

The Indian Law Reports

REVISIONAL CIVIL

Before D. Falshaw, C.J.

DHANI RAM AND OTHERS,—*Petitioners.*

versus

GHASITA RAM,—*Respondent.*

Civil Revision No. 771 of 1961.

*East Punjab Urban Rent Restriction Act (III of 1949)—
S. 8—Excess rent paid by tenant—Whether can be recover-
ed by a suit—Period of limitation for such recovery—Whe-
ther six months as provided by S. 8.*

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Held, that a tenant can recover excess rent paid to a landlord only within six months of making the payment, whether he recovers it by deduction from rent payable thereafter or by any other means in view of the provisions of section 8 of the East Punjab Urban Rent Restriction Act, 1949. A suit to recover excess rent paid is competent but it must be filed within six months from the date of the payment.

Application under section 25 of Small Cause Courts Act, for revision of the decree of the Court of the Senior Sub-Judge, with powers of Small Cause Court, Hoshiarpur, dated the 3rd day of July, 1961, granting the plaintiff a decree for rupees 95 and also allowing him costs of the suit.

AMAR CHAND HOSHIARPURI, ADVOCATE, for the Petitioners.

S. S. SANDHAWALIA, ADVOCATE, for the Respondent.

JUDGMENT

Falshaw, C.J.

Falshaw, C. J.—This is a revision petition by Dhani Ram and five others challenging a decree passed against them in favour of the respondent Ghasita Ram, for Rs. 95 by the Hoshiarpur Small Cause Court.

The petitioners are the landlords and the respondent the tenant of certain premises. In an ejectment petition which was dismissed the rent of the premises in suit was held to be Rs. 13-12-0 per mensem. On the 3rd of February, 1959, the landlords filed a second ejectment application based on non-payment of rent and the rent was claimed at the rate of Rs. 16-12-0 per mensem. On the first date of hearing the defendant in order to avoid ejectment made a deposit in Court of Rs. 402 including arrears of rent at Rs. 16-12-0 per mensem although his case was that the true rent was only 13-12-0 as determined in the previous ejectment proceedings. The tenant instituted his suit for the recovery of Rs. 95, the amount of excess rent, on the 17th of February, 1960 and obtained a decree which is now challenged. The only question in the revision petition is whether the plaintiff's suit was within time, this point being decided in his favour by the learned Small Cause Court Judge on the basis of the decision of Vaidialingam J. in *Damodar Hegadai v. Vittappan* (1). The learned Judge held that there may be a statutory right given to a tenant to claim an adjustment or refund of the amount of rent paid in excess of fair rent by the Lease and Rent Control Order, but if the relief for that refund is sought through the medium of a Court, the provisions of the Limitation Act apply and such a suit

(1) A.I.R. 1961 Kerala 54.

is governed by the general Article 120 and not by Article 62 of the Limitation Act. The period of limitation was thus held to be six years.

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The provision made in the East Punjab Urban Rent Restriction Act, in this behalf is contained in section 8, sub-section (1) of which reads:—

“Where any sum has, whether before or after the commencement of this Act, been paid which sum is by reason of the provisions of this Act irrecoverable such sum shall at any time within a period of six months after the date of the payment, or in the case of a payment made before the commencement of this Act, within six months after the commencement thereof, be recoverable by the tenant by whom it was paid or his legal representatives from the landlord who received the payment or his legal representatives, and may without prejudice to any other method of recovery be deducted by such tenant from any rent payable within such six months by him to such landlord”.

Since the Punjab Act is of the year 1949, the question of the commencement of the Act does not arise in this case, and a bare perusal of section 8(1) appears to indicate that a tenant can recover excess rent paid to a landlord only within six months of making the payment, whether he recovers it by deduction from rent payable thereafter or by any other means, and my attention has been drawn to the decision of Shah C.J. and Baxi J. in *Mahipatram Dolatram v. Bal Anjwali Sabur* (2) in which

(2) A.I.R. 1956 Saur. 87.

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section 20 of the corresponding Act, has been interpreted. The words are similar in purport to those of section 8(1) of the Punjab Act. Section 20 reads—

“Recovery of Amounts Paid Not in Accordance With Act:

Any amount paid on account of rent after the date of the coming into operation of this Act shall, except in so far as payment thereof is in accordance with the provisions of this Act, be recoverable by the tenant from the landlord to whom it was paid, or on whose behalf it was received, or from his legal representative at any time within a period of six months from the date of payment and may, without prejudice to any remedy for recovery, be deducted by such tenant from any rent payable by him to such landlord”.

In that case the tenant had sought his remedy by way of a suit in the Small Cause Court, and it was held that under section 20 the tenant is not entitled to deduct excess rent paid by him to the landlord beyond six months from the date of the last payment. Reference is made in the course of the judgment to a decision by Chagla, C.J. in *Karamsey Kanji v. Velji Virji* (3) and to an English decision referred to therein in *Baylay v. Walkes* (4). The latter case is a decision by Salter J., who has held regarding the statutory provisions in English law, from which the Indian Acts, ultimately derive, that the limit of six months from the passing of the Rent and Mortgage Interest

(3) 56 B.L.R. 619.

(4) (1925) 1 K.B. 447.

Restrictions Act, 1923, within which period over-paid rent is recoverable under section 14, Sub-section (1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, by the tenant from the landlord, applies as well to recovery by deduction as to recovery by action.

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On behalf of the respondent reliance was placed on the words 'without prejudice to any other method of recovery', but these words also occur in the section interpreted by the learned Judges of the Saurashtra Court, and to my mind there is no doubt that their interpretation was correct and it is clear that where a tenant seeks to recover rent illegally paid either by deduction from such rent or by separate action he must do so within six months from the date of the payment. I accordingly accept the revision petition and dismiss the plaintiff's suit. In the circumstances of the case the parties shall bear their own costs.

B.R.T.

CIVIL MISCELLANEOUS

Before A. N. Grover and Inder Dev Dua, JJ.

RAM SARUP AND OTHERS,—*Petitioners*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1212 of 1961.

Constitution of India (1950)—Article 226—Existence of alternative remedy—Whether per se a bar to the exercise of writ jurisdiction—No valid law providing for election petition on the date of the amendment of the impugned election—Subsequent law providing remedy by way of election petition—Whether serves as alternative remedy—Punjab Panchayat Samitis (Primary Members) Election Rules

1962

Oct., 19th