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**R.N.R.**

***Before Rakesh Kumar Jain, J.***

**CHHOTAY LAL—Petitioner**

**versus**

**RAJENDER KUMAR—Respondent**

**C.R. No. 7913 of 2010**

**4th March, 2011**

***Code of Civil Procedure, 1908—Ss. 144 & 151—Haryana Urban (Control of Rent & Eviction) Act, 1973—Ss. 13(3) (c) & 13(6)—Compromise between tenant and landlord—Tenant handing over possession of demised premises to landlord—Eviction petition dismissed as withdrawn by landlord—Whether tenant can seek re-entry u/s 13(6) of 1973 Act to such demised premises reconstructed by landlord on the basis of compromise—Held, yes—Petition seeking restoration of possession of demised premises allowed and orders of lower Courts below quashed.***

*Held*, that there, is no decree passed under Section 13(3)(c) of the Act, rather the possession was handed over by the tenant to the landlord in terms of a compromise entered into between them which was made part of the proceedings as it was tenored by marking as Ex. C1 and the statement of the parties was recorded in respect thereof. The ultimate effect was that the eviction petition was not pursued any further by the landlord and was dismissed as withdrawn. Section 13(3)(c) of the Act provides a right to the landlord to apply to the Rent Controller for seeking an order directing the tenant to put the landlord in possession if he requires it to carry out any building work at the instance of the State Government or local authority or any improvement trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation. The reason assigned for seeking eviction of the tenant from the demised premises in eviction petition No. 29 of 2002 was that it has become unsafe and unfit for human habitation and in those proceedings, the landlord took his tenant into confidence and assured him that if he surrenders possession to him, he will pull down the dilapidated shop and after reconstructing the same would let it out to him again at a particular rate of rent. On this assurance/undertaking, which has not been disputed throughout by the landlord and has formed part of the judicial record by virtue of that order which was recorded by the Rent Controller on 28th November, 2002 and landlord had also suffered a statement in support of the compromise and did not proceed any further for the purpose of seeking an order of eviction from the Court, the landlord has virtually trapped the tenant. The view taken by the learned Courts below that if there was no order of eviction by the Court and the petition was only dismissed as withdrawn it would not attract the provisions of Section 13(6) of the Act, would not be tenable because all intents and purposes insofar as the landlord is concerned, the tenant has been evicted from the demised premises, may be on the basis of a compromise which could be said to be used as a trap by the landlord.

(Para 12)

Pankaj Jain, Advocate, *for the petitioner*.

S. K. Garg Narwana, Advocate, *for the respondents*.

**RAKESH KUMAR JAIN, J.**

(1) The question for adjudication in this case is as to “whether a tenant can seek re-entry under Section 13(6) of the Act to a building reconstructed by the landlord which was earlier got vacated from him in a petition filed under Section 13(3)(c) of the Act on the basis of a compromise in which a statement is also recorded, even if the said eviction petition was admittedly dismissed as withdrawn”.

(2) This revision petition is at the instance of the tenant against the orders passed by the Courts below by which a petition filed by him under Section 13(6) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 [for short “the Act”] read with Sections 144 and 151 of the Code of Civil Procedure, 1908 [for short “CPC”] for restoration of possession of the shop (demised premises), has been dismissed.

(3) The brief facts of the case are that the respondent (landlord) filed an eviction petition No. 29 of 7th September, 2002 titled as ‘**Rajender Kumar versus Chhotey Lal**’ under Section 13 of the Act seeking eviction of the petitioner (tenant) on the ground that the demised premises has become unsafe and unfit for human habitation. During the pendency of the eviction petition, a written compromise was arrived at between the parties on 28th November, 2002, according to which the tenant handed over vacant possession of the demised premises to the landlord on the condition that he would let it out him again after demolition and reconstruction, on a monthly rent of Rs. 1,250 including house tax. The said agreement was produced before the Rent Controller in the said eviction petition on the same day as Ex. C1 and the statement of the parties was also recorded by the Rent Controller. The proceedings carried out on that date were recorded as under :—

*“Present : Petitioner with counsel Shri P. K. Aggarwal.*

*Respondent with Shri R. A. Gupta, Advocate.*

*Case taken up today on the application filed by the parties for compromise. Statement of the parties recorded. Compromise Ex. C1 is placed on record. In view of the statement of the parties, this petition is dismissed as withdrawn. File be consigned to the record room.”*

(4) After delivery of possession by the tenant in terms of the compromise Ex. C1, the landlord reconstructed the shop, but refused to re-deliver its possession to the petitioner/tenant despite the compromise and statement suffered before the Rent Controller in the earlier eviction petition, as a result of which the petitioner/tenant filed petition under Section 13 (6) of the Act read with Sections 144 & 151 of CPC. The application was contested by the landlord on various grounds on the basis of which as many as 8 issues were framed by the learned Rent Controller, which are reproduced as under :---

1. *Whether the petitioner is entitled for the restoration of possession of the shop ? OPP*
2. *Whether the compromise between the parties is enforceable as per law ? OPP*
3. *Whether the present petition is not maintainable in the present form ? OPR*
4. *Whether the petition is barred by the provisions of Order 2 Rule 2 CPC ? OPR*
5. *Whether the petitioner has not come in the court with clean hands ? OPR*
6. *Whether the petitioner has no locus standi and cause of action to file the present petition ? OPR*
7. *Whether the petitioner is estopped from filing the present petition by his own acts and conduct ? OPR*
8. *Relief."*

(5) Both the parties led their respective evidence, but the learned Rent Controller dismissed the petition of the tenant *vide* its order dated 19th December, 2008 which led to the filing of an appeal before the Appellate Authority who recorded in para No. 10 of its order that there is no dispute with regard to the tenancy between the parties, that at the time of filing of the eviction petition the demised premises was unsafe and unfit and was in dilapidated condition and that the compromise was entered into between the parties which was filed before the Rent Controller, but the appeal was

dismissed mainly on the ground that the application filed under Section 13(6) of the Act read with Sections 144 and 151 of CPC for restoration of possession is not maintainable and to form this opinion, he had relied upon a decision of this Court in the case of **Lachhman Dass and another versus Madan Lal (1)**. It was also held by the Appellate Authority that Section 144 of CPC would not be applicable because there was no decree which has been reversed. The tenant was thus left to seek his other remedy before the Civil Court or any other proper Forum.

(6) Learned counsel for the petitioner has submitted that the learned Appellate Authority has erred in relying upon the decision rendered in the case of **Lachhman Dass and another** (supra) based upon a decision of this Court in the case of **Nathu Ram versus Pandit Ram Partap, (2)** which has been over-ruled by a Division Bench of this Court in the case of **Mst. Parbati versus Jagmandar Dass and another, (3)**. He further relied upon the judgments in the case of **Sh. Des Raj versus Sh. Mohan Bahadur, (4)** **Salkia Businessmen's Association and others versus Howrah Municipal Corporation and others, (5)** **Parvatibai Subhanrao Nalawade (Smt.) versus Anwarali Hasanali Makani and others, (6)** **Amir Chand versus Chuni Lal and another, (7)** **Basant Ram and others versus Smt. Devi and others, (8)** and **Maya Ram versus Firm M/s Ram Saran Dass Lass Chand and others, (9)**. On the other hand, learned counsel for the respondent has submitted that in pursuance of the compromise between the parties, the earlier eviction petition No. 29 of 2002 was not decreed but was dismissed as withdrawn by the landlord and has reiterated that the law laid down by this Court in the case of **Lachhman Dass and another** (supra) has been rightly applied by the learned Courts below. He also relied upon a decision of the Supreme Court in the case of **Wazir Chand versus Swarankar Sabha, (10)** to contend

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- (1) 1981 P.L.R. 40
  - (2) (1951) P.L.R. 90
  - (3) Vol. XIV (2) ILR 846
  - (4) 1975 RCR 113
  - (5) (2001) 6 S.C.C. 688
  - (6) (1992) 1 S.C.C. 414
  - (7) AIR 1990 Punjab & Haryana 345
  - (8) AIR 2000 Punjab & Haryana 134
  - (9) 1978 (1) R.L.R. 778
  - (10) 1990 (1) Rent Control Reporter 483

that in a case where eviction has been sought under Section 13 (3) (c) of the Act and the building is got vacated from the tenant on the ground that it has become unsafe and unfit for human habitation, the landlord is not obliged to re-induct the same tenant after re-construction of the building on an application filed under Section 13 (6) of the Act.

(7) I have heard both the learned counsel for the parties and perused the available record with their able assistance.

(8) Learned counsel for the petitioner has submitted that Section 13 (4) of the East Punjab Urban Rent Restriction Act, 1949 [for short "the Act of 1949"] and Section 13 (6) of the Act are *pari materia*. He has referred to earlier two decisions of this Court, namely, **Nathu Ram** (supra) and **Shrimati Nanki Devi versus Ram Kishen Das**, (11) both decided by Kapur J. in which the view was taken that if a tenant is ordered to be evicted by the learned Rent Controller on the ground that the demised premises has become unsafe and unfit for human habitation and, thereafter, the landlord rebuilt the said building after demolition, no application can be made to the Rent Controller for restoration of possession except in a case where the building has not been rebuilt and is let out by the landlord to some other tenant. Both the aforesaid judgments were overruled by this Court in the case of **Mst. Parbati** (supra) in which ejection was sought on the ground that shop was required for re-construction which was vacated by the tenant on the basis of compromise between the parties and a decree on the basis of compromise was drawn, but despite reconstruction and the compromise, the tenant was not allowed re-entry by the landlord on the basis of two judgments delivered by Kapur J. and the matter was referred to the Division Bench by Dulat J., on which the Division Bench observed as under :—

*"In the two decisions by Kapur, J. to which I have referred the properties concerned were shops and in both cases the tenant had submitted to a decree for ejection on condition that the reconstructed shop should be leased to him, and the learned Judge was the opinion that although an agreement of this kind might be otherwise enforceable, it was not open to the Controller, on an application, by the tenant made after reconstruction of the building to restore possession to him, the reason for the view being that the provisions of sub-section (4) were only applicable if the*

*landlord did not reconstruct the building and did not apply if the building was in fact reconstructed. This appears to me to place an unduly narrow and restricted meaning on the words "put that building to any use or lets it out to any tenant other than the tenant evicted from it" which would appear to me to be equally applicable whether a landlord did or did not carry out the proposed reconstruction on account of which the consent of the tenant to vacate the premises as in the present case was obtained, and I am unable to see any reason why the compromise arrived at between the parties in the present case should not be enforceable in execution, if need arises, and since it is the landlord who has come to this Court for the restoration of the decree based on the compromise it does not as a matter of fact seem likely that she will even attempt to back out of it when the time comes."*

(9) Thus, the decree of the Rent Controller based upon a compromise was restored. In the case on **Shri Des Raj** (supra), on the basis of a compromise decree, the landlord took the possession of shop and agreed to restore it to the tenant after its reconstruction, but later on he backed out of agreement. Consequently, the tenant filed application under Section 13 (4) of the Act of 1949 for restoration of possession of the newly constructed shop in pursuance of the agreement incorporated in the consent decree passed by the Rent Controller. In this regard, the Hon'ble Bench held that "*not only am I bound by the judgment of the Division Bench in Mst. Parbati's case, but I am firmly of the view that it lays down the correct law. To hold otherwise would be to lay a trap for the tenant. No Court of law or equity would allow a landlord to take undue advantage of one part of a compromise by backing out of the other which confers some benefit on the opposite party, unless there is a statutory provision compelling a Court to adopt such a course. There is no such provision in this case. Even if it could be held that the language of sub-section (4) of Section 13 does not strictly cover a case of the present type (which was also the situation in Mst. Parbati's case as well as in the earlier two cases decided by a Single Judge), the application would be maintainable under Sections 144 and 141 of the Code of Civil Procedure to restore the tenant to the status quo ante from which he was made to move to his disadvantage on a*

*representation made by the landlord which formed the subject-matter of a binding decree." In the case of **Salkia Businessmen's Association and others (supra)**, the Supreme Court had recorded the question involved as to "What is the efficacy of an order passed by the Court in terms of the memorandum of compromise or an agreement, filed in proceedings on the basis of which the court proceedings came to be finally disposed of". In the said case, members of the Salkia Businessmen's Association, who were carrying on business as traders and businessmen on the Grand Trunk Road (North) in and around Salkia Chowrasta, initiated proceedings apprehending displacement and demolition of the places of their business for the construction of a fly-over. A settlement was arrived at between the parties and the proceedings initiated by the Association were disposed of observing thus:*

*"Let there be an order that the writ petition is disposed of in terms of the settlement made by the parties. Xerox copy of the application for settlement and the order passed today be given to the parties. Let the writ petition be disposed of accordingly."*

(10) However, the other party did not abide by the terms of the order in which the settlement was noticed. The Association filed another writ petition for a direction to the other party to abide by the terms and conditions of the settlement which was dismissed by the Single Judge on the ground that it was in the shape of a contract between the parties which could be remedied only by way of asking for compensation. The subject matter reached before the Supreme Court in which it was observed that "when the real and only question to be considered was as to whether the respondent Authorities are bound by the order passed by the Court on the basis of the compromise memorandum and whether the proposed move on their part did not constitute flagrant violation of the orders of the Court-very much binding on both the parties. The High Court failed to do justice to its own orders. If courts are not to honour and implement their own orders, and encourage party litigants-be they public authorities, to invent methods of their own to short-circuit and give a go-by to the obligations and liabilities incurred by them under orders of the court-the rule of law will certainly become a casualty in the process-a costly consequence to be zealously averted by all and at any rate by the highest courts in the States in the country. It does not, in our view, require any extraordinary exercise to hold that the



*memorandum and terms of the compromise in this case became part of the orders of the High Court itself when the earlier writ petition was finally disposed of on 13th February, 1991 in the terms noticed supra, notwithstanding that there was no verbatim reproduction of the same in the order. The orders passed in this regard admit of no doubt or give any scope for controversy. While so, it is beyond one's comprehension as to how it could have been viewed as a matter of mere contract between the parties and under that pretext absolve itself of the responsibility to enforce it, except by doing violence to the terms thereof in letter and spirit".* In the case of **Parvatibai Subhanrao Nalawade (SMT)** (supra), in pursuance of a solemn compromise between the landlord and the tenant, possession of the demised premises was handed over to the landlord on the express stipulations that on the construction of the new building the tenant would get an identical area therein, but after re-construction instead of honouring the pledge the landlord inducted some other person and did not make any offer to the tenant. When the tenant filed an application for restoration of possession, it was dismissed by the Rent Controller on the ground that it is not maintainable. Ultimately, the Supreme Court held that "*the right of the appellant under the consent decree cannot be defeated in view of the final determination by the High Court on the earlier occasion in Civil Application No. 1819 of 1970 and the respondent-Bank must be held liable for making its undertaking good as well as for any suitable compensation for the gross delay of more than two decades since 1967*". In this case, the right of the newly inducted tenant after reconstruction was not protected. In the case of **Amir Chand (supra)**, the tenant was evicted in the execution of a decree for redemption and possession was delivered to the landlord. The tenant filed an application for restoration under Order 21 Rule 100 of CPC which was accepted and the landlord was directed to restore possession of the tenant. During pendency, the building standing on the land was demolished by the Municipal Committee and the landlord objected that as the building has been demolished, the tenant cannot be held entitled to restoration of possession of vacant land. In these circumstances, it was held that the tenant is entitled to restoration of possession not only of vacant land but also the super-structures raised on it by landlord as was in existence prior to its demolition. In the case of **Basant Ram and others** (supra), in an *ex-parte* ejectment order, the tenant was dispossessed. The *ex-parte* order was set aside in appeal and the case was remanded for deciding the eviction application on merits, but during the pendency of appeal, the

landlord had sold property. It was held that on setting aside the *ex-parte* order for eviction, the tenant is entitled to restitution of possession from the new landlord (transferee) as he cannot be placed in a better position than the original landlords and cannot reap the harvest of any wrong that has been done. In the case of **Maya Ram** (supra), Section 144 of CPC was also made applicable for the purpose of restoration of possession by the Rent Controller as it was held to have the trappings of the Civil Court. It was observed that “ *if the executing Court also happens to be an authority under the Rent Act, it was not affect its jurisdiction, and it can legitimately pass the order of restitution under Section 144 of the Code of Civil Procedure or even ex debito justitiae* ”.

(11) On the contrary, in the judgment relied upon by learned counsel for the respondent in the case of **Lachhman Dass and another** (supra), this Court had held that the word “eviction” used in Section 13(4) of the Act of 1949 would mean an order of the Rent Controller and mere surrender of possession cannot be treated to be eviction entitling the tenant for re-possession. In the said case, the shop was taken by the Improvement Trust under a scheme. It was demolished along with other buildings and new shops were constructed. One such shop was allotted to the landlord in lieu of one taken possession of from the tenant, who applied for restoration of its possession under Section 13(4) of the Act of 1949. It was held that surrender of possession by the tenant to the Improvement Trust cannot be treated as his eviction under Section 13(3)(a)(iii) of the Act and the tenant was not held entitled to restoration of possession under Section 13(4) of the Act of 1950. In the case of **Wazir Chand** (supra), the building was got vacated from the tenant by an order of the Court on the ground of it being unsafe and unfit for human habitation. It was alleged in appeal that if after demolition the landlord reconstructs the new building, the tenant would have a right of re-entry. Thus, the question was as to whether the tenant could claim his right of re-entry, to the newly constructed building in terms of Section 13(6) of the Act. It was held in this case by the Supreme Court that the tenant would have a right of re-entry if, after his dispossession on the ground of building being unsafe and unfit for human habitation the landlord lets it out to any tenant other than the tenant evicted from it, but after it is re-constructed on demolition, the said right cannot be exercised. However, it is not a case where eviction has been sought of the tenant on the basis of a compromise.

(12) Admittedly, in the present case there is no decree passed under Section 13(3)(c) of the Act, rather the possession was handed over

by the tenant to the landlord in terms of a compromise entered into between them which has made part of the proceedings as it was tendered by marking as Ex.C1 and the statement of the parties was recorded in respect thereof. The ultimate effect was that the eviction petition was not pursued any further by the landlord and was dismissed as withdrawn. Section 13(3)(c) of the Act provides a right to the landlord to apply to the Rent Controller for seeking an order directing the tenant to put the landlord in possession if he requires it to carry out any building work at the instance of the State Government or local authority or any improvement trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation. In the present case, the reason assigned for seeking eviction of the tenant from the demised premises in eviction petition No. 29 of 2002 was that it has become unsafe and unfit for human habitation and in those proceedings, the landlord took his tenant into confidence and assured him that if he surrenders possession to him, he will pull down the dilapidated shop and after reconstructing the same would let it out to him again at a particular rate of rent. On this assurance/undertaking, which has not been disputed thought out by the landlord and has formed part of the judicial record by virtue of that order which was recorded by the Rent Controller on 28th November, 2002 and the landlord had also suffered a statement in support of the compromise and did not proceed any further for the purpose of seeking an order of eviction from the Court, the landlord has virtually trapped the tenant. The view taken by the learned Courts below that if there was no order of eviction by the Court and the petition was only dismissed as withdrawn it would not attract the provisions of Section 13(6) of the Act, would not be tenable because for all intents and purposes insofar as the landlord is concerned, the tenant has been evicted from the demised premises, may be on the basis of a compromise which could be said to be used as a trap by the landlord. Thus, I do not subscribe to the view expressed by this Court in the case of **Lachhman Dass and another** (supra) which is otherwise based upon a decision of this Court in the case of **Nathu Ram** (supra) which was over-ruled by the Division Bench of this Court in the case of **Mst. Parbati** (supra).

(13) In view of the above discussion, the present revision petition is hereby allowed and the impugned order is set aside with costs throughout.

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**R.N.R.**