Before S. S. Sandhawalia, C.J., and D. S. Tewatia, J.

MEJA SINGH,—*Petitioner.*

versus

KARAM SINGH,—*Respondent.*

Civil Revision No. 1212 *of* 1976.

January 28, 1981.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 13(2) (i) and 13(3) (a) (iii)—Expression 'first hearing of the application'—Meaning of—Such hearing—Whether to be equated with 'first hearing of a suit'—Court interpreting a statute in a particular manner over a period of time—Such interpretation not revoltingly wrong—Superior courts—Whether should unsettle such an interpretation—Building rented out for tethering cattle—Whether can be got vacated on the ground of its being unsafe and unfit for human habitation.

Held, that 'first hearing of the application' is the date for which the tenant stands duly served and in a case where there has been an ex-parte decree of ejectment and if that decree is set aside, then the date on which the order setting aside the said ex-parte decree is pronounced should be the date of 'first hearing of the application'. An application for ejectment of a tenant under the provisions of the East Punjab Urban Rent Restriction Act 1949 is not treated as a suit and is not tried as such in accordance with the provisions of the Code of Civil Procedure, which provisions except those that are specifically made applicable by section 16 of the Act are not applicable to the trial of an application under the Act and, therefore, 'first hearing of the application' cannot be equated with the 'first hearing of a suit'.

(Paras 5 and 6)

Held, that a perusal of clause (iii) of section 13(3) (a) of the Act would show that the expression used therein is 'building or rented land' and not the residential building which expression has been used in clauses (i) to (iv) of sub-section 3(a) of section 13. A building in possession of a tenant, if becomes unsafe or unfit for human habitation, then the same could be got vacated by the landlord from the tenant and the tenant could not be heard to say that the building was used either for merely tethering cattle or for storing goods, for the expression 'human habitation' cannot be said to have been used by the Legislature to convey a meaning that it refers to

a building which is used by human beings for actual residence. A building is inhabited by a human being for the moment he is present therein and if the building is not safe or fit even for a moment's habitation of a human being, then such a building would be considered unsafe and unfit for human habitation. A building may be rented out for the purpose of tethering cattle, but cattle do not look after themselves—they require a human being to tend to them and for that purpose the building has to be frequented by a human being and if such a building cannot be considered fit for human habitation then the ground under clause (iii) of sub-section 3(1) of section 13 of the Act for ejectment of the tenant is made out.

(Paras 14 and 15)

Petition under Section 15(v) III of 1949 as amended by Act 29 of 1956 for revision of the order of the Court of Shri Gian Inder Singh Additional District Judge as Appellate Authority under the East Punjab Urban Rent Restriction Act, Amritsar dated 28th July, 1976 reversing that of Shri R. K. Sungal, Rent Controller, Amritsar, dated 21st July, 1973 holding that the appellant is not liable to ejectment and as a result accepting the appeal and setting aside the order of ejectment passed by the Rent Controller.

Claim: Application under Order 9 Rule 13 read with Section 151 C.P.C. by Judgment debtor.

Claim in Revision: For reversal of the order of the Lower Court.

H. L. Sarin, Advocate, with R. L. Sarin, M. L. Sarin, and M. M. Singh Bedi, Advocates, *for the Petitioner.*

R. S. Bindra, Advocate, *for the Respondent.*

JUDGMENT

D. S. Tewatia, C. (Oral):

(1) Respondent Karam Singh, hereinafter referred to as the tenant, took the premises described as 'Tabela double storey with a room and Parchhati on the top,' on rent,—*vide* rent note dated 2nd June, 1959, Exhibit A. 1 from Narain Dass and Behari Lal, the two real brothers, admittedly, for the purpose of tethering cattle. The petitioner Meja Singh, hereinafter referred to as the landlord, purchased the said premises,—*vide* registered sale-deed dated 15th

May, 1962, Exhibit A.X. Thereafter, admittedly, the tenant attorned to Meja Singh, the new landlord.

(2) The landlord filed an application for the eviction of the tenant on 3rd May, 1966, inter-alia, on the ground—

(1) that the tenant had defaulted in regular payment of rent and was in arrears of rent with effect from 1st February, 1963 till 30th September, 1965;

(2) that the tenant had committed such acts as were likely to impair materially the value and utility of the building, in that he removed the bricks from the roof of the room on the first floor rendering the whole structure in a precarious condition; and

(3) that the demised premises were unfit and unsafe for human habitation.

The tenant suffered an ex-parte decree and was ordered to be evicted,—*vide* order dated 29th March, 1966. The tenant, however, successfully got the ex parte order of his ejectment set aside,—*vide* order dated 20th February, 1968. After setting aside of the ex-parte decree, the tenant deposited in the treasury the alleged arrears of rent alongwith interest thereon and the costs on 22nd February, 1968. The question arose before the Rent Controller as to whether the tenant had tendered the arrears of rent alongwith interest and costs' on the first hearing of the application in terms of proviso to clause (i) of sub-section (2) of section 13 of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act No. III of 1949), hereinafter referred to as the Punjab Act. Following the five Judges 'Full Bench's' authoritative decision of this Court reported in *Vinod Kumar* v. *Harbans Singh Azad* (1), the Rent Controller found no difficulty in holding that the first date of hearing in a case where, in the first instance, ex-parte decree had been passed would be the date on which the order setting aside the said ex-parte decree was pronounced. That date being 20th February, 1968 in the present case and the arrears of rent alongwith interest and costs having not been tendered on the said date, for, admittedly, the amount was deposited on 22nd February, 1968, the Rent Controller held that the

(1) A.I.R. 1977 Pb. & Har. 262.

tenant was liable to be evicted for the reason of his having defaulted in payment of arrears of rent in due time. The Rent Controller also found the aforementioned other two grounds of ejectment having been established and consequently ordered the eviction of the tenant.

(3) The appellate authority permitted the tenant to adduce evidence in regard to the tender of arrears of rent with interest and costs in relation to the first date of hearing in the case. The landlord adduced evidence in rebuttal. On the basis of the evidence so adduced, the appellate authority came to a positive conclusion that the tenant had, in fact, moved an application for deposit of the requisite amount on 20th February, 1968, itself, the date on which the order setting aside the ex-parte decree had been pronounced. The Rent Controller had signed the challan for depositing the amount in treasury on 21st February, 1968. The appellate authority came to a positive finding that the said amount could not be deposited earlier than 22nd February, 1968, on account of procedural formalities and for no fault of the tenant. The appellate authority on reversing the finding of the Rent Controller in regard to the other two grounds of ejectment also set aside the decree of ejectment.

(4) The expression 'on the first hearing of the application' occurring in clause (i) of sub-section (2) of section 13 of the Punjab Act, on which, if the tenant were to tender the alleged arrears of rent alongwith interest thereon and costs, he could save his eviction sought on the ground of his being a defaulter in payment of rent, has been the subject-matter of frequent controversy, but this Court has been almost consistent in taking the view that the first date in the case for which the tenant stood duly served would be the date of 'the first hearing of the application' and in a case where an ex-parte order had been passed which, later on, at the instance of the tenant, had been set aside, the date on which the order setting aside the said ex-parte order had been pronounced would be the date of 'the first hearing of the application'. However, their Lordships of the Supreme Court in *Ved Parkash Wadhwa* v. *Vishwa Mohan* (2), a decision rendered in a case reaching them from Allahabad High Court, while interpreting the expression 'the first hearing of the suit' occurring in sub-section (4) of section 20 of the U.P. Urban

(2) 1980 CLJ 357.

Building (Regulation of Letting, Rent and Eviction) Act, 1972, hereinafter referred to as the U.P. Act, held that 'the first hearing of the suit' can never be earlier than the date fixed for the preliminary examination of the parties and the settlement of issues. Thus arose certain doubts in regard to the correctness of the interpretation of the expression 'the first hearing of the application' that this Court had adopted and, therefore, when this revision petition came up for hearing in the first instance before me, I referred the matter to a larger Bench and that is how this case is before us.

(5) Obviously the decision of their Lordships of the Supreme Court in *Ved Parkash Wadhwa's case* (supra) has to be brought into focus at the very outset. As already observed, that case dealt with the UP Act. An application for ejectment of a tenant under the provisions of the U.P. Act is, admittedly, treated as a suit and is tried as such in accordance with the provisions of the Civil Procedure Code, while the latter provisions (of the Civil Procedure Code), except those that are specially made applicable by section 16 of the Punjab Act, are not applicable to the trial of an application thereunder (under the Punjab Act) and, therefore, it is not without significance that their Lordships in *Ved Prakash Wadhwa's case* (supra) took special notice of the fact that the expression 'at the first hearing of the suit' also occurred in Order 10, rule 1, Order 14, rule 1 (5), and Order 15, rule 1 of the Civil Procedure Code, when they observed that the 'first hearing of the suit' could never be earlier than the date fixed for preliminary examination of the parties (order 10, rule 1) and the settlement of issues (Order 14, rule 1(5)).

(6) In view of the above, the interpretation put by their Lordships on the expression 'at the first hearing of the suit' occurring in sub-section (4) of section 20 of the U.P. Act in *Ved Prakash Wadhwa's case* (supra) may not be justifiably put on the expression' on the 'first hearing of the application' occurring in the proviso to clause (i) of sub-section (2) of section 13 of the Punjab Act. One can also not lose sight of the precaution that their Lordships of the Supreme Court had taken in their abovesaid judgment against unsetting of settled interpretation that various State High Courts may have put on the expression of identical import occurring in their respective statutes on the subject, when they expressly observed that—

> "In the matter of State statutes where procedure has to be pronounced upon, the practice of the Court is the best

guide to interpretation and the Allahabad High Court having pronounced upon the question we think we ordinarily accept such interpretation unless there is something revoltingly wrong about the construction.....".

This Court, from way back in 1952 till recently in 1980 (see in this connection *Prag Narain* v. *Brij Lal* (3), *Mukh Ram* v. *Siri Ram* (4), *Mela Ram and others* v. *Kundan Lal* (5), *Giani Hari Singh Jachek* v. *Smt. Viran Devi* (6), *Jagat Ram* v. *Shanti Sarup* (7), *Vinod Kumar's case* (supra), *Prem Chand* v. *Murtian Thakran Shri Krishan Ji Radha Ji of Bagicha Thakardwara and others* (8), *Sher Narain* v. *Sher Singh* (9), *and M/s. Ram Sarup Ashok Kumar* v. *Smt. Inderjit Kaur* (10), has been consistent in taking the view that 'first hearing of the application' is the date, for which the tenant stands duly served and in a case where there has been an ex-parte decree of ejectment and if that decree is set aside, then the date on which the order setting aside the said ex-parte decree is pronounced would be the date of 'the first hearing of the application'. This view by no means, can be considered even startling, much less revoltingly wrong and, therefore, the course commended by their Lordships of the Supreme Court in the above extracted observations of not unsettling a settled interpretation of procedural law would be the wise course to adopt.

(7) Hence, we concur with the finding of both the Courts below that the first date of hearing in this case was 20th February, 1968, the date on which the order setting aside the ex-parte decree was pronounced.

(8) The next question that now falls for consideration is as to whether in terms of the proviso to clause (i) of sub-section (2) of section 13 of the Punjab Act—which is in the following terms—the tender had been made by the tenant on that date or not:—

"Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders

(3) 1952 P.L.R. (S.N.) 6.
(4) 1959 P.L.R. 561.
(5) 1961 P.L.R. 451.
(6) 1964 P.L.R. 762.
(7) 1965 P.L.R. 45.
(8) 1978 (2) R.L.R. 29.
(9) 1980 (1) R.C.R. 254.
(10) 1980 (2) R.C.R. 125.

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."

Here again, without going into the details we must observe that we find ourselves unable to be persuaded to take a view contrary to the one that has been taken by the appellate authority. The appellate Court has not faulted on any account in the appreciation of the evidence in this regard and, therefore, we hold that the tenant had tendered the arrears of rent, interest thereon and the costs in terms of the said proviso.

(9) However, the concurrence with the appellate authority ends here, for we find that its finding that the tenant had not demolished the Parchhati and the roof and that since no premises existed, so it could not be said that the premises were unsafe or unfit for human habitation, is not tenable either in law or on facts. The following extract from the rent note, Exhibit A. 1 would show the nature and dimension of the demised premises:—

"Vide oral deed of agreement, I, the executant, have taken in my possession as a tenant the entire Agwar, Tawelas and the upper Baithak bearing No. 1486/6, situated in Katra Mit Singh, Khoti Bazar, Amritsar, for my personal use, for a period of 11 months, at the monthly rent of Rs. Twenty-five (Rs. 25/-) commencing from the 1st June, 1959, from Seth Narain Dass and Seth Behari Lal, sons of Seth Sadhu Ram, caste Arora, residents of Amritsar, Bazar Nar Singh Dass, the owners, through Seth Behari Lal, owner aforesaid .....".

In para 3(iii) of the written statement filed by the tenant on 27th February, 1968, he described the condition of the building in the following terms:—

"....In fact the property is in the form of a Tawela uncovered, where milch animals are tethered and milk sold."

If the premises on the date on which these were given on rent were covered not only with the roof but also bore a room on its first

floor and was thus a double-storey building and if on 27th February, 1968, in place of a double-storey rented premises, there existed bare walls without roof, then obviously the premises, apart from the fact of its being not in the condition in which it had been rented out, the same certainly could not be considered fit for human habitation.

(10) However, it is first necessary to deal with the controversy as to whether it was the tenant or the landlord who had brought about the condition of the premises in which one found it on the date on which the written statement was filed by the tenant as comprising merely of walls.

(11) It was argued on behalf of the tenant that soon after the *ex parte* order of ejectment, was passed against the tenant, the landlord had taken possession of the premises and it is he who must have demolished the Parchhati and the roof. However, one looks invain for any such plea in the written statement. If this would have been so, the tenant in his written statement would have clearly mentioned that on the date he was dispossessed of the premises, the premises had a roof thereon, as also a Parchhati, but on the date he filed his written statement it was not in the same condition in which it was taken from him and that the change in the condition of the building had come about during the period it had been in the possession of the landlord. He had taken no such plea in the written statement. In his testimony he had taken up the stand that Behari Lal had demolished the Parchhati after about 8/9 months of the starting of the tenancy. This stand of the tenant apparently found favour with the appellate authority, though not with the Rent Controller. Even if for the sake of argument it is accepted that it was Behari Lal who had removed the Parchhati, but then who had removed the roof? In this regard, the evidence of the tenant that it might have been removed by the landlord when the premises were taken into possession by him after the *ex parte* decree, cannot be looked into at all, for no such plea had been taken in the written statement.

(12) In view of the above, inescapably one must hold that it was at a time when the premises were in the possession of the tenant that the first-floor room Parchhati had been removed and also the ground floor came to be rendered roofless. Even if one

is to hold that it was through no fault of the tenant that the ground floor became roofless, for the roof might have collapsed on its own due to rains etc., then the question arises, can the roofless ground floor be considered fit for human habitation ?

(13) At this stage, learned counsel for the tenant, however, urged that only a building rented out for residential purposes could be got vacated on the ground of the same being unsafe and unfit for human habitation, but not a building which was, admittedly, rented out for tethering cattle.

(14) Clause (iii) of sub-section (3) (a) of section 13 of the Punjab Act described the relevant ground in the following terms.

> "(iii) In the case of any building or rented land, if he requires it to carry out any building work at the instance of the Government or local authority or any Improvement Trust under improvement or development scheme or if it has become unsafe or unfit for human habitation."

A perusal of clause (iii) above would show that the expression used therein is 'building or rented land" and not the residential building which expression has been used in clauses (i) and (iv) of sub-section (3) (a) of section 13 of the Punjab Act. In clause (ii) thereof, the expression used is only 'rented land'. Hence, the expression 'building or rented land' used in clause (iii) is not without significance. A building in the possession of a tenant, if becomes unsafe or unfit for human habitation, then the same could be got vacated by the landlord from the tenant and the tenant could not be heard to say that the building was used either for merely tethering cattle or for storing goods, for the expression 'human habitation', in our opinion, cannot be said to have been used by the legislature to convey a meaning that it refers to a building which is used by human beings for actual residence. In our opinion, a building is inhabited by a human being for the moment, he is present therein and if a building is not safe or fit even for a moment's habitation of a human being, then such a building would be considered unsafe and unfit for human habitation. It is, no doubt, true that the building in question had been rented out for the purpose of tethering cattle; but cattle do not look after themselves—they require a human being to tend to them and for

that purpose, the building has to be frequented by a human being and, therefore, a building which had a roof when it was rented out, cannot be considered fit for human habitation when it stands without a roof or where the building completely falls and what remains is a mere vacant plot.

(15) What the landlord had rented out was a building with roof. If roof fell or even the walls collapsed and what remained was a vacant site in place of the rented out building, then the ground under clause (iii) of sub-section (3) (a) of section 13 of the Punjab Act for ejectment is made out with greater force, for no building existed there and a tenant cannot be permitted to make use of the vacant site by living thereupon in the open or to come round and say that there being no building and it being a vacant site or plot, it cannot be considered unfit or unsafe for human habitation.

(16) For the reasons aforementioned, we hold that the appellate authority erred in holding that because no building existed on the plot, and, therefore, the vacant plot or a plot bearing simply walls could not be held to be unfit for human habitation. In the result, the revision petition is allowed, the order and decree of the lower appellate Court is set aside and the tenant is ordered to be evicted from the premises in dispute.

S. S. Sandhawalia, C.J.—I agree

H. S. B.

1868 HC—Govt. Press, U.T. Chd.