APPELLATE CIVIL.

Before J. S. Bedi, J.

M/S JIWAN INDUSTRIES PRIVATE LTD.,—*Appellants.*

versus

M/S SANTOSH AND CO.,—*Respondents.*

S.A.O. No. 170-D of 1964.

1964

December, 17th.

Delhi Rent Control Act (LIX of 1958)—Ss. 9 and 15—Landlord filing an application for ejectment of tenant—Tenant raising the plea of the rent being exhorbitant in written statement and praying for fixation of standard rent—Landlord's application dismissed for non-appearance—Standard rent—Whether can still be fixed in those proceedings.

Held, that a perusal of sections 9 and 15 of the Delhi Rent Control Act, 1958, makes it quite clear that it is the Rent Controller who has got to fix the standard rent. If the landlord's application for the ejectment of the tenant is dismissed for non-appearance, the proceedings for the fixation of standard rent can still be continued if the tenant has raised that plea in his written statement and had prayed for its fixation.

Second appeal under Section 39 of Act 59 of 1958, from the order of Shri P. S. Pattar, Rent Control Tribunal, Delhi, dated the

(1) 1963 S.T.C. 821.

21st March, 1964, reversing that of Shri A. S. Gill, Rent Controller, Delhi, dated the 7th October, 1963, accepting the appeal and sending back the case to the Controller, Delhi, for fixation of standard rent of the premises in dispute in accordance with law, and making no order as to costs.

N. D. BALI, ADVOCATE, for the Petitioner.

A. N. MONGA AND D. L. KHANNA, ADVOCATES, for the Respondents.

JUDGMENT

Bedi, J.

BEDI, J.—This is a second appeal against the order, dated 21st March, 1964, of Shri Pritam Singh Pattar, Rent Control Tribunal, Delhi. The facts giving rise to this appeal are as follows: The appellants, M/s. Jeewan Industries Private Limited, who were the landlords of the premises in dispute, applied for the ejectment of the tenant-respondents, namely, M/s. Santosh & Co., on the grounds of non-payment of the arrears of rent, for causing substantial damages to the property and for the wrong user. The tenant resisted the application and raised various pleas against his eviction. It was averred that the rent agreed between the parties was excessive and its standard rent may be fixed. The Rent Controller, however, directed the tenant on the 7th January, 1963, to deposit the arrears of rent of Rs. 200 per month, within one month and that he should pay future rent at the same rate by the 15th of each month following. The case was then adjourned to 13th of March, 1963, for evidence of the landlord. On that day, the landlord disappeared as a result of which the petition for ejectment was dismissed with costs. On the 23rd of March, 1963, the tenant applied to the Rent Controller that although the application of the landlord for his ejectment had been dismissed, his plea for fixation of standard rent may be decided and that the proceedings may be continued to that extent. The landlord resisted this application alleging that the tenant could not raise this plea in defence. The parties were heard by the Rent Controller at length and he came to the conclusion that the proceedings could not be revived and that the standard rent could not be fixed after the ejectment application of the landlord had been dismissed. The tenant felt disgruntled against that order of the Rent Controller and went up in appeal, which

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came up before Shri Pritam Singh Pattar, Rent Control Tribunal, Delhi, who accepted the same holding that it was the duty of the Controller to have proceeded to fix the standard rent as the point had been raised by the tenant in the written statement and that since the Controller did not do so, therefore, the tenant moved the Rent Controller by application made on the 23rd of March, 1963, to fix the standard rent and that the said application was competent. He set aside the order of the Rent Controller and remanded the case for fixation of standard rent in accordance with law by his order, dated 21st of March, 1964. M/s Jeewan Industries, the landlord, felt aggrieved against that order and approached this Court in second appeal.

The application in question was made under the Delhi Rent Control Act, 1958. The relevant provisions of this Act are given in sections 9(1) and 15(3). Section 9(1) lays down that the Controller shall, on an application made to him in this behalf, either by the landlord or by the tenant, in the prescribed manner, fix in respect of any premises the standard rent. Now section 15(3) provides that if, in any proceeding referred to in sub-section (1) or sub-section (2), there is any dispute as to the amount of rent payable by the tenant, the Controller shall, within fifteen days of the date of the first hearing of the proceeding, fix an interim rent in relation to the premises to be paid or deposited in accordance with the provisions of sub-section (1) or sub-section (2) as the case may be; until the standard rent in relation thereto is fixed having regard to the provisions of this Act.

The learned counsel for the appellant argued that the words "in relation thereto is fixed" are important. He submitted that if the intention of the legislature was that it is the Controller who should fix the rent, then in section 15(3) they should have added "in relation thereto is fixed having regard to the provisions of this Act by the Rent Controller" and since this is omitted, therefore, the intention of the legislature was otherwise. He cited *Firm Hansaraj Nathuram* v. *Firm Lalji Raja and Sons* (1), in which it was held that "section of an Act has to be interpreted as it is and a Court cannot read it as if its language

(1) A.I.R. 1963 S.C. 1180.

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was different from what it actually is. It is not permissible for the Court to amend the law": He also cited *Punjab Distilling Industries Ltd.; Khasa* v. *Commissioner of Income-tax; Simla* (2); in support of the first point. There is no quarrel over the principle laid down in these authorities. But from a persual of the above-mentioned sections 9 and 15 of the Delhi Rent Control Act, 1958, it is quite clear that it is the Rent Controller who has got to fix the standard rent. The point, however, is whether the Rent Controller could fix the standard rent in the same proceedings after the application of the landlord for ejectment of the tenant had been dismissed. On that point, the learned Rent Control Tribunal has relied upon the observation made in Civil Revision No. 247-D of 1958, *Ch. Nathu Singh* v. *Chander Sahai*, by Dulat. J., on the 13th of November, 1962. In that case the facts were almost similar. The landlord had made an application for ejectment of the tenant on the ground of non-payment of arrears of rent. The tenant resisted the application and alleged that the rent was exhorbitant and that its standard rent be fixed. The tenant, on the day fixed in that case, had come prepared to pay the rent claimed by the landlord, but the landlord did not proceed with the application and asked for its dismissal. The trial Court passed an order accordingly. The tenant preferred an appeal against that order alleging that the Rent Controller should have fixed the standard rent of the premises even if the ejectment proceedings against him had been dismissed at the instance of the landlord. The appeal was accepted by the appellate Court and the case remanded to the lower Court for fixation of the standard rent. Dulat J., observed in that case—

> "On the whole it seems to me that the view taken by the learned Senior Sub-Judge was correct."

Similar view had been taken by Bhandari, C.J., in *Shrimati Jaswanti Devi* v. *Harbans Lal Bhatia*, (3), and it was held—

> "When the landlord sues the tenant for recovery of rent and standard rent has already been fixed, rent has to be decreed at that rate. But

(2) A.I.R. 1962 Pb. 337.
(3) 1956, P.L.R., 440.

if the standard rent has not been already fixed the Court must determine that rent and decree at that rate even though the period within which an application for its determination can be made has already expired."

The principle laid down in these authorities fully applies to this case. No authority to the contrary has been cited by the appellants' counsel in support of his contention.

For the reasons given above, I feel that there is no substance in this appeal, which is hereby dismissed, with costs.