

Mela Ram Vs. Balak Ram

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Court : Himachal Pradesh

Decided On : Sep-18-1964

Reported in : AIR1966HP74

Judge : Om Parkash, C.J.

Acts : [East Punjab Urban Rent Restriction Act, 1949](#) - Section 13 and 13(2)

Appeal No. : Civil Revn. No. 31 of 1964

Appellant : Mela Ram

Respondent : Balak Ram

Advocate for Def. : Chhabil Dass, Adv.

Advocate for Pet/Ap. : T.R. Chandel, Adv.

Disposition : Petition dismissed

Judgement :

Om Parkash, C.J.

1. The facts, involved in this revision-petition, against an appellate order of the learned District Judge, Mahasu, are not in dispute, and are as follows:

2. The petitioner had taken, on lease, from the respondent, the upper flat of a shop, situated in Shali Bazar, Theog. The lease was for one year, from 1st April, 1959, to 31st March, 1960. The annual rent was Rs. 150/-. The petitioner had paid, out of the rent, Rs. 50/- on the 7th April, 1959. The balance was payable in two instalments of Rs. 50/- each; the first instalment being payable in the month of June, 1959 and the second on Diwali, 1959. It appears that the petitioner failed to pay the balance of Rs. 100.00. On the 3rd December, 1959, the respondent filed an application, under Section 13 of the East Punjab Urban Rent Restriction Act, as applied to Himachal Pradesh, (hereinafter referred to as the Punjab Act), before the Controller, Theog, for the eviction of the petitioner, from the demised premises, on the allegations that the petitioner had failed to pay or tender the balance of Rs. 100/- and that the petitioner was also guilty of such acts and conduct as were a nuisance to the other occupiers of the building.

The petitioner did not appear to contest the application and an ex parte order of ejectment was passed against him, on the 4th March, 1960. An application, to set aside the ex parte order, was dismissed by the Controller, on the technical ground, that he had no power to set aside the ex parte order. The petitioner appealed to the Appellate Authority, against the order of the Controller. The Appellate Authority allowed the appeal, holding that the Controller was competent to set aside the ex parte order, on cause, being shown. The order of the Controller, rejecting the application of the petitioner was set aside, and the application was remitted to him for decision, on merits.

3. After remand, the application was taken up, by the Controller, on the 2nd May, 1962. On that date, the respondent made a statement that he had no objection to the setting aside of the ex parte order of ejectment. On the basis of this statement, the application of the petitioner, for setting aside the ex parte order, was allowed. The application of the respondent, under Section 13 of the Punjab Act was taken up for hearing on the same day i.e. 2nd May, 1962. The petitioner made a statement that he had effected a compromise with the respondent and that he had paid a sum of Rs. 87.50 out of the arrears of rent, due from him and would pay the balance of Rs. 400/-, in the month of October, 1962. The petitioner, further, stated that in case he failed to pay up the arrears of Rs. 400/- in October, 1962, he

would be liable to be ejected. This statement of the petitioner was accepted by the respondent. On the basis of the statements of the parties, the Controller passed an order of ejectment against the petitioner, subject to the condition that the order will not take effect, in case the petitioner paid Rs. 400/- upto the month of October, 1962.

4. The petitioner failed to pay the amount of RS. 400/- in October, 1962, as promised. Thereupon, the respondent filed an application in the Court of the Subordinate Judge, Theog, for the execution of the order of ejectment. The petitioner put in an objection petition against the execution of the order. His main objection was that the order was not executable as it was illegal and without jurisdiction, having been passed on the basis of a compromise, which was against the terms of the Punjab Act. The Subordinate Judge rejected the objection petition. He held that the compromise, between the parties, did not offend against the provisions of the Punjab Act and that the order of ejectment based on the compromise was not illegal or without jurisdiction. These findings of the Subordinate Judge were affirmed by the learned District Judge, in an appeal, preferred by the petitioner, who has, now, come up in revision.

5. It was urged, on behalf of the petitioner, that the order of ejectment was illegal and without jurisdiction as it was passed by the Controller merely on the basis of the compromise, and without satisfying himself, whether any of the statutory grounds for eviction, existed in the case. The argument was that Section 13 of the Punjab Act makes it obligatory for the Controller to satisfy himself, after an enquiry, whether any of the grounds of ejectment, specified in that section, exists, in a particular case, and that the Controller acts without jurisdiction, and in violation of the provisions of the above section, if he passes an order of ejectment merely on the basis of a compromise, without conducting any enquiry. The argument is too broadly stated.

Section 13 of the Punjab Act, no doubt, lays down that before passing an order of eviction, the Controller is to satisfy himself that any of the statutory grounds exists. But this section, or any other provision in the Punjab Act, does not enjoin that the satisfaction of the Controller must invariably be founded on the result of a

contentious trial only and that it can never be based on the terms of a compromise. All what is necessary is that there should be material on record for the satisfaction of the Controller, that one of the statutory grounds for ejectment exists. The material may be furnished by an admission of the tenant, in this behalf. The Controller will be justified in acting upon such an admission and passing an order of ejectment. In this connection, the following observations, made by Jenkins, L.J., in *Middleton v. Baldock*, 1950-1, All ER 708, are instructive:

'I think the principles deducible from those cases are that under the Acts the court only has jurisdiction to order possession on one or other of the specified statutory grounds. The Court, however, is not always obliged to hear a case out, because, if the tenant appears and admits that the plaintiff is entitled to possession on one of the statutory grounds, the court may act on that admission and make the appropriate order. Again--and this, I think is an extension of what I have just said--if there is a representation made by the plaintiff landlord to the defendant tenant to the effect, for instance, that the landlord wants the premises for his own occupation--which is one of the ingredients of a ground on which possession may be ordered and the tenant accepts that representation and on that footing submits to an order, the order can validly be made, subject to the possibility that in the event of the representation turning out to have been false the efficacy of the order may be destroyed. In my judgment, the court cannot go further than that and exercise a general jurisdiction to make a consent order without inquiry or investigation simply because the tenant appears in court and says: 'I consent to an order,' or goes into the witness box and says he does not contest the plaintiff's right. I think that necessarily follows from the principle that possession can only be ordered on one or other of the statutory grounds and that the tenant cannot waive the statutory protection by agreement.' Page 715.

6. Coming to the facts of the present case, the respondent had sought ejectment of the petitioner on two grounds; firstly that the petitioner had not paid the rent, as agreed and that the rent had fallen into arrears; secondly that the petitioner was guilty of acts and conduct which amounted to a nuisance. In his statement, dated the 2nd May, 1962, the petitioner had clearly admitted that he had not paid the rent, as agreed, and that the rent was in arrears. The petitioner did not tender the

arrears of rent, even those arrears which were due on the date of application, on the first hearing, as laid down in the proviso to Section 13(2)(i) of the Punjab Act. There was material on the record for the satisfaction of the Controller that the petitioner was liable to be ejected under Section 13(2) (i). The Controller was, therefore, justified in passing the order of ejectment, on the basis of the statement of the petitioner, in which he had, admitted the existence of one of the statutory grounds for ejectment. The order of ejectment, was neither without jurisdiction nor otherwise illegal.

7. Some cases, relevant to the question, under discussion, may be considered. The facts, in Babu Ram Sharma v. Bal Singh, 1959-61 Punj L R 33, were, almost, on all fours, with the facts of the present case. In that case, the landlord had filed an application, under Section 13 of the Punjab Act, for the ejectment of his tenant, on the ground of non-payment of rent. The tenant appeared before the Controller and denied the allegation, made by the landlord, in his application.

However, on the 21st May, 1954, the parties entered into a compromise, whereby the tenant undertook to pay an amount of Rs. 800/-, as arrears of rent, by instalments and, further, agreed that in default of payment of any one of the instalments, he would be liable to be ejected. An order of ejectment was passed on the basis of this statement. It appears that the tenant did not pay the instalments, as promised. Thereupon, the landlord took out execution of the ejectment order. The tenant filed an objection petition against the execution of the order of ejectment. The matter went up to the High Court. It was contended, on behalf of the tenant, that the order of ejectment, which was based on a compromise, was an illegal order, as Section 13 of the Punjab Act did not contemplate any such order. This contention of the tenant was rejected. It was observed, on page 37 of the report, that:

'According to this section the landlord is entitled to seek eviction of his tenant on certain grounds, and the Rent Controller, after giving notice to the tenant, is empowered to give his own finding and then to pass the necessary order. In the present case the ground on which, the landlord had sought eviction was non-payment of rent. Such a ground is within the express language of Section 13 of the

aforesaid Act. It was, therefore, open to the Rent Controller to determine whether or not the allegation of the landlord that the tenant had not paid the rent was correct. It appears that the tenant admitted that he had not paid the rent as alleged by the landlord. In this view of things I do not understand how it was necessary for the Controller to hold any further enquiry. The landlord was willing to accommodate the tenant, by granting him time to pay the arrears of rent by instalments. There is no prohibition in the statute against such accommodation being given by the landlord to the tenant. Nor can such accommodation be deemed to have been prohibited on grounds of public policy or on the ground of being opposed to the object and purpose of the East Punjab Rent Restriction Act, for the concession shown by the landlord is obviously to the advantage of the tenant for whose benefit principally the above statute has been enacted. It was, in my opinion, within the jurisdiction of the Rent Controller in these circumstances to give the concession to the tenant to which the landlord had agreed and to order him to pay the arrears by instalments failing which alone he would be ejected.'

8. The above observations are applicable to the present case.

9. The case, (1959) 61 Pun LR 33 (supra) was followed in Vas Dev Sharma v. Milkhi Ram Bhatia, AIR 1960 Punj 514. That was a case under Section 13 of the Delhi and Ajmer Rent Control Act, 1952, whose provisions are analogous to the provisions of the Punjab Act. In that case, a decree for ejectment of a tenant was passed in terms of the compromise, according to which the tenant was to vacate the premises by 30th April, 1957. The tenant did not vacate the premises, as agreed. The landlord took out execution. The tenant raised an objection that as the ejectment decree was passed on the basis of a compromise, it was invalid and could not be executed. This objection was over-ruled and it was held that an order of ejectment, passed on the basis of a compromise, was not an illegal order.

10. The above mentioned two cases were reviewed and the principles, enunciated therein, approved, in Jagan Nath Pershad v. Jatinder Nath, AIR 1961 Punj 574. That was, also, a case under the Delhi and Ajmer Rent Control Act, 1952. The facts were that the landlord had applied for the ejectment of a tenant on the ground of personal requirement of the premises. The suit was contested by the

tenant; but after 8 witnesses had been examined, in support of the landlord's case, the parties made a joint statement which read: 'The parties have compromised. A decree for ejectment in favour of the plaintiffs against the defendant may be passed not to be executable before the 30th of September, 1958.' On the basis of this statement, the Court passed a decree for ejectment which was declared not to be executable before the date fixed. The validity of this decree was questioned in the subsequent proceedings. It was held that the tenant had impliedly admitted that the landlord required the premises for personal requirement and that as this was a statutory ground for eviction of a tenant, the decree of eviction, passed against the tenant, was valid.

11. The learned counsel for the petitioner, placed reliance, for his contention that an order of ejectment passed on the basis of a compromise, is illegal, on *K.L. Bansal v. Kaushalya Devi*, 1962-64 Punj LR 1091. That case is distinguishable. The tenant had not, in that case, admitted that one of the statutory grounds for ejectment existed. There was no material on record, on which the Controller could have satisfied himself that any of the grounds for ejectment existed. It is significant that (1959) 61 Pun LR 33 and 62 Pun LR 888: AIR 1960 Punj 514 cases were discussed but were not dissented from. As already stated, in the present case, the petitioner had admitted that he had not paid the rent. Non-payment of rent is a ground, on which ejectment can be- ordered, under Section 13 of the Punjab Act. The learned counsel, also, relied on *Korah Punnen v. Parameswara Kurup Vasudeva Kurup* AIR 1956 Trav Co 1 (FB). That case is, again, distinguishable from the present case. In that case, a decree for ejectment, passed by a Civil Court, was sought to be executed against a tenant in violation of the provisions of the Travancore Cochin, Buildings (Lease and Rent Control) Order, 1950, which laid down that a tenant could only be ejected in accordance with the provisions of that Order, by the Controller. In the present case, it is the order, passed by the Controller, in accordance with the provisions of the Punjab Act, which was being executed.

12. For the reasons, already stated, it is held that the order of ejectment, passed against the petitioner, was a valid order.

13. It was, also, urged, on behalf of the petitioner, that he was not liable to be ejected on the basis of the order of ejectment as a new tenancy was created in his favour by the compromise and the consent order. It is difficult to understand how the compromise and the consent order, which provided for the ejectment of the petitioner, though granting him concession to remain in possession on payment of arrears of rent upto a certain date, could create a new tenancy in his favour.

14. The result is that the revision-petition fails and is dismissed with costs. Lawyer's fee is assessed at Rs. 30/-.

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