

Kakoo and Others

Vs

Gauri Shankar

Civil Appeals Nos. 813 of 1980 and 1278 of 1979

(D.A. Desai, A.P. Sen JJ)

24.03.1981

JUDGMENT

DESAI, J. -

1. Two tenants Kaloo and Chet Narain occupying two different portions of a building belonging to respondent Gauri Shankar are the appellants in these two appeals involving a common question of law. A few facts shedding light on the question of law may be stated.
2. One Brij Mohan was the owner of a building. Brij Mohan sold the building to one Shital and Gauri Devi. Respondent Gauri Shankar and his cousin Sheo Narain purchased the building from Shital and Gauri Devi by a registered sale deed dated July 29, 1965. There is some dispute as to whether both of them jointly purchased the whole property or by a single sale deed each of them purchased separate and specified portion of the same building and this controversy has led to some confusion in these proceedings.

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3. Bhola was inducted as tenant in a shop forming part of this building. Appellant Kaloo (CA No. 813 of 1980) and one Hira Lal, brothers of Bhola, according to them, were staying with Bhola in his lifetime and on the death of Bhola in August 1966 they inherited the tenancy rights in respect of the shop. Respondent-landlord Gauri Shankar served notice dated December 22, 1965 (Ex. 9) upon Bhola alleging that he has been a tenant of the shop on a monthly rent of Rs. 10 and that he has been in arrears from September 1, 1964. Bhola sent reply Ex. 10 to the notice (Ex. 9) specifically stating that he was not in arrears of rent from September 1, 1964, and that he had tendered the rent by money order dated September 28, 1965, which has been accepted by respondent Gauri Shankar. Simultaneously Bhola remitted rent by money order (Ex. A-11) dated January 18, 1966, describing the payee as 'Gauri Shankar wali Sheo Narain'. This money order was refused by respondent Gauri Shankar. In the reply to the notice Bhola had stated that Gauri Shankar alone could not serve notice because the property in question was jointly purchased by Gauri Shankar and Sheo Narain. It is this plea of Bhola which possibly induced him to send the money order as hereinabove described. Respondent, after obtaining necessary permission from the District Magistrate, filed a suit for eviction on the ground mentioned in Section 3(1)(a) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 ('1947 Act' for short) alleging that tenant Bhola was in arrears of rent for more than three months and has failed to pay the same to the landlord within one month from the date of service upon him of the notice. When the matter was pending before the Commissioner in revision under Section 3(2) and (3) of 1947 Act at the instance of the landlord against the order of District Magistrate refusing permission to file the suit under Section 3(2) of the 1947 Act, Bhola died and

appellant Kaloo and his brother Hira Lal were substituted as his legal representatives by the respondent. The permission being granted, the suit for eviction was filed against Kaloo and his brother Hira Lal. Even though respondent Gauri Shankar treated Kaloo and Hira Lal as having inherited tenancy right of Bhola, it was alleged in the plaint that the appellant Kaloo and his brother Hira Lal were trespassers as they had forcibly taken over possession of the shop after it was released in favour of the respondent. A self-contradictory stand was taken in the plaint describing Kaloo and his brother as trespassers and in any case as Bhola having defaulted in payment of rent and his tenancy was terminated the same could not have devolved on his legal representatives namely, Kaloo and Hira Lal, and, therefore, also they were trespassers. As a third alternative it was stated that as Bhola had not paid the rent as required by law, appellant Kaloo and Hira Lal were not entitled to the protection of the 1947 Act and, therefore, also the respondent-landlord was entitled to evict them and obtain possession.

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4. In this connected appeal it was alleged by the respondent in the plaint that the appellant Chet Narain was a tenant on a monthly rent of Rs. 6.25 and that he was in arrears from July 1, 1965. Respondent-landlord served notice dated October 23, 1967, which was received by the appellant on November 2, 1967. Appellant had already remitted Rs. 156.25 by money order Ex. A-18 dated October 16, 1967, which was refused on October 17, 1967. Appellant again remitted Rs. 168.75 by money order Ex. A-17 which was refused on January 23, 1968. Consequently, the appellant deposited Rs. 168.75 in the Court of the Munsif under Section 7-C of the 1947 Act as evidenced by Ex. A-10. Appellant accordingly contended that he was not a tenant in arrears and he could not be evicted on the ground mentioned in Section 3(1)(a) of the 1947 Act.

5. The trial Court dismissed both the suits filed by the respondent-landlord. In the suit against Kaloo the trial Court held that Kaloo and Hiralal brothers of deceased-tenant Bhola have been accepted as tenant by the respondent-landlord in the proceedings before the Commissioner for obtaining permission to file the suit and, therefore, he rejected the contention that Kaloo and his brother had forcibly occupied the shop after the death of Bhola and that they were trespassers. It was further held that the refusal of the money order sent by Bhola addressed as 'Gauri Shankar wali Sheo Narian' may be prima facie justified but the ground for refusal having not been stated or intimated to Bhola, the latter was justified in making an application under Section 7-C of the 1947 Act and depositing the rent in the Court of the Munsif. The trial Court observed that both the respondent and predecessors-in-interest seem to have adopted all sorts of tactics and devices to eject tenants and, therefore, they were not entitled to a decree for eviction. He further observed that the sale deeds taken by Sheo Narian and respondent Gauri Shankar are overlapping each other as far as rented property is concerned and that description of the rented property set out in sale deed dated July 29, 1965, is bound to mislead a person about the property transferred to one or the other purchaser and that in this background if the repeated money orders were sent by Bhola addressed to 'Gauri Shankar wali Sheo Narian', the tenant expressed his genuine anxiety to pay the rent protecting his own interest and, therefore, on the ground of his being a willful defaulter a decree for eviction could not be passed. With these observations the suit filed by the respondent for eviction was dismissed but decree for arrears of rent was passed.

6. In the suit against Chet Narain the trial Court held that the tenant had remitted rent prior to the notice Ex. 4 dated October 23, 1967, and again subsequent to the notice by money order, both of which were refused by respondent-landlord whereupon the appellant-tenant moved the Court of the Munsif under Section 7-C of the 1947 Act and deposited the rent and, therefore, the appellant-tenant

could not be said to be a defaulter within the meaning of Section 3(1)(a) of the 1947 Act. The trial Court also observed that if the appellant had any objection to receiving the money order addressed as 'Gauri Shankar wali Sheo Narian' it was his duty to so state and intimate to the tenant but he having not so honestly and fairly acted, the tenant could not be said to be a defaulter. Accordingly the suit filed by the respondent for eviction was dismissed but was decreed for arrears of rent.

7. Respondent-landlord preferred two civil appeals in the court of Civil Judge, Fatehpur. The one against Kaloo and Hira Lal was numbered as Civil Appeal 13 of 1972 and the other against Chet Narian was numbered as Civil Appeal 11 of 1972. The learned Civil Judge allowed both the appeals observing that the money order addressed by the tenant in each case to 'Gauri Shankar wali Sheo Narian' would not evidence proper legal tender to the landlord because landlord Gauri Shankar was the sole and exclusive owner of the property in each case and Sheo Narian has nothing to do with the property and if the landlord were to accept the money order so addressed it would amount to an admission on his part that Sheo Narian was the owner and he was only his karta and, therefore, refusal was justified and tender was not legal. The learned Judge further held that if the initial tender was not legal and the refusal was justified, the tenant in each case was not entitled to resort to proceedings under Section 7-C of the Act 1947 and, therefore, the tenant in each case was not entitled to relief and was liable to be evicted. Accordingly, both the appeals were allowed and the suit of the respondent against each tenant for eviction was decreed.

8. It may be mentioned that in the appeal against Kaloo and Hira Lal there was some dispute about one almirah forming part of tenancy and it was held that the almirah formed part of the tenancy. This is being mentioned because the High Court had taken a different view, but the view which we are taking would render reference to almirah irrelevant.

9. The tenant in each case preferred a second appeal to the High Court at Allahabad against the decision of the Civil Judge, Fatehpur. Appeal preferred by Kaloo and Hira Lal was numbered as Second Appeal 3194 of 1972 and the one preferred by Chet Narain was numbered as Second Appeal 3193 of 1972. They were heard by the same learned Judge but each one was disposed of by a separate judgment rendered on two different dates. Both the second appeals were dismissed.

10. In the appeal filed by Kaloo the High Court observed that : "Admittedly, the arrears of rent which amounted to more than three months' rent, were not paid. Meanwhile, Bholu died and the appellants came in as his heirs." The High Court has not examined the question about the effect of the money orders being sent before the notice terminating the tenancy, the one sent after the notice terminating the tenancy, and the deposit made under Section 7-C of the 1947 Act. In fact, there is not the slightest discussion about the substantial point involved in appeal in the judgment of the High Court and the main part is devoted to the question whether almirah was part of the tenancy. Precisely, the statement that 'admittedly the rent was in arrears' is not justified by the record because there is no such admission.

11. In the appeal by Chet Narain the point involved in dispute appears to have been answered by the High Court saying that as respondent Gauri Shankar was the landlord, the tenant should have remitted the money orders to the name of Gauri Shankar alone and he was not justified in sending money orders addressed to 'Gauri Shankar wali Sheo Narain', more so, because the tenant knew who was his landlord. Approaching the matter from this angle, it was held that the respondent Gauri Shankar was perfectly justified in refusing to accept the money order and that respondent Gauri Shankar owed no obligation to the tenant to explain why he refused to accept the money order. The High Court did not examine the position in law about the deposit made under Section 7-C of the

1947 Act, in the background of facts of this case. Accordingly, the High Court dismissed the appeal of Chet Narian with the observation that if the money orders were rightly refused by the respondent, the tenant was in arrears of rent for more than three months and has failed to repair the default within one month of the receipt of the notice and he was liable to be evicted. Hence these two appeals by the two tenants by special leave.

12. The short question in these two appeals is whether the respondent-landlord in the background of the facts found by the courts has made out a case under Section 3(1)(a) of the 1947 Act for eviction of the tenant. In examining this question it would be necessary to take into account remedy adopted by the tenant in each appeal under Section 7-C and whether in the facts and circumstances of the case each of the tenant is entitled to the benefit of sub-section (6) of Section 7-C.

13. The respondent-landlord seeks possession on the ground mentioned in Section 3(1)(a) of the 1947 Act which reads as under :

that the tenant is in arrears of rent for more than three months and has failed to pay the same, to the landlord within one month of the service upon him of a notice of demand.

To be able to successfully evict the tenant under this section, the landlord has to establish affirmatively (i) that the tenant is in arrears of rent for more than three months; (ii) a notice of demand has been served upon him; (iii) and the tenant has failed to pay the rent as in (iv) to the landlord within one month from the date of the service of the notice. The tenant can successfully non-suit the landlord by establishing that he was not in arrears of rent on the date of the notice or he has complied with the notice and if while complying with the notice he tenders the rent in arrears by a money order and the landlord refuses to accept the rent, the tenant can proceed to protect himself by initiating a proceeding under Section 7-C of the 1947 Act. Benefit conferred by Section 7-C can also be availed of by the tenant where a bona fide doubt or dispute has arisen as to the person who is entitled to receive any rent payable by the tenant.

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14. Landlord Gauri Shankar claims to have purchased the suit property on July 29, 1965, from Shital and Gauri Devi who in turn purchased the same from one Brij Mohan who had inducted Bhola as the tenant. Except the notice claiming rent there is no material on record to show whether the vendors of the respondent-landlord gave any intimation to Bhola as to whom the property was sold and to whom he must pay rent and get attorned. The learned trial Judge has made a pertinent observation in this context that :

The sale deeds of both Sheo Narain and respondent executed by Shital and Gauri Devi are overlapping each other as far as the rented property is concerned. The description of rented property made in the sale deed dated July 29, 1965, Ex. 6 is bound to mislead a person about the property which purports to have been transferred through the same sale deed Ex. 6.

15. This finding was not question by reading out the sale deed of the building in question to us. In the background of this finding of the trial Court the conduct of tenant Bhola may be examined. The respondent-landlord complained that the tenant Bhola was in arrears from September 1, 1964. Keeping aside for the time being the question of arrears when Brij Mohan was the landlord, the case

may be examined from the stand point of the present landlord, from the time he became entitled to recover rent. That would be from the date of purchase unless he is in a position to show that he has purchased the previous arrears of rent. The sale deed under which respondent claims to be the landlord is dated July 29, 1965. Bhola sent the money order for Rs. 20 Ex. A-10 on September 28, 1965, as rent for the months of July and August 1965 at the rate of Rs. 10 p.m. which is admitted monthly rent. Respondent refused to accept the rent so tendered. This was tendered prior to notice Ex. 9 dated December 12, 1965. Bhola again sent a second money order Ex. A-11 in the amount of Rs. 60 69 for the rent up to and inclusive of December 31, 1965. This was refused by the respondent. A third money order was sent for Rs. 80 covering rent up to February 1966. This was also refused by the respondent. It was said on behalf of the respondent that the money order was addressed in the name of 'Gauri Shankar wali Sheo Narain' and as the respondent Gauri Shankar was the sole and executive owner of the demised property the rent tendered to him in his capacity as the guardian of some minor who had no interest in the property cannot be said to be legal tender to the landlord and the landlord was justified in refusing to accept the rent. If the matter were to rest here, one could have discovered microscopic justification for the conduct of the landlord but Bhola did not stop by merely sending money orders. On refusal of three successive money orders, he took the only legal and logical subsequent step of moving an application under Section 7-C of the 1947 Act. He had a two-fold contention to offer in the proceeding he initiated under Section 7-C. According to him the landlord unjustifiably refused to accept the rent offered by money order, a situation covered by sub-section (1) of Section 7-C and in any event if the sale deed under which the landlord purchased the property gave a misleading account as to who was the purchaser, there would be a bona fide doubt as to the person to whom rent was payable on purchase of the demised property, a situation comprehended in sub-section (2) of Section 7-C and according to him both sub-sections 7-C(1) and (2) would come into play, and, therefore, he deposited rent in the Court of the Munsif having jurisdiction over the area where the accommodation was situated. That Bhola initiated such a proceeding and made a full deposit is not in dispute. The grievance is that as the refusal to accept the rent was justified and that there was not the slightest doubt as to the identity of the person who was entitled to recover the rent and therefore the proceeding initiated by Bhola under Section 7-C is misconceived and would not protect him. Said the learned counsel for the respondent, that in this background Bhola and the present appellant claiming through Bhola, is not entitled to the benefit of sub-section (6) of Section 7-C which provides that in any case where a deposit has been made as set out in Section 7-C(1) or (2), it shall be deemed that the rent has been fully paid by the tenant to the landlord, but Bhola cannot be relieved from the consequences of his own conduct.

16. Reverting back to the requirements of Section 3(1)(a), could it be said that in the background of these facts the tenant has failed to pay the rent which was in arrears prior to the notice of demand and subsequent to the notice of demand and that he cannot be relieved ?

17. The submission is that the expression 'failed to pay the rent within one month after the notice of demand is served upon the tenant' would not mean that every error or omission in payment of rent would constitute failure to pay the rent. Failure, contended the learned counsel, is something more than mere error or omission, inaction or inadvertence in payment of rent. This submission, weighty by itself, would have necessitated a thorough analysis of the expression used in Section 3(1)(a) but in view of the legislative exposition as far as the 1947 Act is concerned, the submission is not open to the learned counsel for the appellant. When the Act was enacted in 1947, Section 3(1)(a) read as under :

3. Restrictions on evictions. - (1) No suit shall, without the permission of the District

Magistrate, be filed in any civil court against a tenant for his eviction from any accommodation except on one or more of the following grounds :

(a) that the tenant has wilfully failed to make payment to the landlord of any arrears of rent within one month of the service upon him of a notice of demand from the landlord.

By Section 4 of the Uttar Pradesh (Temporary) Control of Rent and Eviction (Amendment) Act, 1954 (U.P. Act 17 of 1954), clause (a) of sub-section 3(1) as it stood at the time of its enactment in 1947 was deleted and substituted by the following sub-section (sic clause) (a) :

That the tenant is in arrears of rent for more than three months and has failed to pay the rent to the landlord within one month of the service upon him of the notice of demand.

18. The glaring legislative exposition is the deletion of the word "wilfully" and the omission seems to be deliberate inasmuch as the legislative intention becomes manifestly clear that once a notice of demand is made obligatory before an action for ejection is filed for default in payment of rent, the tenant is given one month's time to repair the default and he cannot further be heard to say that the failure was unintentional. As the sub-clause (sic clause) now stands, once a notice of demand is served and the quantum or fact of rent being in arrears is not disputed, the only way the tenant can be saved from the threat of eviction is to pay up the rent demanded in the notice and to repair the default within the period of 30 days which constitutes locus poenitentiae for him.

19. The question still survives whether on facts not in dispute the tenant could be said to have failed to pay the rent within the time stipulated by Section 3(1)(a) after the receipt of the notice of demand. Avoiding repetition, Bhola the tenant had sent a money order Ex. A-10 on September 28, 1965, in the amount of Rs. 20 even prior to the receipt of the notice dated December 22, 1965. This tender was for rent for two months of July and August 1965 at the admitted rate of Rs. 10 p.m. Soon after the notice, a second money order Ex. A-11 in the amount of Rs. 60.69 was sent for the rent up to and inclusive of December 31, 1965. A third money order was sent for Rs. 80 covering rent up to February 1966. The first money order was prior to the notice and the second and third money orders were subsequent to the notice and they were all prior to the suit. All the three money orders were refused. But even before the suit was filed, Bhola approached the Court of the Munsif under Section 7-C which enables a tenant who is attempting to pay rent but whose attempt is thwarted by the landlord by refusing to accept the rent tendered, to deposit the rent in the court. Section 7-C(1) comprehends a situation where a landlord refuses to accept any rent lawfully paid to him by tenant and Section 7-C(2) comprehends a situation where any bona fide doubt or dispute has arisen as to the identity of the person who is entitled to receive any rent payable by the tenant. In both the situations the tenant can approach the Court of the Munsif having jurisdiction in the area and where the accommodation is situated, under Section 7-C(3) and deposit the rent. On receipt of this deposit the court has to serve a notice on the landlord and the deposit is for the benefit of the landlord who can withdraw the same at any time. Sub-section (6) provides that where deposit has been made either under Section 7-C(1) or 7-C(2) it shall be deemed that the rent has been duly paid to the landlord which would imply that the tenant is not in default so as to be denied the protection of the Rent Act.

20. In this case the tenant Bhola tendered rent by three money orders. All the three were refused by the landlord and when called upon to explain why the rent tendered was not accepted, a spacious

plea was taken that the money order was addressed to 'Gauri Shankar wali Sheo Narian' and Sheo Narain having nothing to do with the property, it was not a valid tender to the landlord. Is it fair conduct of the landlord ? If one recalls the observations of the trial Court extracted hereinbefore, the recitals in the sale deed under which the landlord purchased the suit property are misleading and likely to confuse any one reading the same. Yet the tenant even before the first demand by notice sent the money order addressed undoubtedly to the respondent with the description of the respondent not very happy but one induced by his won sale deed. Was he justified in refusing the same ? After refusing the money order when the notice was served, no attempt was made to clarify the situation, a fact which was appealed to the trial Court in non-suiting the plaintiff. But if the sale deed is confusing and likely to mislead and if the landlord acquired property under such a sale deed where property purchased by Sheo Narain and the present respondent formed overlapping description, could it not be said that a bona fide doubt or dispute would arise as to the person who has purchased the property and would therefore be entitled to recover rent and would not Section 7-C(2) come into play to enable the tenant to deposit the rent in the Court of the Munsif to save himself from the threat of eviction and which he unhesitatingly did undertake and deposited the rent ? By what logic such a tenant could be said to be one who has failed to pay the rent either prior or subsequent to the notice ? He took every possible step within his means and power to pay the rent. It would be a travesty of justice if on some hypertechanical consideration such an over-zealous tenant can be denied the protection of the Rent Act. Any other interpretation of the conduct of the tenant may lead in the given case to perversion of the Act, namely, adequate protection of the tenant (see *Shyamcharan Sharma v. Dharamdas* ((1980) 2 SCC 151 : (1980) 2 SCR 334, 338)).

21. The trial Court approached the matter in the correct perspective and dismissed the suit. The first appellate Court merely noted the fact that the money orders sent in the name of 'Gauri Shankar wali Sheo Narain' would not constitute legal tender of rent. The learned appellate Judge did not examine the effect of deposit made under Section 7-C and on the aforementioned short ground allowed the appeal and decreed eviction. Unfortunately, in the High Court the whole emphasis was placed on some almirah which, in our opinion, is a misplaced emphasis and hardly relevant for the decision of the appeal. Neither the effect of the previous money orders nor the deposit under Section 7-C were examined by the High Court. The High Court affirmed the decree of the first appellate Court with this observation that the defendant-tenant shall not be ejected from the almirah shown in map, Ex. C-24.

22. In the circumstances herein discussed, as Bholu the tenant could not be said to have failed to pay the rent in arrears, he and after his death his successors are not liable to be evicted on the ground mentioned in Section 3(1)(a). Accordingly, this appeal is allowed and the decree of the first appellate Court and the High Court are set aside and the decree of the trial Court dismissing the suit is restored with no order as to costs.

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23. Chet Narain, the appellant is the tenant on a monthly rent of Rs. 6.25 and according to the respondent-landlord he was in arrears from July 1, 1965. A notice of demand Ex. 4 dated October 23, 1967, was served upon the appellant on November 2, 1967. The facts found by the trial Court are that the appellant-tenant had remitted Rs. 156.25 on October 16, 1967, as per money order Ex. A-18. This was tender of rent prior to notice. By the date of notice tenant was in arrears of rent for the period of 27 months but even before the receipt of the notice, by money order Ex. A-18 dated October 16, 1967, he had remitted Rs. 156.25 as rent to 'Gauri Shankar wali Sheo Narain'. This money order was refused. By another money order Ex. A-17 an amount of Rs. 168.75 was tendered

by way of rent to 'Gauri Shankar wali Sheo Narain' and this was refused on January 23, 1968. Immediately thereafter the appellant-tenant approached the Court of the Munsif and initiated proceedings under Section 7-C and as per Ex. A-10, deposited the rent in arrears. The respondent has neither disputed the tendering of rent by money order and refusal of the same nor the deposit of the rent under Section 7-C. The trial Court dismissed the suit holding that the tenant could not be said to have failed to pay the rent and was not liable to be evicted on the ground mentioned in Section 3(1)(a). On appeal by the landlord the appellate Judge reversed the finding on the only ground that the money order addressed to 'Gauri Shankar wali Sheo Narain' would not constitute legal tender. The appellate Court did not care to examine the effect of the deposit made by the tenant under Section 7-C. The appellate Court reversed the trial Court's decree and decreed the suit. The second appeal of the tenant was dismissed on the same ground, namely, the tender of rent by money order to 'Gauri Shankar wali Sheo Narain' is not legal tender. The High Court also did not care to examine the effect of deposit under Section 7-C in the facts and circumstances of the case.

24. In the facts set out above, could this tenant be said to be the one who has failed to pay the rent and was to be denied the protection of the Rent Act.

25. Facts herein set out clearly show that the reasons which appealed to us in the case of the connected appeal would mutatis apply here. Therefore, for the same reasons, this appeal will have to be allowed and the decree of the High Court and the first appellate Court would have to be set aside and the one passed by the trial Court has to be restored.

26. Accordingly, Civil Appeal 813 of 1980 and Civil Appeal 1278 of 1979 are allowed and the decree and judgment of the first appellate Court and the High Court in each of them is set aside and the one of the trial Court is restore with no order as to costs throughout.

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