

A M/S. MANGAT SINGH TRILOCHAN SINGH THR.
MANGAT SINGH (D) THR. LRS. AND ORS.

v.
SATPAL

B SEPTEMBER 26, 2003

[SHIVARAJ V. PATIL AND D.M. DHARMADHIKARI, JJ.]

Rent and Eviction :

C *Code of Civil Procedure, 1908—Order XV, Rule 5—Delay in deposit of arrears of rent—Consequences of—Prayer by landlords for striking off defence of tenants on ground of non-deposit of arrears of rent within the specified time—Trial Court rejecting the said prayer and allowing the tenants to deposit arrears of rent—High Court reversing the judgment of*
D *Trial Court in revision—Tenability of—Held, since the trial court had exercised its jurisdiction in accordance with law in refusing to strike off the defence of the tenants, High Court could not justifiably interfere with the same in exercise of its revisional jurisdiction—It is not obligatory for the Court in every case to strike off defence only because there is delay in deposit of arrears of rent—Section 115—Revision—Jurisdiction of High*
E *Court.*

Words and Phrases—‘First hearing of suit’ occurring in Rule 5 of Order XV CPC as applicable to Punjab, Haryana and Chandigarh—Meaning of.

F In a suit for eviction, Trial Court rejected the prayer of Respondent-landlords for striking off defence of appellant-tenants on the ground of non-deposit of arrears of rent within the time specified in Order XV Rule 5 CPC as applicable in Punjab, Haryana and
G Chandigarh and allowed applications of appellant-tenants seeking permission to deposit the arrears of rent. High Court reversed the judgment of Trial Court. Hence the present appeals.

H On behalf of appellant-tenants, it was contended that the power of the Court to strike off defence, in the event of non-deposit of arrears of rent within the specified period, is discretionary and it is not

compulsory for the court in every case to take such extreme step of penalising the tenant; that only a date of appearance of the parties was intimated on the summons served by trial court on the tenants after the institution of suit for eviction against them and it was not a date fixed for hearing of the suit and as such the period specified for deposit of rent under Order XV Rule 5 of the Code could not be reckoned from that date and; that trial court having exercised its discretion by not striking off the defence of tenants and accepting the rent deposited, High Court in its revisional jurisdiction had no justification to interfere with the same. A B

Allowing the appeals, this Court C

HELD : 1.1. It is not obligatory for the Court in every case to strike off defence only because there is delay in deposit of the arrears of rent. The court has discretion in the matter and the power to strike off the defence is to be exercised with due regard to the facts and circumstances of each case. [59-D] D

1.2. The tenants had not withheld payment of rent arbitrarily. There was no lack of *bona fides* on their part. It is in these circumstances that the trial court refused to strike off the defence and on consideration of the representation of the tenants accepted the deposit of arrears of rent. Since the trial court had exercised its jurisdiction lawfully, the High Court could not justifiably interfere with the same in exercise of its revisional jurisdiction under Section 115 of the Code. [59-F, 60-H] E

1.3. The use of the expression 'first hearing' is not to mean 'the date fixed for return of summons or the returnable date which is the day of appearance' before the court of the parties; but the day on which the court applies its mind to the case which ordinarily would be at the time when either the issue are determined or evidence taken. The arrears of rent were, therefore, duly deposited by the tenants within the specified period from the first effective 'date of hearing'. [60-A, D, 59-G] F G

Sham Lal (Dead) By Lrs. v. Atme Nand Jain Sabha (Regd.), Dal Bazar, [1987] 1 SCC 222, relied on.

Bimal Chand Jain v. Sri Gopal Agarwal, [1981] 3 SCC 486, referred to. H

A *Anandi Devi v. Om Prakash*, [1987] Suppl. SCC 527, cited.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6605-6606 of 2002.

B From the Judgment and Order dated 25.2.2002 of the Punjab and Haryana High Court in C.R. Nos. 863 and 864 of 2001.

C G.L. Sanghi V.C. Mahajan, Dhruv Mehta, Mohit Chaudhary, Ms. Shalini Gupta, S.K. Mehta, Dr. Meera Agarwal, R.C. Mishra, Rakesh K. Khanna, Ms. Rashmi Khanna, Reetesh Singh, Surya Kant, S.M. Sarin and P.N. Puri, for the appearing parties.

The Judgment of the Court was delivered by

D **DHARMADHIKARI, J.** : The High Court by the orders impugned in these appeals has reversed the judgment of trial court and defence of the petitioners – tenants in each of the cases has been struck off on the alleged ground of non-deposit of arrears of rent within the specified period in accordance with provisions of Order XV Rule 5 of the Code of Civil Procedure (hereinafter referred to as the Code).

E The trial court by separate orders passed in each of the cases had rejected the prayer of the landlords for striking off the defence and allowed the applications of the appellants – tenants seeking permission to deposit the arrears of rent.

F Learned senior counsel Shri G.L. Sanghi appearing for the appellants – tenants has brought to our notice the contents of the summons served the trial court on the tenants after the institution of the suit for eviction against them. Relying on the contents of the summons, the submission made is that only a date of appearance of the parties was intimated and
G it was not a date fixed for hearing of the suit. It is further submitted that since the date mentioned in the summons was not the date for hearing of the parties in the suit, the period specified for deposit of rent under Order XV Rule 5 of the Code could not be reckoned from that date. Reliance is placed on the decisions of this court in *Sham Lal (Dead by LRs. v. Atme Nand Jain Sabha, (Regd.) Dal Bazar*, [1987] 1 SCC 222 and *Bimal Chand*
H

Jain v. Sri Gopal Agarwal, [1981] 3 SCC 486.

Relying on the same decisions of this Court (*supra*) the next submission made is that the power of the court to strike off the defence, in the event of non-deposit of arrears of rent within the specified period, is discretionary and it is not compulsory for the court in every case to take such extreme step of penalising the tenant. Lastly, it is submitted that the trial court having exercised its discretion by not striking off the defence of the tenants and accepting the rent deposited, the High Court had no justification in exercise of its revisional jurisdiction under Section 115 of the Code, to interfere with the same.

In reply, learned senior counsel Shri V.C. Mahajan appearing for the respondents – landlords supported the orders of the High Court and placed reliance on the decision of this Court in *Anandi Devi v. Om Prakash*, [1987] Suppl SCC 527.

After hearing the learned counsel appearing for the contesting parties and perusing the orders of the trial court and the High Court, we find that the question of law raised stands concluded in favour of the tenants. Our conclusion, therefore, is that these appeals must be allowed by setting aside the orders of the High Court and remitting the cases to the trial court for proceeding further with the trial of the suit.

The Order XV Rule 5 of the Code as applicable to the State of Punjab, Haryana and Chandigarh reads as under :

“5. Striking off defence for failure to deposit admitted rent. - (1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, *at or before the first hearing of the suit*, deposit the entire amount admitted by him to be due together with interests thereon at the rate of nine per cent annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or monthly

- A amount due as aforesaid, *the Court may, subject to the provisions of sub-rule (2) strike off his defence.*

- B Explanation 1. - *The expression "first hearing" means the date for filing written statement or for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.*

- C Explanation 2. - The expression "entire amount admitted by him to be due" means the entire gross amount whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account and the amount, if any, deposited in any Court.

- D Explanation 3. - (1) The expression "monthly amount due" means the amount due every month, whether as rent or compensation for use and occupation of the admitted rate of rent, after making on other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account.

- E (2) *Before making an order for striking off defence, that Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days, of the first hearing or, of the expiry of the week referred to in sub-section (1) as the case may be.*

- F (3) The amount deposited under this rule may at any time be withdrawn by the plaintiff :

- G Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited :

- H Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible or any account, the

Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same. A

(Emphasis supplied)

The trial court by separate orders passed, refused to strike off the defence of the tenants for the reason amongst others, as stated by it, that a substantial question of jurisdiction of the civil court is involved in the cases. Admittedly, before filing of the present suit for eviction, landlords had earlier filed applications before the competent authority under the provisions of East Punjab Urban Rent Restriction Act which were later withdrawn. B

The trial court placed reliance on the decisions of this Court (supra) which have also been relied upon for the tenants before us on the interpretation of the provisions of Order XV Rule 5 of the Code. This Court has held that it is not obligatory for the court in every case to strike off defence only because there is delay in deposit of the arrears of rent. The court has discretion in the matter and the power to strike off the defence is to be exercised with due regard to the facts and circumstances of each case. C D

After duly noticing the legal position as has been explained by this Court, the trial court has recorded in its order that the Rent Controller had fixed a fair rent for the suit premises and the arrears of rent at that rate were deposited by the tenants in the State Bank of Patiala for payment to the landlords. It finds that the tenants had not withheld payment of rent arbitrarily. There was no lack of *bona fides* on their part. It is in these circumstances that the trial court refused to strike off the defence and on consideration of the representation of the tenants accepted the deposit of arrears of rent. E F

The contention advanced on behalf of the tenants that the arrears of rent were duly deposited within the specified period from the first effective 'date of hearing' also gets support from the decision of this Court in the case of *Sham Lal* (supra). In that case, the words 'first hearing of the application,' as used in Section 13(2)(i) of East Punjab Urban Rent Restriction Act, came up for interpretation. It was held that to promote object of the legislation contained in the provisions, the expression used H

A therein has to be construed reasonably. The use of the expression 'first hearing' is held not to mean 'the date fixed for return of summons or the returnable date which is the day of appearance' before the court of the parties. See the following observations of this Court in above respect :

B
C
D "11. It appears that there is consensus in regard to the interpretation of the expression 'first day' in the context of the rent legislations of several other States, for instance, the Gujarat High Court in *Shah Ambalal Chhotatal v. Shah Babaldas Dayabhai*, dealing with the identical question as to the meaning of the words "the first day of the hearing of the suit" as provided in sub-section 3(b) of section 12 of Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 has observed after considering several decisions that *"the words 'the first day of hearing' as meaning not the day for the return of the summons or the returnable day, but the day on which the court applies its mind to the case which ordinarily would be at the time when either the issues are determined or evidence taken"*.

(Emphasis added)

E
F In the instant cases before us, the trial court accepted the deposit of arrears of rent by the tenants and refused to strike off defence for more than one valid reason. The most important reason assigned by the trial Judge is that there is a serious question of jurisdiction of the civil court involved in the cases. The court also came to the conclusion that as the arrears of rent were deposited in the Bank, there were no *mala fides* on the part of the tenants. The rent was not withheld for any ulterior purpose. The arrears of rent were, thereafter deposited in court with an application or representation which was made in accordance with Sub-rule (2) of Rule 5 of Order XV of the Code.

G
H The last submission made on behalf of the tenants has also great force that since the trial court had exercised its jurisdiction lawfully by refusing to strike off defence and accepting the deposit of arrears of rent, the High Court could not justifiably interfere with the same in exercise of its revisional jurisdiction under section 115 of the Code.

As a result of the discussions aforesaid, we find that the trial court A
had exercised its jurisdiction in accordance with law in refusing to strike
off the defence of the tenants. In the result, these appeals succeed and are,
accordingly, allowed. The impugned orders dated 25.2.2002 of the High
Court in all these cases are hereby set aside. These cases are remitted to
the trial court for proceeding with the suits in accordance with law. B

In these circumstances, we leave the parties to bear their own costs
in these appeals.

M.P.

Appeals allowed