

Raj Mohan Mazumdar

Vs

Ram Krishna Dass and Another

Civil Appeal No. 331 of 1977

(A. C. Gupta, P. N. Shinghal JJ)

15.01.1980

JUDGMENT

GUPTA, J. –

1. This appeal by special leave is at the instance of a tenant questioning the correctness of the decision of the Calcutta High Court affirming a decree of ejection made against him. The suit was decreed on the ground that the tenant was in default within the meaning of Section 13(1)(i) of the West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as the 'Act') which makes default in the payment of rent a ground for eviction where the tenant has defaulted in paying rent for two months within a period of twelve months or for two successive periods in cases where rent is not payable monthly. This is a case where rent was payable monthly. Section 21(1) of the Act requires the tenant to deposit rent with the Rent Controller in the case where the landlord does not accept any rent tendered by the tenant within the time referred to in Section 4 of the Act. Under Section 4(2) rent is payable within the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable. It is not claimed in this case that there was any contract fixing the time for payment of rent. Section 22 fixes the time-limit for making deposit of rent with the Controller; sub-section (1) of the section permits the tenant, in the absence of any contract in writing, to deposit rent within the last day of the month following that for which the rent was payable. It appears from the impugned judgment that on August 11, 1965, the tenant had remitted by money order the rent payable for the month of July 1965, which was returned apparently because the landlord declined to accept the rent tendered to him, and the tenant received it back on August 14, 1965. Thereafter quite unnecessarily, the tenant made a second tender for the month of July 1965, beyond the prescribed time which also was not accepted and then started depositing the monthly rent with the Rent Controller from September 18, 1965, on which date the rent for the month of July was deposited. It is not found that except the deposit for the month of July, the deposits for the subsequent months were beyond time. There was thus not default in the payment of rent for two months to attract Section 13(1)(i). The High Court, However, decided against the tenant on the view that all the deposits were invalid because they were not preceded by "at least one valid tender". This finding does not seem to us to be correct because the High Court itself found that the rent for the month of July 1965 had been remitted by money order of August 11, 1965 which was well within time. That being so, the basis of the decision was wrong.

2. Mr. D. N. Mukherjee, appearing for the landlord-respondents, argues that sub-section (4-A) of Section 21 which permits the tenant to deposit the rent for subsequent months with the Controller without further tender of rent to the landlord after his refusal to accept a valid tender of rent for any month requires that the rent for the subsequent months is to be deposited with the Rent Controller

within the time fixed by Section 4, i.e. by the fifteenth of the next subsequent month; according to Mr. Mukherjee the subsequent deposits are beyond time on such a construction of Section 21(4-A). In our opinion, a plain reading of Section 21 and Section 22 makes it clear that such a construction is not possible and this contention has no substance.

3. We accordingly allow this appeal and set aside the judgment and decree passed by the High Court and dismiss the suit for eviction with costs.

</html