

Ram Sewak

Vs

Munna Lal

Civil Appeal No. 1654 of 1979

(Sabyasachi Mukharji, S. Ranganathan JJ)

16.12.1987

JUDGMENT

RANGANATHAN, J. –

1. The question which has come up for consideration in this appeal from a judgment of the Allahabad High Court is whether the deposit of rent by a tenant under Section 7-C of the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter called the 'Act') as such entitles him to resist successfully eviction under the provisions of the Act on the ground of default in payment of rent.

2. The appellant, Ram Sewak, was a tenant of the respondent, Munnal Lal, in respect of a shop on a rent of Rs. 25 per month. The rent up to November 30, 1966 had been paid by the tenant. The landlord, however, claimed that the rent for the period from December 1, 1966 till February 28, 1971, less an amount of Rs. 275, which had been received by him by way of money order, was due from the appellant-tenant. This remained unpaid despite notices of demand dated March 22, 1971 and April 12, 1971, and a notice of termination of the tenancy dated April 27, 1971. On these allegations, the landlord instituted a suit for ejection of the tenant on the ground of non-payment of rent. He also claimed the recovery of arrears of rent, mesne profits and certain taxes, which were alleged to be payable by the tenant. This suit was decreed by the learned Munsif, Jhansi. A first appeal was unsuccessful insofar as the decree related to the eviction of the petitioner was concerned but the claim for arrears of rent was rejected in part on the ground of limitation. A second appeal was also dismissed by the High Court and hence the present appeal.

3. The defence of the tenant to the suit was that he had tendered the rent to the plaintiff-landlord but the latter had refused to accept it. The rent was sent by money order but even then it was refused. It was submitted that the tenant had thereupon made an application on July 31, 1967 under Section 7-C of the Act in the court of the learned Munsif, Jhansi, for permission to deposit the rent in the court. The court issued a notice to the landlord, which was also duly served on him. On the date of hearing there was no appearance on behalf of the landlord. Thereupon the learned Munsif passed an order, on November 11, 1967, permitting the tenant to deposit the arrears of rent as well as future rent in court. It was claimed that the tenant had deposited arrears of rent amounting to Rs. 200 for the period from December 1, 1966 to July 31, 1967 in the court along with application and that he continued to deposit in court the rent thereafter from month to month. It was, therefore, submitted that there were no arrears of rent due from the tenant to the landlord and that, therefore, the suit for eviction was not maintainable.

4. The learned Munsif and, on appeal, the learned Subordinate Judge found as a fact that the

plaintiff had failed to prove that he had tendered the rent to the landlord or that the latter had refused to accept it. This being so, they held, the statutory conditions requisite for a valid deposit under Section 7-C were not fulfilled. Neither the application made by the plaintiff under Section 7-C nor the order passed by the learned Munsif on November 11, 1967 could therefore, help the plaintiff. In this view of the matter, both the courts held that the default in payment of rent, within the meaning of Section 3(1)(a) of the Act, stood established and the plaintiff was, therefore, liable to eviction. Before us, as before the courts below, learned counsel for the tenant based his case solely on the order under the provisions of Section 7-C of the Act. That section reads as follows :

7-C. Payment by deposit of rent. - (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 mean time 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.

(5) When a deposit has been made under sub-section (2) the amount of the deposit shall be held by the court for the benefit of the person who may be entitled to it and the same shall be payable to such person.

(6) In any case where a deposit has been made, as aforesaid, it shall be deemed that the rent has been duly paid by the tenant to the landlord.

5. Learned counsel submitted that, in the event of a landlord's refusal to accept the rent, the tenant had no other alternative but to deposit the same in the court under the above special provision. It was open to the landlord to have appeared before the learned Munsif at the time of hearing of the application for deposit and put forward any pleas, which he might have had. The landlord not having done this, it was claimed that the order passed by the learned Munsif on November 11, 1967 provides a complete defence to the action under Section 3(1)(a) of the Act against the tenant particularly in view of the language of sub-section (6) of Section 7-C. It was contended that the statute should not be construed as requiring that a tenant should prove the fact of his having tendered the rent and the landlord having refused it twice over, once while making a deposit under Section 7-C and, again, in proceedings under Section 3(1)(a). If, despite a deposit under Section 7-C, an action under Section 3(1)(a) were to be permitted, it was urged, Section 7-C would be rendered nugatory and otiose. Learned counsel also made a point that though the landlord in this

case had knowledge that the rent was being deposited in court since August 1967, he chose to keep quiet for a period of four years before issuing a notice calling upon the appellant to pay the arrears of rent.

6. Prima facie, the arguments of the appellant appear to have some force. However, after hearing learned counsel for the respondent and considering the facts of this case and the relevant statutory provisions, we have come to the conclusion that this appeal must fail both on technicalities as well as on equities.

7. Section 7-C is no doubt a provision intended to protect the interests of the tenant. But there is the authority of this Court holding that the mere fact of a deposit under this section, in itself cannot be an answer to an action under Section 3(1)(a). In *Dr. Brahmanand v. Kaushalya Devi* ((1977) 3 SCC 1), the relations between the landlord and tenant were highly strained. The tenant therefore deposited the moneys into court and pleaded this as a defence to an action under Section 3(1)(a). The High Court rejected this plea on the ground that there was nothing to show that the tenant had tendered the rent physically to the landlord and so the deposit could not be treated as a valid deposit under Section 7-C(1) so as to attract the deeming effect in Section 7-C(6). This Court held that the High Court had taken too narrow a view of the words 'paid to' the landlord. Krishna Iyer, J. observed : (SCC p. 3, paras 3 and 4)

. . . a liberal construction of the expression 'paid to him by a tenant' in Section 7-C(1) is necessary. Physically offering payment when the relations between the parties are strained is to ask for trouble and be impractical. But harassing the landlord by straightway depositing the rent in court without fulfilment of the conditions required by Section 7-C(1) is also unwarranted. Section 7-C(6) by using the expression 'where the deposit has been made as aforesaid' takes us back to Section 7-C(1). That is to say, the deposit is permissible only when the condition in Section 7-C(1) is complied with. If the landlord refuses to accept rent paid to him a deposit is permissible. But payment need not be by physical tender, person to person. It can be by money order, or through messenger or by sending a notice to the landlord asking him to nominate a bank into which the rents may be regularly paid to the credit of the landlord. If the landlord refuses under these circumstances, then a court deposit will be the remedy.

In the present case, on account of the bad blood between the parties, a physical tender of the rent is ruled out. At the same time the courts below have not considered whether the circumstances which drove the appellant into depositing the rent in court were such as eliminated the other possibilities of direct payment we have indicated. It is therefore fair to set aside the finding of the courts below and remand the case to the lower appellate court (which is the final court of fact under ordinary circumstances) to ascertain whether any of the alternatives we have indicated, or may otherwise be made out by the tenant as equivalent to payment of rent, is present in the case. If no such circumstance is made out by the tenant justifying deposit of rent in court, the decree for eviction will stand. Otherwise, the petition for eviction will be dismissed.

It is important to note that this Court did not view the deposit under Section 7-C as conclusive of the issue. On the other hand, it held that if no circumstance was made out by the tenant justifying the deposit in court, the decree for eviction will stand. In other words, this Court was of the view that, irrespective of the fact of deposit under Section 7-C, the tenant has to show, when a suit is under Section 3(1)(a), the existence of circumstances justifying a deposit under Section 7-C. In the present case, the courts have concurrently found that there was no valid tender of rent by the tenant or refusal thereof by the landlord. There is no ground, therefore to interfere with the decision of the

courts below.

8. A careful perusal of Section 7-C and the rules and forms made thereunder also supports the above conclusion. The application for a deposit under this section has to be made in the form prescribed in Appendix A to the rules framed under the Act. The appellant's application to the court was filed in this form. Column 6 of the application form as filled in by the tenant may be extracted :

A B6. Whether deposit is made under The deposit is being made undersub-section (1)/(2) of Section 7-C. sub-section (1) of SectionIn case of sub-section (1) briefly 7-C of the Act. Fact in briefstate the circumstances of refusal is that the landlord hasby the owner. In case of sub-section refused to accept the rent.(2), mention circumstances of doubt It is being deposited underor dispute about ownership, Section 7-C of the U.P. Act 3 of 1947.##

The rules framed under the Act also prescribe the form in which notice is to be served on the respondent when an application is made under Section 7-C. This form reads as follows :

* * *##

To

Whereas has deposited Rs. as rent for the period for the premises of which you have been mentioned as the landlord.

Notice is hereby given to you under sub-section (4) of Section 7-C of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, that the said amount will be paid to you on an application for withdrawal being presented to this Court.

Given under my hand and seal this day of

Munsif.

Reading Section 7-C, the rules framed thereunder and the above statutory forms together, it would appear that this provision envisages that where a tenant finds that the landlord refuses to accept the rent or there is some dispute regarding the ownership, he can, in order to protect his interests seek the permission of the court to deposit the arrears of rent as well as future rent in the court instead of running after the landlord. Though the applicant is asked to indicate briefly the circumstances in which he wants to make a deposit, there is no procedure contemplated for an enquiry into those circumstances. The section or rules do not seem to contemplate the transmission of this application to the landlord, the fixing of a date of hearing on which both the tenant and the landlord could be heard or the passing of a considered order by the court after hearing both sides and being satisfied that there was in fact a tender of rent by the tenant and a refusal by the landlord to receive the rent or a dispute regarding the ownership of the property which rendered it difficult or impossible for the tenant to send the money to the landlord straight. The notice which is sent to the landlord merely sets out that money has been deposited in the court and that the landlord is at liberty to withdraw it if he so desires. All that the landlord can do on receipt of the notice is either to withdraw the moneys deposited or stop future deposits by expressing a willingness directly to the tenant to accept direct payment of rent thereafter. On the language of the statutory provisions therefore, it is not possible to say that a deposit under Section 7-C is necessarily a valid one preceded by an enquiry or satisfaction of the court that the condition precedent set out in Section 7-C(1) is fulfilled.

9. Counsel for the petitioner submits that in *Fateh Chand v. Bal Saroop Goel* ((1967) 65 All LJ 979) and other cases, the Allahabad High Court has held that a deposit under Section 7-C is not a mere formality and that before directing or permitting a deposit the court has to go into the question whether there has been a tender and a refusal. In fact, the High Court has gone further and held that the court has to go into that question, at two stages : one, when an application is presented and before issuing notice to the landlord; and the other when the landlord appears before the court and disputes the validity of the procedure sought to be invoked by the tenant. Perhaps these requirements have been read into the section on grounds of equity and natural justice. Whatever that may be, we are constrained to say that such procedure does not appear to have been followed in this case. As we have already mentioned the application in the present case gave no details in the space against column 6. Instead of setting out the circumstances in which it was alleged that the landlord had refused to receive the rent, the application barely asserted that the landlord had refused to accept the rent. There is no information as to the nature of the notice served on the landlord but it must have been only in the form of Appendix B already set out. Again, though the application of the appellant under Section 7-C appears to have come up before the Munsif on November 11, 1967, and the order mentions that the landlord is "absent though served sufficiently", the order is only that the landlord may withdraw the amount deposited on proper application. It does not indicate any application of mind by the learned Munsif as to whether the conditions precedent for a valid deposit under Section 7-C were satisfied. There is certainly no finding at that stage on this vital requirement. The grant of permission to deposit under Section 7-C, in the circumstances of the case, cannot therefore be treated as conclusive that a valid deposit had been made under that section.

10. Shri Kacker took up the stand that even if Section 7-C is interpreted as providing an opportunity to both parties and even if a clear finding is recorded in these proceedings, after hearing both parties, that the preconditions of a valid deposit under that section are satisfied, that will not constitute *res judicata* or take away the court's rights in an action under Section 3(1)(a), of being satisfied on the evidence before it to the same effect. He relied in this context on two decisions of the Allahabad High Court. It is sufficient to extract some portions from the headnote of one of them, viz. *Haji Abdul Karim v. Mohd. Ismail* (1978 UPRCC 691) :

A finding merely on a collateral fact of jurisdiction cannot operate as *res judicata* in later proceedings between the same parties. It has been stated in Halbury's Laws of England, Third Edition Volume XV, paragraph 367 at page 192. It is a fundamental rule that a judgment is not conclusive to anything but the point decided, or of any matter which came collaterally in question or of any matter incidentally cognizable.

The principle behind this rule seems to be that even though in the previous proceedings a decision on a collateral fact about jurisdiction, wrongly given may be binding on the parties for a limited purpose i.e., only so far as those proceedings are concerned, yet it would completely defeat the ends of justice, if such erroneous decision were allowed to become final and perpetuate itself. It would be conducive to the ends of justice that in later regular proceedings the parties should not be thwarted by an earlier wrong finding and should be afforded full opportunity of demonstrating that the conditions precedent to the exercise of jurisdiction were absent.

It cannot, therefore, operate as *res judicata* and the parties must be left free to agitate the same question again in a subsequent suit for ejection or other appropriate proceedings. The whole scheme of Section 7-C is inconsistent with any adjudication of the rights of the parties. Under this section the learned Munsif is not required to determine the rights and obligations of the landlord and the tenant in these proceedings. All that he has to do on deposit of rent under Section 7-C(1) is to

issue a notice to the landlord informing him that such deposits has been made.

The deposit made under Section 7-C is by itself a neutral act and it acquires its legal completion only when the rights of the parties are later determined in appropriate proceedings. The deposit is thus without prejudice to the rights of the parties which ought to be determined in the appropriate proceeding.

. . . the entire scheme of Section 7-C leads to the inescapable conclusion that it is merely a tentative or provisional forum provided for the purpose of checkmating any sinister attempt on the parts of the landlord for letting it appear that no rent has been actually paid to him and thereby procuring the ejection of a tenant. It is a legal fiction operating for the benefit of tenant in order to destroy a subterfuge which may unjustly result in the eviction of the tenant. A deposit, therefore, per se does not decide the rights of the parties. Its significance and legal impost actually take shape according to the tenor and upshot of other subsequent proceedings in which such rights may be actually adjudicated.

For the purposes of the present case, we need not go into this larger question. In view of our conclusion regarding the scope of Section 7-C and our finding that, here, there was no enquiry or finding recorded in the proceedings under Section 7-C which could at all operate as res judicata against the landlord in the suit under Section 3(1)(a).

11. Learned counsel for the appellant strongly relied on two decisions of this Court in support of his contention. The first was *Kaloo v. Gauri Shankar* ((1981) 3 SCC 51). Learned counsel relied on certain passages in paragraphs 13, 19 and 23. In our opinion this decision is not of much help as the court in that case was concerned with a clear case of refusal of rent by the landlord fully justifying the deposit under Section 7-C. This is clear from various passages in the judgment particularly in paragraphs 19 and 20. The other judgment relied upon is that of this Court in *Kameshwar Singh Srivastava v. IV Addl. District Judge, Lucknow* (AIR 1987 SC 138 : (1986) 4 SCC 661). This was a decision under a later Act of Uttar Pradesh, namely, Act 13 of 1972. Section 30 of the said Act is a provision similar to Section 7-C of the Act presently in question. In this case also it was found as a fact that there had been a tender of rent to the landlord, who did not accept the same and this was held to be a complete answer in proceedings for eviction. There can be no doubt that, by virtue of Section 7-C(6) a deposit properly and justifiably made under Section 7-C would be deemed to be a payment of rent to the landlord himself. Once there is a proof of a valid deposit, then there can be no eviction of the tenant under Section 3(1)(a) since the section equates such a deposit to a payment to the landlord, thus negating the existence of any arrears of rent or any wilful default. But, at the same time it is necessary for the courts to ensure that the tenants do not resort to the provisions of Section 7-C merely to harass the landlord. The decision in *Kameshwar Singh* case (AIR 1987 SC 138 : (1986) 4 SCC 661) emphasises this aspect in paragraph 7 : (SCC pp. 666-67, para 7)

7. We should not be understood to have laid down that the tenant should deposit rent in court instead of paying the same to the landlord. Primarily, a tenant is under a legal obligation to pay rent to the landlord as and when due and if he fails to pay the same on demand from the landlord and if he is in arrears for a period of more than four months he would be liable to ejection. Where there is a bona fide dispute regarding the landlord's right to receive rent on account of there being several claimants or if the landlord refuses to accept the rent without there being any justification for the same, the tenant would be entitled to take proceedings under Section 30 of the Act and deposit the rent in court thereupon he would be deemed to have paid the rent to the landlord, consequently he would be relieved of his liability of eviction. It does not however follow that the tenant is entitled to disregard

the landlord or ignore his demand for payment of rent to him. The provisions of the Act safeguard tenant's interest but it must be kept in mind that the landlord's right to receive rent and in the event of the tenant's being in arrears of rent for a period of more than four months, his right to evict the tenant is preserved. If the tenant makes the deposit in court without there being any justification for the same or if he refuses to pay the rent even on the service of notice of demand by the landlord, he would be liable to eviction. However, the question whether the tenant is justified in depositing the rent in court and whether deeming provision of Section 30(6) would be available to him to relieve him from the liability of eviction would depend upon facts of each case. As noted earlier on the special facts of the instant case we have no doubt in our mind that the appellant had relieved himself from the liability of eviction and he was not in arrears of rent for a period of more than four months.

This decision also, incidentally, proceeds on the basis that, despite an order under Section 30, it is open to the court in the proceedings for eviction, to consider whether the deposit was a valid one or not. In the light of the above observations also, the courts below were justified, having regard to the facts and circumstances of the present case, in ordering eviction.

12. Learned counsel for the appellant submitted that such an interpretation as we have upheld would completely render Section 7-C a dead letter. This is not so. Section 7-C, as we have pointed out earlier, is only intended as a protection to the tenant to tide over a particular genuine difficulty. It enables the tenant to deposit the rent from time to time in the court so that the arrears of rent do not accumulate and he is not constrained to pay large sums of money owing to the landlord on a future date. Secondly, it safeguards the landlord inasmuch as the rent from month to month is being deposited in the court and the landlord is not prejudiced by a huge accumulation of rent which he may find it later on, difficult to recover. Thirdly, it also protects the tenant in this that, if ultimately he is able to show in the eviction proceedings that the deposit was made because of the refusal of the landlord to accept the rent, it provides a complete answer to the plea of eviction under Section 3(1)(a). It cannot, therefore, be said that Section 7-C loses all its meaning and becomes otiose if it is interpreted in the restrictive manner above discussed.

13. This leaves only the equities of the matter to be considered. The contention of the learned counsel for the appellant that though the landlord was aware that the rent was being deposited in the court ever since August 1967, he waited for a period of four years before issuing a notice of demand for arrears of rent is seen to be without substance. Shri Kacker has pointed out that the appellant had filed a suit (No. 786 of 1968) claiming that he had paid Rs. 275 towards rent by money order and claiming refund of the same. This suit was pending till April 1971. On April 19, 1971, the suit was dismissed. The Third Additional Munsif, Jhansi found that the sum of Rs. 275 had been paid towards rent for the period ending November 30, 1966 and that the appellant was not entitled to the refund thereof. Shri Kacker rightly points out that since the appellant had raised a plea in this suit that the sum of Rs. 275 had been paid by him towards the arrears of rent due after November 1966, the landlord was disabled from instituting proceedings for eviction until this issue was decided in the suit. In other words, the delay from August 1967, when the appellant started depositing the rent in court till 1971, when the proceedings for ejection were started, was not due to any laches on the part of the respondent but was caused on account of the pendency of the litigation instituted by the tenant. Indeed it is rather unbelievable that, after having alleged in the application under Section 7-C that the landlord had refused to accept the amount tendered and deposited the arrears of rent in court, the tenant would have sent a sum of Rs. 275 by money order on November 30, 1967, as alleged. In fact the findings in that suit, incidentally, also negative the tenant's allegation that he had sent several money orders which the landlord had refused to receive. But this aspect need not detain us as all the three courts have concurrently found that in the present case the appellant had not been

able to prove that there had been a tender of the rent by him and refusal thereof by the landlord.

14. In the result we have come to the conclusion that both in law and in equity the appellant has no case and that the ejectment suit was properly decreed by the courts below. The appeal, therefore, fails and is dismissed. We, however, make no order as to costs, since the arrears of rent are available to the landlord for being withdrawn from the court.

</html