

Sadanand Dass

Vs

Md. Hussain and Another

Civil Appeal No. 1530 of 1978

(R. S. Pathak, V. B. Eradi JJ)

17.04.1986

JUDGMENT

PATHAK, J. –

1. This is defendant's appeal by special leave arising out of a suit for eviction.
2. The respondent is the owner landlord of the premises situated in Ward No. 111 of Dumka Municipality. The appellant is the tenant. The respondent filed a suit in 1966 claiming that the appellant had fallen in arrears of rent and that, therefore, the respondent had terminated his tenancy and required him to vacate the premises. The suit was contested by the appellant who denied that he was in arrears of rent. The suit was contested by the appellant who denied that he was in arrears of rent. He claimed that the respondent had refused to accept the rent tendered to him, and that after obtaining permission from the Controller under the Bihar Building (Lease, Rent and Eviction) Control Act, 1947 (hereinafter referred to as "the Act") he had been depositing rent regularly in the Treasury. The trial court found that the appellant was a defaulter in payment of rent and the ground mentioned in clause (d) of sub-section (1) of Section 11 of the Act was made out and, therefore, the suit for eviction was decreed. An appeal was filed by the appellant against the decree but failed and the trial court decree was affirmed. A second appeal was dismissed by the High Court in limine.
3. Learned counsel for the appellant has argued the case before us with considerable vehemence and has attempted to show that the appellant was not in wilful arrears of rent, and that in fact he had attempted to pay the rent regularly but the respondent had declined to accept it. In any event, he urged, according to the contract between the parties, it was open to him to pay the rent due for each month at his convenience and that no limit of time was settled therefor. The trial court has found that the appellant was in arrears of rent for more than two months on several occasions and the circumstance that there was no express contract regarding the time of payment of rent did not excuse the appellant from paying it regularly every month. The trial court also held that the deposit of rent in the Treasury was of no avail, and after the amendment of the Act the only course open to a tenant upon refusal by the landlord was to remit the rent by postal money order. The first appellate court endorsed the view of the trial court that the rent was payable month by month, and that the appellant had defaulted in payment of rent for more than two months. As mentioned earlier the High Court summarily dismissed the second appeal.
4. We have heard learned counsel for the parties and we see no substance in this appeal. The findings reached by the courts below are reasonable findings having regard to the material on the record. After hearing the appeal we gave an opportunity to the parties to settle the dispute, and, if possible, enter into a fresh contract of tenancy. It appears that a settlement has not been possible

between the parties. In the circumstances the appeal must fail.

5. The appeal is dismissed but without any order as to costs.

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