

Rakapalli Raja Rama Gopala Rao

Vs

Naragani Govinda Sehararao and Another

Civil Appeal No. 3812 of 1989

(K. Jagannatha Shetty, A. M. Ahmadi JJ)

12.09.1989

JUDGMENT

AHMADI, J. -

1. Special leave granted.

2. This tenant's appeal raises the question whether a tenant who omits to pay or tender the rent in respect of the demised premises under the belief that he had a right to purchase the property under a prior agreement to sell and was, therefore, not obliged to pay the rent can be said to be a wilful defaulter within the meaning of the proviso to sub-section (2) of Section 10 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter called 'the Act'). Section 10(1) lays down that a tenant shall not be evicted except in accordance with the provisions of this section or Sections 12 and 13 of the Act. Clause (i) of sub-section (2) of that section next provides that a landlord who seeks to evict his tenant may apply to the Controller for a direction in that behalf and the Controller on being satisfied that the tenant has not tendered the rent due by him within fifteen days after the expiry of the time fixed in the agreement of tenancy or in the absence of any such agreement by the last day of the month next following that for which the rent is due, shall make an order directing the tenant to put the landlord in possession. This is, however, subject to the proviso which reads as under :

"Provided that in any case falling under clause (i), if the Controller is satisfied that the tenant's default to pay or tender rent was not wilful, he may notwithstanding anything in Section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected."

The proviso, therefore, makes it clear that if the Controller is satisfied that the tenant's default is not wilful he may give the tenant an opportunity to pay or tender the rent due by him to the landlord and on such payment or tender being made within the time allowed, the landlord's application for eviction shall be rejected. The benefit of this proviso is available to only those tenants who are not guilty of wilful default. In the present case, the courts below have come to the conclusion that the tenant's default was wilful and hence the benefit of the proviso was not available to him. The question then is whether this conclusion reached by the courts below can be sustained on the facts found proved.

3. The facts lie in a narrow compass. The respondents purchased the demised premises by a registered sale deed dated December 7, 1977 for Rs. 70,000. The appellant was in actual possession

of a part of the premises as a tenant of the vendors on the date of purchase. After the purchase of the property the respondents served the appellant with a notice dated December 13, 1977 calling upon him to pay the rent due and deliver vacant possession of the demised premises. The appellant replied to the notice on December 29, 1977 alleging that the vendors had orally agreed to October 14, 1977 to sell the property to him for Rs. 70,000 and had received Rs. 5,000 as earnest. The appellant, therefore, contended that he was ready willing to purchase the property. The respondents sent a reply denying the existence of any such oral agreement and filed a suit for eviction. It may here be mentioned that on the date of the purchase of the property the rent was paid to the vendors up to the end of November 1977. The respondents, therefore, claimed the rent from December 1977 to May 1978 from the appellant. Since the appellant failed to pay the rent for the said period the courts below came to the conclusion that he was a wilful defaulter and passed a decree in ejectment against him. The tenant has, therefore, come in appeal to this Court.

4. The short question then is whether it can be said that the tenant's default to pay or tender rent from December 1977 to May 1978 was not wilful to avail of the benefit of the proviso extracted above. It may be noticed that in cases where the tenant has defaulted to pay or tender the rent he is entitled to an opportunity to pay or tender the same if his default is not wilful. The proviso is couched in negative form to reduce the rigour of the substantive provision in Section 10(2) of the Act. An act is said to be wilful if it is intentional, conscious and deliberate. The expressions 'wilful' and 'wilful default' came up for consideration before this Court in *S. Sundaram Pillai v. V. R. Pattabiraman Shedule* ((1985) 1 SCC 591 : (1985) 2 SCR 643 : AIR 1985 SC 582). After extracting the meaning of these expressions from different dictionaries (see pp. 659 and 660 : SCC pp. 605 and 606) this Court concluded at p. 661 as under : (SCC 606, para 26)

"Thus, a consensus of the meaning of the words 'wilful default' appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom."

Since the proviso with which we are concerned is couched in negative form the tenant can prevent the decree by satisfying the Controller that his omission to pay or tender the rent was not wilful. If the Controller is so satisfied he must give an opportunity to the tenant to make good the arrears within a reasonable time and if the tenant does so within the time prescribed, he must reject the landlord's application for eviction. In the present case, it is so in dispute that the tenant did not pay the rent from December 1977 to May 1978 before the institution of the suit. Under the eviction notice served on him in December 1977 he called upon to pay the rent from December 1977 only. The appellant-tenant did not pay or tender the rent from December 1977 to May 1978 not because he had no desire to pay the rent to respondents but because he bona fide believed that he was entitled to purchase the property under the oral agreement of October 14, 1977. He had also paid Rs. 5,000 by way of earnest under the said oral agreement. True it is, his suit for specific performance of the said oral agreement has since been dismissed but he has filed an appeal which is pending. He, therefore, bona fide believed that he was entitled to purchase the property under the said oral agreement and since he had already paid Rs. 5,000 by way of earnest thereunder he was under no obligation to pay the rent to the respondents. In order to secure eviction for non-payment of rent, it must be shown that the default was intentional, deliberate, calculated and conscious with full knowledge of its consequences. Here is a tenant who felt that even though he had invested Rs. 5,000 as earnest the vendor has sold the property to the respondents in total disregard of his right to purchase the same. This is not a case of a tenant who has failed to pay the rent without any rhyme or reason. He was not averse to paying the rent but he genuinely believed that he was under no obligation to do so as he had a prior right to purchase the property. We are, therefore, of the opinion

that this is a case in which the Controller should have invoked the proviso and called upon the appellant to pay the arrears from December 1977 to May 1978 within a certain time. Failure to do so has resulted in miscarriage of justice. We are, therefore, of the opinion that the ejection decree cannot be allowed to stand.

5. In the result we allow this appeal and set aside the eviction decree. The matter will go back to the Controller with a direction that he will give the benefit of the proviso extracted above to the appellant in accordance with law. Parties will bear their own costs.

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