

Awadhesh Mishra

Vs

Lakhan Sao and Another

Civil Appeal No. 133 of 1984

(L. M. Sharma, J. S. Verma JJ)

10.08.1990

ORDER

1. This appeal arises out of an order of interlocutory nature passed by the trial court in a pending suit filed by the landlord, respondent 1, for the eviction of the appellant. On an application under Section 15 of the Bihar Buildings (Lease, Rent and Eviction) Control Ordinance, 1982, the appellant was, by an order dated January 6, 1983, directed to deposit the arrears of rent, and in compliance thereof the necessary amount was deposited through a challan within the time available under the law. On January 22, 1983 an application was filed by the appellant for permission to correct certain errors in the challan under which the deposit had been made with was rejected by the trial court. The order was maintained by the High Court and hence the present appeal.

2. On the finding of the courts below that the deposit cannot be treated to have been made in proper compliance of the court's direction, the defence of the appellant is liable to be struck off. It, therefore, becomes necessary to examine as to whether the irregularities in the challan are vital so as to ignore the deposit and to hold that there has been a failure of compliance of the direction of the court.

3. We have heard the learned counsel for the parties and examined the challan and the other relevant documents and in our view the irregularities pointed out were fit to be permitted to be rectified. Besides, it has to be appreciated that a prayer for rectification was made within a fortnight of the date on which the order under Section 15 of the Ordinance had been passed.

4. It has been contended on behalf of respondent 1 that at least one of the mistakes committed in the challan is serious and cannot be ignored. According to his case, the appellant, who is defendant 1 in the suit, is the tenant and is guilty of sub-letting the premises to defendant 2, his father. While passing the order dated January 6, 1983 the trial court directed defendant 1 to make the deposit, but the challan which was filed through the common advocate, indicated that the deposit was being made by defendant 2. The interpretation of the order dated January 6, 1983 as suggested on behalf of respondent 1 is correct that the deposit ought to have been made by defendant 1, but towards the end of the order the trial court made a misleading statement by observing :

"The defendants are to note that as per the provision, they should make payment of the arrears of rent within 15 days from the date of the order otherwise their defence, if any, on the record will be struck off and they will be stopped from cross-examining the PWs on this point."

There was sufficient scope for confusion on account of the above statement. We, therefore, do not

think that for this defect the defence is liable to be struck off, specially when the prayer for rectification was made within a fortnight. Accordingly, we set aside the judgment of the trial court as also that of the High Court and allow the appellant's prayer for rectification of the challan. The amount shall be treated to have been deposited within time by defendant 1 and it will be open to the plaintiff to withdraw the same without prejudice to any of his pleas. The appeal is accordingly allowed, but there will be no order as to costs.

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