

Mrs. Manju Choudhary and Another

Vs

Dulal Kumar Chandra

Civil Appeal No. 4010 of 1985

(Sabyasachi Mukharji, S. Ranganathan JJ)

09.12.1987

### JUDGMENT

This is an appeal from the order of the High Court of Patna striking out the defence of the tenant for failure to deposit rent in accordance with the Bihar Building (Letting, Rent and Eviction) Control Ordinance, 1982. The trial court found that there was such default. The High Court in revision also found that the rent for the month of July, which was to be deposited by August 15, 1979, was deposited not earlier than August 20, 1979, so, there was a default. Indeed, the High Court has further noted the conduct of the tenant who had made default even in complying with the two orders mentioned above. Therefore, the High Court was of the view that the trial court had rightly struck off the defence. The tenant made out a case that there was a bank strike and as such he could not deposit his rent in time, that is obviously not a correct plea. It was found that there was, in fact, no bank strike. The special leave petition proceeded on the basis that there was actual delay of 4 or 5 days in depositing the rent. Section 13 of the Act stipulates that if in a suit for recovery of possession of any building the tenant contests the suit as regards the claim for ejection, the landlord may move an application at any stage of the suit for an order on the tenant to deposit rent month by month at the rate at which it was last paid and also subject to the law of limitation, the arrears of rent, if any, and the court after giving an opportunity to the parties to be heard may make an order to deposit the rent month by month at such rates as to be determined and the arrears, both before and after the institution of the suit, if any, and thereafter provides "on failure of the tenant to deposit the arrears of rent within 15 days of the next following month the court shall order the defence against the ejection to be struck off". Therefore, there is a duty cast on the court to strike out the defence if there is a failure of the tenant to deposit arrears of rent within 15 days. In this case, both the trial court as well as the High Court have found that there was, in fact, a delay to pay the arrears of rent within 15 days. In that view of the matter it is not possible to interfere with the order of the High Court. The appeal therefore fails and is accordingly dismissed. There will, however, be no order as to costs.

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