was passed, would not be treated as a hearing at all. What had happened on that hearing is just obliterated. Thus the first hearing in this situation is when the *ex parte* order is set aside and the tenant is entitled to participate in the proceedings. This is what has been held in the following decisions:—

(1) *Manohar Lal* v. *Bal Raj* (11).

(2) *O. P. Kathpalia* v. *S. Lakhmir Singh and others* (12).

(11) A.I.R. 1953 Punj. 247.

(12) I.L.R. (1963) 2 Punj. 257=1963 P.L.R. 438.

(3) *Dwarka Devi and others* v. *Hans Raj* (13).

(4) *Bichha Ram* v. *L. Lajpat Rai*, Civil Revision No. 44 of 1959, decided on the 13th of August, 1959, by Capoor, J.

(5) *Narsingh Dass* v. *Raja Ram*, Civil Revision No. 396 of 1960, decided on the 30th of March, 1961, by Khosla, C.J.

(6) *Thakar Dass* v. *Siri Ram*, Civil Revision No. 423 of 1961, decided on the 29th September, 1961, by Falshaw, J., and

(7) *Giani Hari Singh Jachak* v. *Smt. Viran Devi* (14).

In all these decisions the view has been taken that if a party is prevented by sufficient cause from appearing on the date specified in the summons, the day so specified is not the 'first hearing'. The 'first hearing' in the circumstances will be the date, the *ex-parte* order is set aside. This happens when after service the party fails to appear. If the failure to appear is for sufficient cause, the date fixed for appearance has no meaning. But if the failure is not for sufficient cause, the date fixed for appearance will still remain the first hearing, provided the summonses were duly served.

However, there is one more matter which has to be adverted to, namely, while setting aside the *ex-parte* order the Rent Controller has not merely to go by the fact that tenant was prevented by sufficient cause from attending the hearing, but also whether on that date the tenant had the funds to clear the arrears of rent. It is the tenant who is in arrears of rent. It is the tenant who wants to avoid his eviction under the proviso after having incurred the forfeiture of his tenancy by non-payment of rent. It is for him to prove not only that he was prevented by sufficient cause from not attending the date fixed but also that he had the means to meet that liability. We are stressing this aspect for the reason that dismissals for default should not be set aside as a matter of course, particularly, when false medical certificates which are easily available in this country, are usually produced and the correctness of which is not an easy matter to verify. It goes without

(13) I.L.R. (1963) 2 Punj. 458=1963 P.L.R. 705.

(14) 1964 P.L.R. 762.

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saying that these are considerations which have to be kept in view at the time of decision of an application to set aside an *ex-parte* order passed at the first hearing.

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In view of what has been said above, it must be held in the present case that there was no 'due service' of the petitioner. He was served for the 7th of February, 1963, but without a copy of the application. He appeared on that date and demanded the copy of the application which was supplied and the case was adjourned to the 9th February, 1963. Thus, 9th of February, 1963, would be the first hearing as already held. On the 9th of February, 1963, the petitioner was absent and *ex-parte* order was passed. The petitioner made an application for setting aside of the *ex-parte* orders on the 14th of February, 1963. He deposited the arrears on the 15th of February, 1963, and on the 5th of March, 1963, the *ex-parte* order was set aside. Thus the arrears had been cleared off before the first hearing in this case, which would be 5th March, 1963, when the *ex-parte order* was set aside. As a matter of fact, there was no challenge to the setting aside of the *ex-parte* order.

The petitioner is accordingly allowed and the order of eviction is set aside. The case will now go back to the Rent Controller, for decision of the landlord's application on the merits. Costs to abide the event.

The parties are directed to appear before the Rent Controller on 23rd November, 1964.

Dua, J.

INDER DEV DUA, J.—I agree.

K.S.K.