

J. L. Varandani

Vs

Ashalata Mukherjee (Dead) by Lrs.

Civil Appeal No. 671 of 1985

(J. S. Verma, M. M. Punchhi, K. Jayachandra Reddy JJ)

03.08.1990

JUDGMENT

K. JAYACHANDRA REDDY, J. -

1. The matter arises under the West Bengal Premises Tenancy Act, 1956 ('Act' for short). The appellant is the tenant occupying the premises belonging to the respondent on a monthly rent of Rs. 475. The respondent landlady filed a Suit No. T.S. 84 of 1973 on the ground of default of rent for the period from May to August 1973. The appellant deposited the rent and made an application under Section 17(2) of the Act. The trial court vide its order dated February 27, 1974 held that the rent payable is only Rs. 450 per month and directed the appellant to deposit the balance of arrears of rent within 15 days. At this stage a compromise memo was filed and the suit was compromised in terms of the compromise memo. In the memo it was mentioned that the default was of the first instance and that there would be no decree for Khas possession. It appears the appellant again committed default in payment of rent from June to December 1975 (both months inclusive). The respondent landlady filed Title Suit No. 3 of 1976 after giving notice for eviction. In that suit the appellant filed a petition under Section 17(2) and Section 17(2-A) of the Act. By Order No. 26 dated March 23, 1977 the trial court decided that the rent payable was Rs. 475 per month and the appellant was asked to deposit the arrears at the rate of Rs. 315 per month by the 15th of each month commencing from April 1977. The appellant contested the suit and filed a written statement claiming benefit under Section 17(4) of the Act pleading that it was the first default. The respondent landlady contested the same stating that no such relief can be granted as per the proviso to the section since such a relief was already granted once and that at any rate the appellant did not comply with the order while making the deposit of the arrears by 15th of each month and on that ground also no relief can be granted under Section 17(4). The trial court decreed the suit and the first appellate court as well as the High Court dismissed the appeals preferred by the appellant.

2. In this appeal firstly it is contended that though there was delay in paying the instalments as per order dated March 23, 1977 passed under Sections 17(2) and 17(2-A) the court did not order striking off the defence as provided under Section 17(3) and therefore the delay must be deemed to have been condoned and consequently it must be held that the appellant made the deposits as required by sub-sections (2) and (2-A) of Section 17 and hence he is entitled to claim relief under Section 17(4). The second contention is that the default which is the subject matter of Title Suit No. 3 of 1976 should be treated as the first default inasmuch as the relief granted in Title Suit No. 84 of 1973 in respect of the default for the period from May to August 1973 was not one under Section 17(4) since the suit was decreed by way of compromise.

3. When this matter came up before another bench of this Court consisting of two Hon'ble Judges,

in support of the second contention, reliance was placed on *Jagan Nath v. Ram Kishan Das* ((1985) 1 SCC 406 : (1985) 2 SCR 388) (a decision of three Judges) where a similar provision in the Delhi Rent Control Act, 1958 was considered in a case where the earlier suit was withdrawn. The bench felt that the provision was construed in a narrow and technical sense and referred this matter to a bench of three Judges and that is how this matter has come up before us.

4. All the three courts below have held that the appellant did not make the deposits before 15th day of each month as per the order dated March 23, 1977 passed under Section 17(2) and Section 17(2-A). Unless such a deposit is duly made no relief can be granted under Section 17(4) of the Act. At this stage it becomes relevant to refer to the provisions of Section 17. Section 17 reads as under :

"17. When a tenant can get the benefit of protection against eviction. - (1) On a suit or proceeding being instituted by the landlord on any of the grounds referred to in Section 13, the tenant shall, subject to the provisions of sub-section (2) within one month of the service of the writ of summons on him or where he appears in the suit or proceeding without the writ of summons being served on him, within one month of his appearance deposit in court or with the Controller or pay to the landlord an amount calculated at the rate of rent at which it was last paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made together with interest on such amount calculated at the rate of eight and one-third per cent, per annum from the date when any such amount was payable up to the date of deposit, and shall thereafter continue to deposit or pay, month by month by month, by the 15th of each succeeding month a sum equivalent other rent at that rate.

(2) If in any suit or proceeding referred to in sub-section (1) there is any dispute as to the amount of rent payable by the tenant, the tenant shall within the time specified in sub-section (1), deposit in court the amount admitted by him to be due from him together with an application to the court for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. On receipt of such application, the court shall -

(a) having regard to the rate at which rent was last paid, and the period for which default may have been made, by the tenant, make, as soon as possible within a period not exceeding one year, a preliminary order, pending final decision of the dispute, specifying the amount, if any, due from the tenant and thereupon the tenant shall, within one month of the date of such preliminary order, deposit in court or pay to the landlord the amount so specified in the preliminary order; and

(b) having regard to the provisions of this Act, make, as soon after the preliminary order as possible, a final order determining the rate of rent and the amount to be deposited in court or paid to the landlord and either fixing the time within which the amount shall be deposited or paid or, as the case may be, directing that the amount already deposited or paid be adjusted in such manner and within such time as may be specified in the order.

(2-A) Notwithstanding anything contained in sub-section (1) or sub-section (2), on the application of the tenant, the court may, by order, -

(a) extend the time specified in sub-section (1) or sub-section (2) for the deposit or payment of any amount referred to therein;

(b) having regard to the circumstances of the tenant as also of the landlord and the total sum inclusive of interest required to be deposited or paid under sub-section (1) on account of default in the payment of rent, permit the tenant to deposit or pay such sum in such instalments and by such dates as the court may fix :

Provided that where payment is permitted by instalments such sum shall include all amounts, calculated at the rate of rent for the period of default including the period subsequent thereto up to the end of the month previous to that in which the order under this sub-section is to be made with interest on any such amount calculated at the rate specified in sub-section (1) from the date when such amount was payable up to the date of such order

(2-B) No application for extension of time for the deposit or payment of any amount under clause (4) of sub-section (2-A) shall be entertained unless it is made before the expiry of the time specified therefor in sub-section (1) or sub-section (2), and no application for permission to pay in instalment under clause (b) of sub-section (2-A) shall be entertained unless it is made before the expiry of the time specified in sub-section (1) for the deposit or payment of the amount due on account of default in the payment of rent.

(3) If a tenant fails to deposit, or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be allowed under clause (a) of sub-section (2-A), or fails to deposit or pay any instalment permitted under clause (b) of sub-section (2-A) within the time fixed therefor, the court shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.

(4) If a tenant makes deposit or payment as required by sub-section (1), sub-section (2) or sub-section (2-A) no decree or order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant shall be made by the court but the court may allow such costs as it may deem fit to the landlord :

Provided that a tenant shall not be entitled to any relief under this sub-section if, having obtained such relief once in respect of the premises, he has again made default in the payment of rent for four months within a period of twelve months."

The learned counsel for the appellant submits that assuming that there was delay in making the deposit of instalments of the rent as per the said order, the follow up action by the court as contemplated under Section 17(3) namely striking off the defence has not been ordered and therefore it should be presumed that the delay was condoned or deemed to have been condoned. We are unable to agree with this submission of the learned counsel for the appellant. As already mentioned, the appellant filed petition under Section 17(2) and 17(2-A) pending the present suit disputing the amount of rent and also seeking permission to deposit the rent by way of instalments. The rent was held to be Rs. 475 per month and the same was directed by the court to be paid by monthly instalments before 15th of each month but the appellant did not make the deposits duly.

Admittedly no application was made for extension of time. Section 17(2) provides that if in any suit there is dispute as to the amount of rent payable the tenant within the time specified shall deposit in court the amount admitted by him to be due from him with an application for determination of rent. Section 17 (2-A) provides for extension of the specified time and also to deposit the rent by way of instalment under the orders of the court. Section 17(2-B) lays down that no application for extension of time shall be entertained unless it is made before the expiry of the specified time under sub-section (1) or sub-section (2) and it further lays down that no application or permission to pay in instalments under clause (b) of sub-section (2-A) shall be entertained unless it is made before the expiry of the time specified. Section 17(3), on which reliance is placed by the appellant lays down that if a tenant fails to deposit, or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be allowed under clause (a) of sub-section (2-A), or fails to deposit or pay any instalment permitted under clause (b) of sub-section (2-A), the court shall order the defence against delivery of possession to be struck out (sic off) and shall proceed with the hearing of the suit. We have already noted that no application for extension of time was made. The mere fact that the court has not passed an order striking off the defence as contemplated under Section 17(3) because of the tenant's failure to deposit within the time specified in the order passed under Sections 17(2) and 17(2-A) does not necessarily lead to a presumption that the time was extended. On the other hand Section 17(2-B) which is a mandatory provision lays down that no application for extension of time for the deposit or payment of any amount under clause (a) of sub-section (2-A) shall be entertained unless it is made before the expiry of the time specified in sub-section (1). Therefore in the absence of such application it cannot be contended that the court is deemed to have condoned the delay. That being the position it must be held that the appellant tenant failed to make the deposit of the rent as per Order No. 26 dated March 23, 1977 passed under Sections 17(2) and 17(2-A). Since such a deposit is the condition precedent for seeking relief under Section 17(4) the appellant who has not fulfilled the same cannot claim the said relief. On this ground alone the orders of the courts below have to be confirmed. In this view of the matter we do not propose to go into the second contention in this appeal. It may be decided in any other appropriate case where the question directly arises. The premises in question is in Calcutta city where accommodation problem is very acute. Therefore the appellant is given time till March 31, 1991 to vacate the premises on filing the usual undertaking within three weeks from today. The appeal is accordingly dismissed. In the circumstances of the case there will be no order as to costs.

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