

Padmakar

Vs

Madhukar

Civil Appeal No. 4452 of 1990

(S. Mohan, B. L. Hansaria JJ)

23.02.1994

ORDER

The short question that arises for our consideration in this case is whether the appellant-tenant has been rightly declared to be wilful defaulter. A brief sketch of the facts would be enough. The respondent sought to evict the appellant-tenant that he had defaulted in payment of rent at the rate of Rs. 75 per mensem. In defence it was contended earlier than the tenant-appellant, the previous tenant was paying rent at the rate of Rs. 35 p.m. Besides, the tenant had also incurred an expenditure of Rs. 1500 towards repairs of the houses. Therefore, the demand of the landlord for the rent of Rs. 75 would not be sustainable in view of the pendency of the application for fixation of fair rent. All these pleas of the tenant-appellant have been rejected by the courts below. However, what is argued before us is, so long as the application for fixation of fair rent is pending, unless and until the same is finally disposed of, there was no obligation to pay the rent at the rate of Rs. 75. Stopping here for a moment, we have got to state that the application for fixation of fair rent pursuant to the remit order made by the High Court was taken up by the original authority. That was dismissed for default. The application for restoration alone is pending, not the application as to the fixation of the fair rent. Be that so, one further question may arise, namely, whether the tenant had discharged at least his liability to pay at the rate of Rs. 35 to prove his bona fide. The Rent Controller had found :

"There is nothing on record to show that even the non-applicant has made attempt to make payment of rent at the rate of Rs. 35 as well."

This finding has been confirmed both by the appellate court as well as the High Court. When we put a pointed question to Mr Sanghi, learned counsel for the appellant whether he has at least paid the rent, no answer is forthcoming. However, he would submit that these observations are obiter, because the bone of contention between the parties was whether the tenant was liable to pay rent at the rate of Rs. 75. We are unable to appreciate this contention. As rightly held by the courts below at least if the appellant-tenant had paid rent at the rate of Rs. 35 something could be said in his favour. Even that he had successfully denied to himself by his obstinacy in contending till the application for fixation of fair rent is finally disposed of there was no necessity for him to pay the rent. If this is the stand of the tenant, the conclusion is inescapable that he has been rightly declared a habitual defaulter. Accordingly, finding no merit in this appeal, we dismiss the same No costs.

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