

Maiku

Vs

Vilayat Hussain through Lrs

Civil Appeal No. 413 of 1976

(R.B. Misra, M. M. Dutt JJ)

10.04.1986

JUDGMENT

R.B. MISRA, J. -

1. The only question for consideration in this appeal by special leave is whether the deposit of arrears of rent under Section 7-C of the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 will save the tenant from the penalty of being evicted for non-payment of rent.
2. The appellant is a tenant of the respondent on a monthly rent of Rs 6.25 per mensem. He fell into arrears of rent amounting to Rs 318.75 for the period from October 1, 1959 to December 31, 1963. The tenant did not pay the aforesaid amount in spite of the verbal demand. Consequently, the landlord served upon the tenant a notice of demand. The tenant, however, failed to comply with the said notice, hence he became a defaulter. The landlord thereafter served another notice on the tenant under Section 106 of the Transfer of Property Act. The tenant, however, neither vacated the premises nor cleared the arrears of rent. The landlord was, therefore, obliged to file a suit. He, however, claimed a sum of Rs 176.68 as arrears of rent for the period from October 1, 1961 to February 8, 1964 the claim for rent for the remaining period having become barred by time. He also claimed a sum of Rs 58.23 as damages for the period from February 9, 1964 to October 22, 1964 as also pendente lite and future damages at the rate of Rs 6.25 per mensem.
3. The claim was resisted by the tenant on the ground that he was not a defaulter inasmuch as whatever rent was tendered to the landlord he refused to accept the same and, therefore, he was constrained to deposit the amount, that is, a sum of Rs 231.25 for the period from September 1, 1961 to September 30, 1964 in the court under Section 7-C of the Act. He also disputed the date of tenancy as alleged by the respondent-landlord.
4. The trial court came to the conclusion that the defendant became a tenant from January 17, 1962 and not from 1959, as alleged in the plaint. As the deposit of arrears of rent by the tenant under Section 7-C was not a valid deposit, therefore, it could not absolve the liability of the tenant from eviction inasmuch as the defendant had failed to establish that the landlord had refused to accept the tender made by the tenant. Accordingly, the suit for recovery of arrears of rent amounting to Rs 154 and damages amounting to Rs 58.23 was decreed with pendente lite and future mesne profits at the rate of Rs. 6.25 per mensem.
5. On appeal the learned Additional Civil Judge reversed the finding of the trial court and held that the tenant was not a defaulter on account of the deposit made by him under Section 7-C of the said Act and set aside the judgment and decree of the trial court for eviction. In second appeal the High

Court set aside the judgment and decree of the lower appellate court as regards eviction and restored the decree of the trial court. The tenant has now come in appeal to this Court as stated earlier, by special leave.

6. Shri R.K. Jain appearing for the appellant has contended that if the arrears of rent had been deposited with permission of the court under Section 7-C of the Act it will be presumed that the landlord had refused to accept the rent tendered by the tenant. As a second limb to this argument it was contended that it was not open to the court in a suit for eviction to go into the question of validity of the deposit made under Section 7-C. He produced a certified copy of the order of the Munsif (City), Kanpur dated July 30, 1962 allowing the application made by the tenant for permission to deposit the arrears of rent. The order reads :

This is an application under Section 7-C(1) of the U.P. Act 3 of 1947. The opposite party was served with the notice. No objection filed. The case falls under Section 7-C(1) the ingredients of which are made out. Hence the applicant tenant is allowed to deposit rent in this Court regularly under Section 7-C(1) and the opposite party landlord is entitled to withdraw the money.

On the strength of this order it was strenuously contended by Shri Jain that no objection was ever raised by the landlord in proceedings under Section 7-C of the Act and therefore, it is not open to him to raise the question of validity of the order passed under Section 7-C.

7. The question that squarely falls for consideration is whether the order granting permission to the tenant to deposit the arrears of rent in court is sacrosanct and cannot be challenged in a regular suit for eviction. Indeed, the Munsif before whom the application for permission was filed was not required to determine the rights and obligations of the tenant. All that he had to do on deposit of rent under Section 7-C was to issue a notice to the landlord informing him that such deposit had been made. Section 7-C so far as material, provides :

7-C. Deposit of rent in court. - (1) When a landlord refuses to accept any rent lawfully paid to him by a tenant in respect of any accommodation the tenant may in the prescribed manner deposit such rent and continue to deposit any subsequent rent which becomes due in respect of such accommodation unless the landlord in the meantime signifies by notice in writing to the tenant his willingness to accept.

(2) Where any bona fide doubt or dispute has arisen as to the person who is entitled to receive any rent referred to in sub-section (1) in respect of any accommodation, the tenant may similarly deposit the rent stating the circumstances under which such deposit is made and may until such doubt has been removed or such dispute has been settled by the decision of any competent court, or by settlement between the parties, continue to deposit, in like manner, the rent that may subsequently become due in respect of such building.

(3) The deposit referred to in sub-section (1) or (2) shall be made in the court of the Munsif having jurisdiction in the area where the accommodation is situate.

(4) On any deposit being made under sub-section (1), the court shall cause a notice of the deposit to be served on the landlord, and the amount of deposit may be withdrawn by the landlord on application made by him to the court in this behalf.

8. Section 7-C gives a right to the tenant to deposit rent when a landlord refuses to accept any rent lawfully paid to him by the tenant. A tenant may allege that the landlord had refused to accept any rent lawfully paid to him. The section itself does not require the Munsif to go into the question whether the landlord had refused to accept the rent paid lawfully or otherwise. We fail to understand how, as the learned Munsif observed, the opposite party was served with a notice. Sub-section (4) of Section 7-C contemplates of only one notice after the deposit, in pursuance of the permission granted to deposit the arrears of rent under this section. In the absence of any provision for sending notice to the landlord before granting permission to the tenant, we fail to understand how a notice was sent to the landlord before the passing of the order. The sub-section clearly contemplates that on any deposit being made under sub-section (1) the court shall cause a notice of the deposit to be served on the landlord and the amount of deposit may be withdrawn by the landlord on application made by him to the court in this behalf. If the Munsif was to accord the permission to deposit the arrears of rent merely on being satisfied that the necessary allegation as required by Section 7-C of the Act has been made, viz. the landlord had refused to accept the rent lawfully tendered to him, he was not obligated to enquire whether the allegation made in the application was correct or not.

9. Section 7-C permits a tenant to deposit the arrears of rent in court only under two conditions : (i) when the landlord refuses to accept any rent lawfully paid to him by the tenant in respect of any accommodation, and (ii) where any bona fide doubt or dispute has arisen as to the person who was entitled to receive any rent referred to in sub-section (1) in respect of any accommodation. If the deposit of arrears of rent was a valid deposit in accordance with the requirements of Section 7-C certainly it will amount to payment to the landlord and the tenant will be absolved from the liability of being evicted. But if the Munsif had only to accept the application and accord permission to the tenant to deposit the arrears in court merely on the basis that necessary allegations in the application as required by Section 7-C had been made, the court trying the suit for eviction cannot be precluded from enquiring about the validity of the permission under Section 7-C.

10. It was next contended for the appellant that the first appellate court had recorded a finding of fact believing the statement of the tenant that the landlord had refused to accept the rent when tendered to him and also refused to accept the amount sent by money order and this finding could not have been set aside by the High Court in second appeal. We are afraid this contention has no substance. The finding recorded by the first appellate court is based more on surmises and conjectures than on the basis of the material on record. We should do no better than quote the observations made by the first appellate court :

The appellant having admitted deposit of rent in court under Section 7-C and the court having accepted the deposit holding the ingredients of the section to have been made out and permitting the appellant to continue depositing rent in future also, prima facie the deposit has to be treated as valid and the burden lay on the plaintiff to show that the entire proceedings under Section 7-C were invalid and the Munsif had absolutely no jurisdiction to entertain the application and accept the deposit... The circumstances of the case also indicate that the rent must have been tendered by the defendant and might have been refused by the plaintiff. When the defendant had applied for allotment of the shop in his name, plaintiff had filed objections before the Rent Control and Eviction Officer but his objections were overruled and allotment was made in favour of the defendant. This was bound to cause annoyance to the plaintiff and he might have refused to accept the rent on that account.

11. Obviously, the first appellate court was of the opinion that once permission had been granted by

the Munsif to the tenant to deposit arrears of rent it would be presumed that the permission was a valid one under Section 7-C and this view of that court had coloured its findings and it had entered into surmises and conjectures.

12. The trial court had rejected the testimony of the defendant with regard to the tender of rent on the ground that he was an interested witness. According to his deposition he had gone to pay the arrears of rent prior to bringing the application under Section 7-C and that he had twice tendered the amount of arrears by hand to the plaintiff in the presence of plaintiff's son and the plaintiff had refused to accept it. He further deposed that the rent was tendered by money order also but the plaintiff had refused to accept it. The defendant did not care to file the postal receipts in the present case nor did he produce the plaintiff's son before whom he made tender which was refused by the plaintiff. Unless the evidence was filed in the present case that could not be taken into consideration by the court by summoning the file of some other case. The first appellate court had, however, relied upon the postal money order receipts by looking into the records of the proceedings under Section 7-C. The High Court in the circumstances was fully justified in reversing the finding recorded by the first appellate court as it was vitiated in law.

13. It may look hard that the tenant who had deposited the rent in court under Section 7-C, has to be evicted as the ingredients of Section 7-C had not been established but there is no help. In the instant case the only evidence is the deposition of the tenant which the trial court did not rely upon and even the first appellate court did not categorically say that it believes the deposition of the defendant. The law in our opinion is clear that the tenant must establish before the court in which the suit for eviction has been filed, the factum of refusal by the landlord when the payment was sought to be made to him. The mere fact that an application under Section 7-C for permission to deposit the arrears of rent has been allowed by the Munsif will not absolve the tenant from establishing before the court, where the suit for eviction was filed, that the landlord had refused to accept the rent lawfully tendered.

14. For the reasons given above we do not find any error, much less a manifest error, for interference with the judgment of the High Court. The appeal is accordingly dismissed, but there is, however, no order as to cost. With the dismissal of the appeal the stay order stands vacated and no separate order is needed. The civil miscellaneous petition is disposed of accordingly.

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