

Pushpa Devi Vs. Kanshi Ram-nand Kishore

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Court : Himachal Pradesh

Decided On : Jul-26-1951

Reported in : AIR1951HP72

Judge : Chowdhry, C.J.

Acts : [Constitution of India](#) - Article 227; ;[East Punjab Urban Rent Restriction Act, 1949](#) - Sections 13, 13(4) and 15(4); ;[Transfer of Property Act, 1882](#) - Section 84

Appeal No. : Civil Revn. No. 14 of 1951

Appellant : Pushpa Devi

Respondent : Kanshi Ram-nand Kishore

Advocate for Def. : Party in person

Advocate for Pet/Ap. : Thakur Das, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Chowdhry, J.

1. The petitioner, Sm. Pushpa Devi, is the 'landlord', and the respondents, Messrs Kanshi Earn Nand Kiahore, the tenants of a chaubara in Solan. The tenancy is an

yearly one commencing from 10th October every year, and the annual rent payable is Rs. 32-8-0.

2. The petitioner applied on 9-6-1950 to the Controller for the eviction of the respondents from the chaubara under Section 13, East Punjab Urban Rent Restriction Act (III of 1949), and the Controller passed an order on 30-9-1950 directing the respondents to put the petitioner in possession of the building. The order was passed on the grounds, firstly, of non-payment of rent for the preceding year from 10-10-1948 to 9-10-1949, and secondly, of the building being required by the petitioner for her own occupation. On an appeal by the respondent tenants, the learned District Judge, Mahaau, by his judgment and decree dated 18-12-1950 set aside the Controller's order and dismissed the petitioner's application. He did so on the findings that the respondents made an attempt to pay the rent in question but the petitioner was not prepared to accept the payment, and that the building was in fact not required by the petitioner for her own occupation.

3. The landlord-petitioner has now come up in revision to this Court under Article 227 of the [Constitution of India](#), There is no doubt that since the passing of the Constitution, this Court has the jurisdiction, in exercise of its power of superintendence under Article 227 of the Constitution, to interfere with the decision of the appellate authority despite the finality given to that decision under Section 15 (4) of the said Act. Nathu Ram v. Pandit Ram Partap, 53 P. L. R. 90. The respondents, who argued the case personally, cited Brij Raj Krishna v. Shaw Bros. A.I.R. (38) 1951S. C. 115. All that was laid down in that ruling was that the order of the Controller cannot be questioned in a civil Court, but not that a High Court cannot interfere with that order under Article 227 of the Constitution. The power is however, by its very nature to be exercised sparingly, and, so far as the present case is concerned, I see no reason whatsoever to interfere.

4. So far as the ground of non-payment of rent for the year 10-10-1948 to 9-10-1949 is concerned, it appears that in response to a notice from the petitioner, dated 4-3-1950, the respondents remitted the rent in question to her father Dhani Ram by money-order on 8-4-1950, but the money-order was returned. It was argued by the learned counsel for the petitioner that the remittance did not amount

to a valid tender since the rent had become due and payable by the end of November 1949 but the remittance was made in April 1950. The petitioner's application under Section 13 is quite silent on the point. There is no allegation therein as to what was the agreement between the parties in regard to the time of payment of the annual rent. In fact, the application does not even mention the fact of the remittance, to say nothing of its invalidity. The petitioner did not come into the witness-box, but her father, Dhani Earn, made no mention in his statement about the remittance. All that he stated was that he had not received the arrears in question. It is manifest, therefore, that this is a case covered by the principle enunciated in *Mahomed Muzzafar Ali v. Asraf Ali*, A. I. R. (1) 1914 Cal. 823 and *Krishnaswamy v. Mohan Lal*, A.I.R. (36) 1949 Mad. 535, to the effect that a person who denies the very factum of tender is not entitled to question its validity. It follows, therefore, that the rent in question had been offered to the petitioner before the institution of her application by means of a tender the validity of which she is not entitled to question, and that therefore, she is not entitled to claim the respondents' eviction on the ground of non-payment of rent.

5. The other ground for the respondents' eviction is equally not tenable. Admittedly, the petitioner had along with her husband Gian Prakash been living for one year with her father Dhani Ram at Kandaghat. There is no doubt that Kandaghat is not, within Section 13 (3) (a) (i) (b), 'the urban area concerned,' but she has to show that she requires the chaubara for her own occupation. She is the only child of her father and, therefore, can certainly continue to live with him. It is also admitted that her husband has got an ancestral house in Patiala State. She can, therefore, go and live there. It is not shown, or even suggested, that it is no longer possible for her to live with her father or at her husband's house. In the circumstance, the appellate authority was quite correct in concluding that the petitioner does not in fact require the chaubara for her own occupation, whatever else may be the reason for her wishing to evict the respondents. The learned counsel for the petitioner referred me to the provisions of Clause (4) of Section 13 of the said Act. There is no doubt that under this provision an evicted tenant can claim restoration of possession in case the landlord does not occupy the building, but that does not mean that a tenant becomes liable to eviction on the mere ipse dixit of the landlord that the latter requires the building for his own occupation. That

allegation has got to be proved by the landlord, and in the present case the allegation has not been substantiated.

6. The revision is rejected with costs to the respondents, and the judgment and order of the District Judge of Mahasu as an appellate authority under Section 15 of the said Act are affirmed.

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