A

SHEO NARAIN

v.

SHER SINGH

September 21, 1979

B

[S. MURTAZA FAZAL ALI, P. S. KAILASAM AND A. P. SEN, JJ.]

East Punjab Urban Rent Restriction Act, 1949, *Proviso to Section* 13(2)(*i*) *—Scope of—Whether the deposit by a tenant of the entire arrears of rent or the Fair Rent fixed by the Rent Controller before the first date of hearing of the ejectment application would amount to deposit on the first date of hearing so as* C *to attract the benefit under Section* 13(2)(*i*) *of the Act.*

The proviso to clause (1) of sub-section (2) of section 13 of the East Punjab Urban Rent Restriction Act, 1949, states that "if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest @ 6% per annum or such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly D paid or tendered the rent within the time showed in clause (i) of sub-section (2) of section 13 of the Act, 1949". In such circumstances, an order for eviction against the tenant cannot be passed.

The appellant was a tenant under the respondent-landlord Sher Singh. On 21-3-67, Sher Singh filed an application under Section 13 of the East Punjab Urban Rent Restrictions Act, 1949 for ejectment of the appellant-tenant from the E tenanted shop situate in Gurgaon Cantonment, on the ground of arrears of rent for the period from 9-11-65 to 8-3-67 at the agreed rate @ Rs. 15/- p.m. The notice of the application for ejectment with the first date of hearing as 11-5-67 was served on the appellant-tenant on 22-4-67. On 29-4-1967 the appellant-tenant made an application before the very same Rent Controller praying for payment of arrears of rent i.e. Rs. 178.48 for the above period computed @ Rs. 10.62 p.m., being the fair rent fixed by that Court on 20-4-67 in an earlier F application for fixation of fair rent. The said amount was actually deposited in the court of the Rent Controller on 4-5-67. On 11-5-67 the appellant tenant tendered in the court to the landlord a further sum of Rs. 25/- being the costs and Rs. 2/- being the interest. This was not accepted on the ground that the tender was not a valid one within the meaning of section 13(2)(i) of the Act. This objection was accepted by the Rent Controller and an ejectment order was passed. On first appeal the District Judge reversed the said order. In the G Revision before the High Court, the High Court remanded the matter to the first Appellate Court for fresh orders in view of this Court's ruling in *Vidya Prachar Trust* v. *Basant Ram* [1970] 1 S.C.R. 66. The First Appellate Court affirmed the ejectment order. In the further revision to the High Court, the learned single Judge referred it to the Division Bench which in turn referred it to a third Judge. The third Judge agreed with the single Judge that the payment of fair rent fixed on 4-5-67 was not a valid tender within the meaning of section 13(2)(i) H of the Act. The single Judge, therefore, dismissed the revision petition and confirmed the orders of ejectment of the courts below.

Allowing the appeal by special leave, the Court.

HELD : 1. Proviso to section 13(2)(i) of the East Punjab Urban Rent Restrictions Act, 1949 requires three essential conditions : (1) that there must be an application for ejectment before the Court, (2) that even after due service the tenant does not pay or tender the arrears of rent and interest at 6 per cent per annum together with costs assessed by the Controller, (3) that if the payment as required by the aforesaid two conditions is made then the tenant shall be deemed to have paid rent within the time required by law. The last part of section 13 enjoins that where the conditions of the proviso are not fulfilled the Controller shall make an order directing the tenant to put the landlord in possession and where he is satisfied that the rent has been paid, the application of the landlord must be rejected. [841 A-C]

2. There is no magical formula or any prescribed manner in which rent can be deposited by the tenant with the landlord. The rent can be deposited by placing the money in the hands of the landlord which could amount to actual tender. The second mode of payment is to deposit the amount in the court where a case is pending in such a manner so as to make the amount available to the landlord without any hitch or hindrance whenever he wants it. Even the Act does not prescribe any particular mode of deposit. In fact, the use of the words "tender or deposit" in the proviso clearly postulate that the rent can be given to the landlord in either of the two modes. (1) It may be tendered to the landlord personally or to his authorised agent or it may be deposited in Court which is dealing with the case of the landlord to his knowledge so that the landlord may withdraw the deposit whenever he likes. In the instant case the appellant tenant chose the second course. [842 A-C]

3. A deposit before the Rent Controller where the case of the landlord was *subjudice* would be a valid deposit, if it was in fact in existence on the date of the first hearing to the knowledge of the landlord. In fact, if the tenant deposits the rent even before the first date of hearing it is a solid proof of his bonafides in the matter and the legal position would be that if the rent is deposited before the first date of hearing, it will be deemed to have been deposited on the date of the hearing also because the deposit continues to remain in the court on that date and the position would be as if the tenant had deposited the rent in court for payment to the landlord. [842 D-E]

In the instant case, all the conditions necessary for the application of the proviso have been completely fulfilled. This is more particularly so when the Controller gave notice to the counsel for the respondent on the first date of hearing that the amount had been deposited with the Controller. [842 E-F]

Vidya Prachar Trust v. *Pandit Basant Ram,* [1970] 1 S.C.R. explained and distinguished.

Dulichand v. *Maman Chand,* C.A. 1744/69 dated 27-3-79 followed.

Mehnga Singh & Ors. v. *Dewan Dilbagh Rai & Ors.,* (1971) P.L.R. 57 overruled.

Observation :

The Rent Control Act is a piece of social legislation designed to protect the tenant from eviction by landlords on frivolous, insufficient or purely technical grounds. Even as the Act allows eviction of the tenant on the ground of

A non-payment of arrears of rent the proviso affords sufficient protection to the tenant against eviction if the tenant deposits the rent in accordance with the proviso. [844 B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 80 of 1977.

B Appeal by Special Leave from the Judgment and Order dated 4-11-1976 of the Punjab and Haryana High Court in Civil Rev. No. 226 of 1971.

Suresh Sethi (*Amicus Curiae*) for the Appellant.

Yogeshwar Prasad and *Mrs. Rani Chhabra* for the Respondent.

C The Judgment of the Court was delivered by

FAZAL ALI J. This appeal by special leave is directed against the judgment of the Punjab and Haryana High Court dated 4th November, 1976 dismissing the revision petition filed by the appellant before the High Court.

D This case has rather a chequered career and travelled through various stages and finally when it came to the High Court the case was remanded and after remand another revision petition was filed before the High Court which was heard by a Single Judge who referred it to a Division Bench as in his opinion a substantial question of law was involved in the case. When the case went before the Division E Bench consisting of Pandit and B. S. Dhillon, JJ. the two Judges differed from each other and the case was referred to a third Judge, namely, Mittal, J. who agreed with Pandit, J. and dismissed the petition. Hence this appeal.

In order to understand the point of law involved in this case, it F may be necessary to give a brief resume of the facts leading to the appeal. It appears that the appellant-defendant was a tenant of a shop belonging to one Sher Singh and was situated in Gurgaon Cantonment. Sher Singh gave an application on 21-3-1967 under the provisions of the East Punjab Urban Rent Restriction Act 1949 (hereinafter referred to as the Act) against the defendant-appellant for eviction from the G shop on the ground that he had defaulted in payment of the rent and arrears for the period 9-11-1965 to 8-3-1967. Notice of this application for 11th May 1967 was issued on the 22nd March, 1967 and was actually served on the defendant appellant on 22nd April, 1967. On the 29th April, 1967 the defendant-appellant made an application before the Senior Sub-Judge who was also the Rent Controller for H depositing a sum of Rs. 179.48 being the rent along with interest due. The amount was however deposited before the Rent Controller on the 4th May, 1967. It appears that the first date of the hearing of the

application was 11th May, 1967 on which date the Rent Controller made the following order : A

"Present : Mr. Vijay Pal Singh for the petitioner

Mr. P. L. Kakkar for the respondent

The respondent's counsel Sh. P. L. Kakkar has been informed that the petitioner has deposited Rs. 179.48 paise on 4-5-67. Papers are filed." B

Even before this date when the amount was actually deposited by the appellant, the Rent Controller had passed the following order :—

"Present : Sh. Shiv Narain Petitioner. C

The rent be deposited at the responsibility of the petitioner and after that notice be issued on payment of P.F. for the respondent for 11-5-67."

It is, therefore, manifest that in the instant case a deposit of the rent and the arrears along with interest had actually been made before the first date of hearing to the knowledge of the Court and the Court had acknowledged the fact of the deposit of the amount. Again, on the first date of hearing i.e. 11th May, 1967 the Rent Controller informed counsel for the applicant respondent that a sum of Rs. 179.48 had been deposited. It is, therefore, clear that the applicant respondent was apprised clearly of the fact that the amount in question had actually been deposited and was at his disposal and he could withdraw the same from the Court of the Rent Controller whenever he liked. Despite these facts, the Rent Controller held in its order dated the 2nd December, 1967 that the deposit was not made in accordance with the proviso to section 13(2)(i) of the Act, and, therefore, the appellant being a defaulter the application was allowed and ejectment was ordered. Thereafter, the appellant went up in appeal to the District Judge who was the Appellate Authority under the Act which differed from the view taken by the Rent Controller and by his Order dated 22nd February, 1968 having held that the deposit was valid dismissed the application filed by the respondent for evicting the appellant. Thereafter a revision was filed to the High Court which was remanded to the District Judge for deciding the case afresh, and particularly having regard to the decision of this Court in the case of *Shri Vidya Prachar Trust* v. *Pandit Basant Ram*(1). On remand the District Judge accepted the application of the respondent and affirmed the order of the Rent Controller directing ejectment of the appellant. Thereafter the D E F G H

(1) [1970] 1 S. C. R. 66.

A appellant filed a revision before the High Court which, as already indicated, had a varied career before the High Court and was ultimately decided against the appellant and in favour of the applicant respondent.

The three Judges of the High Court who heard the case have been greatly influenced by the decision of this Court in *Shri Vidya Prachar* B *Trust* case (supra). It appears that the previous Division Bench of the Punjab and Haryana High Court in the case of *Mehnga Singh & Ors.* v. *Dewan Dilbagh Rai & Ors*(1) had followed the Supreme Court decision and taken the view that the deposit in the circumstances was not valid.

We have gone through the judgment of the Judges of the High C Court and we are unable to agree with the interpretation placed by them on the proviso to section 13(2)(i) of the Act. We are also constrained to observe that the High Court has misapplied the decision of this Court in *Vidya Prachar Trust* case (supra) which is clearly distinguishable from the facts and circumstances of this case.

D Before dealing with the point of law involved it may be necessary to extract portions of the Act with which we are concerned. In the instant case, we are mainly concerned with section 13 of the Act which may be extracted thus :—

"13. (1) x x x

E (2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied—

(i) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within F fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable :

G Provided that if the tenant on the first hearing of the application for ejectment after the due service pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid.

H x x x x x

(1) (1971) P. L. R. 57.

The Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application."

The decision of the case mainly turns upon the interpretation of the proviso to section 13, which requires three essential conditions : (1) that there must be an application for ejectment before the Court, (2) that even after due service the tenant does not pay or tender the arrears of rent and interest at 6 per cent per annum together with costs assessed by the Controller, (3) that if the payment as required by the aforesaid two conditions is made then the tenant shall be deemed to have paid rent within the time required by law. The last part of section 13 enjoins that where the conditions of the proviso are not fulfilled the Controller shall make an order directing the tenant to put the landlord in possession and where he is satisfied that the rent has been paid, the application of the landlord must be rejected.

Thus, the sole question which has to be determined in the instant case is as to whether or not the deposit made by the appellant was legally valid. The grounds on which the High Court held the deposit to be invalid were (1) that the rent was deposited in the Court of the Rent Controller without there being any express provision in the Act requiring the tenant to deposit the rent in Court, (2) that even if the deposit be held to be valid since it was made not on the date of the first hearing but before that date, the deposit did not conform to the conditions required in the proviso. Thirdly, the High Court relied mainly on the decision of this Court in *Vidya Prachar Trust* case (supra) and held that the deposit was not valid.

Before examining the case of this Court in the case of *Vidya Prachar Trust* case (supra) it may be necessary to comment on the reasons given by the High Court in rejecting the case of the appellant. We have already indicated above that the appellant first moved the Rent Controller for making a deposit of Rs. 179.48 and then made the actual deposit on the 4th May, 1967 i.e. to say a week before the date of the first hearing fixed by the Rent Controller. It is also not disputed before us or for that matter also, also before the courts below that the amount deposited by the appellant consisted of not only the arrears of rent but also costs and interest as required by the proviso to section 13 of the Act. Fourthly, it is also established that after the deposit was made before the Rent Controller he did not return the same to the appellant on the ground that he had no jurisdiction to receive it but on the other hand directed that notice of the deposit may be given to the respondent

A for 11-5-1967. Furthermore, the trial court on 11-5-1967 that is the first date of hearing recorded an order that the respondent's counsel had been informed that the amount had been deposited. There is no magical formula or any prescribed manner in which rent can be deposited by the tenant with the landlord. The rent can be deposited by placing the money in the hands of the landlord which would amount B to actual tender. The second mode of payment is to deposit the amount in the court where a case is pending in such a manner so as to make the amount available to the landlord without any hitch or hindrance whenever he wants it. Even the Act does not prescribe any particular mode of deposit. In fact, the use of the words "tender or deposit" in the proviso clearly postulate that the rent can be given C to the landlord in either of the two modes. (1) It may be tendered to the landlord personally or to his authorised agent or it may be deposited in Court which is dealing with the case of the landlord to his knowledge so that the landlord may withdraw the deposit whenever he likes. In the instant case the appellant tenant chose the second course. How can it be said that a deposit before the Rent Controller D where the case of the landlord was *sub-judice* would not be a valid deposit if it was in fact in existence on the date of the first hearing to the knowledge of the landlord. The reasoning of the High Court that the rent was deposited earlier than 11-5-1967 and is therefore, invalid does not appear to us at all. In fact, if the tenant deposits E the rent even before the first date of hearing it is a solid proof of his bonafides in the matter and the legal position would be that if the rent is deposited before the first date of hearing, it will be deemed to have been deposited on the date of the hearing also because the deposit continues to remain in the court on that date and the position would be as if the tenant has deposited the rent in court for payment F to the landlord. This is more particularly so when the Controller gave notice to counsel for the respondent on the first date of hearing that the amount had been deposited with the Controller. In these circumstances, we are satisfied that all the conditions necessary for the application of the proviso have been completely fulfilled in this case and the High Court was not at all justified in allowing the application of G the landlord and directing ejectment of the appellant.

Coming now to the case of *Vidya Prachar Trust* case (supra) which is the sheet anchor of the judgment of the High Court we think that it is clearly distinguishable from the facts of this case. In the first place, although in that case also an application under section 13 of H the Act had been made by the applicant for the eviction of the respondent on the ground that rent was not paid, the tenant on the first date of hearing did not tender the rent, cost and interest as required

by the proviso but only a part of the rent. It is, therefore, manifest that in the case which was being dealt with by the Supreme Court the first condition enjoined by the proviso was not fulfilled at all and on that ground alone it could be held that the deposit was not valid. Secondly, the deposit in that case was made not before the Rent Controller under the proviso to section 13 of the Act but was made before the Judge under section 31 of the Punjab Relief of Indebtedness Act which had absolutely no application to proceedings for eviction taken under the Act. Thus, a deposit made before some other court had no nexus with the arrears of rent for which an application for ejectment was filed before the Rent Controller. Thirdly, it was pointed out by this Court that the tenant had deposited even one month's rent in advance which under the provisions of section 19 read with section 6 of the Act was an offence if the landlord had withdrawn the rent. Thus, the tenant in that case had deposited the rent in a manner and under circumstances under which it could not be made available to the landlord even if he wanted to withdraw it because the landlord may have entailed a criminal penalty. These are the facts on the basis of which this Court held that the deposit was not valid. In this connection this Court observed as follows :—

> "There is only one saving for the tenant and that is when he tenders the full rent in Court before the Rent Controller together with interest and costs. In the present case, the tenant did tender rent but only for a portion of the period and he relied on his deposit under the Relief of Indebtedness Act as due discharge of his liability for the earlier period. It may be stated that the deposit before the Senior Sub Judge was made not only of arrears of rent but prospectively for some future period for which the rent was then not due."

It appears from the observations of this Court extracted above that the deposit was *prima facie* invalid. This Court further observed as follows :—

> "It is impossible to think that the landlords would be required to go to the Court of the Senior Sub Judge with a view to finding out whether their tenants have deposited rent due to them or not.....On the whole, therefore, we are of opinion that the deposit under section 31 of the Relief of Indebtedness Act did not save the tenant from the consequences of the default as contemplated by s. 13 of the Urban Rent Restriction Act."

A The effect of this observation is that the deposit was made in a wrong court and under such circumstances that the deposit could not be available to the landlord whenever he wanted. It was against the background of these special facts and circumstances that this Court in the *Vidya Prachar Trust* case (supra) held that the deposit was not valid. In the instant case we find that the deposit made by the B appellant does not suffer from any such infirmities as were present in *Vidya Prachar Trust* case (supra).

Finally, we would like to observe that the Rent Control Act is a piece of social legislation designed to protect the tenant from eviction C by landlords on frivolous, insufficient or purely technical grounds. Even as the Act allows eviction of the tenant on the ground of non-payment of arrears of rent the proviso affords sufficient protection to the tenant against eviction if the tenant deposits the rent in accordance with the proviso. *Vidya Prachar Trust* case (supra) was reconsidered by this Court in a recent decision in the case of *Duli Chand* v. *Maman* D *Chand*(1) by a Bench of three Hon'ble Judges of which one of us (Kailasam, J.) was a party and while distinguishing the case this Court made the following observations :—

> "We need not deal with all the contents that have been canvassed on both sides. Nor do we feel the necessity of E reconsidering the decision in *Vidya Prachar Trust* v. *Basant Ram* because on facts, the instant case is clearly distinguishable from that case. Here, before us, the rent for the months of February, March and April 1964 was deposited by the tenant to the credit of the landlord in the very court of the Rent Controller in which the landlord subsequently filed the F eviction petition. The deposit lying in the Treasury was in the legal custody and control of the court of the Rent Controller, and at the first hearing, if not earlier, the landlord was informed that he was entitled to withdraw that deposit. Thus, even if the tenant had obtained the order of the Rent Controller for making the deposit, by referring to section 31 G of the Relief Act, the fact remained that the money was in *custodia legis* and could be ordered to be paid to the landlord there and then by the Court at the first hearing."

It was further held by this Court that where the tenant makes the H deposit of the arrears of rent and interest informing the landlord at the

(1) C. A. 1744 of 1969 decided on 27-3-1979.

first hearing then the requirement of the law has been sufficiently complied with. In this connection, the Court observed thus :— A

> "The tenant by making deposit of the arrears of rent and interest and costs and informing the landlord at the first hearing that he could receive the same from the Court, had substantially complied with the requirement of the said proviso." B

In the instant case we have already pointed out that the appellant had fulfilled all the conditions of the proviso and had deposited the rent arrears, costs and interest on the first date of hearing and he, therefore, complied with all the requirements of the proviso and was, therefore, entitled to the protection given by the statute. In view of the legal C opinion we have formed regarding the interpretation of proviso to section 13 of the Act it is manifest that the judgment of the High Court is legally erroneous and the case of *Mehnga Singh* (supra) is hereby overruled, as it had wrongly applied and misconstrued the decision of this Court in *Vidya Prachar Trust* case (supra). D

For these reasons, therefore, we allow this appeal, set aside the judgment of the High Court and dismiss the application of the respondent for ejectment of the appellant. In the peculiar facts and circumstances of this case the parties will pay and bear their own costs throughout. E

S.R. *Appeal allowed.*