

Biswajit Pati

Vs

Surami Pati and Others

Civil Appeals No. 12510 of 1996

(Kuldip Singh, S. B. Majmudar JJ)

25.09.1996

JUDGMENT

S. B. MAJMUDAR, J. –

1. Leave granted in both the special leave petitions.
2. By consent of the learned advocates of parties, the appeals were finally heard and are being disposed of by this common judgment as common questions for consideration between the same parties arise for our decision in these appeals.
3. The common appellant in these appeals is the tenant and common respondents are the heirs of original landlord. The dispute centres round the possession of two rooms belonging to the respondents which were let out to the appellant by their predecessor-in-interest for running a hotel in Rourkela town situated in District Sundargarh in Orissa State. The rent of the premises was fixed at Rs. 1000 per month.
4. The present litigation between the parties has seen many ups and downs which will be apparent when we glance through the chequered career of this litigation leading to the present proceedings. For the sake of convenience, we will refer to the appellant as the tenant and predecessor-in-interest of the respondents as the landlord in the latter part of this judgment.
5. The tenant was inducted in the two rooms on 15-8-1979 by the landlord and since then the tenant is running his hotel in the premises. The agreed monthly rent, as noted above, was Rs. 1000 per month. The landlord gave a notice to the tenant on 24-5-1984 calling upon him to vacate the premises on various grounds mentioned in the notice. It appears that thereafter the landlord purported to enhance the rent unilaterally to Rs. 2500 per month. He, therefore, refused to accept the rent sent by the tenant by money orders for the months of June 1984 onwards. As according to the landlord from June 1984 the rent was to be enhanced to Rs. 2500 per month, the money orders sent by the tenant from June 1984 onwards towards rent at the rate of Rs. 1000 per month were refused by him. Thereafter, he filed an eviction proceedings on 14-11-1984 before the Rent Controller, Panposh, for evicting the tenant under Section 7(2)(i) of the Orissa House Rent Control Act, 1967 (4 of 1968) (hereinafter referred to as "the Act"). The said provision reads as under :

"7. Conditions under which a tenant can be ejected. -(1) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf.

(2) If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied -

(i) that the tenant has not paid or tendered the rent due from him in respect of the house within thirty days after the expiry of the time fixed in the agreement of the tenancy with the landlord for payment of rent or in the absence of any such agreement by the last day of the month next following that for which the rent is payable; or

#(ii) \* \* \*##

The tenant by his written statement contested the proceedings and submitted that he was not a tenant who defaulted in payment of rent as the rent sent by him for the relevant months was refused by the landlord. Thereafter, the landlord filed an application under Section 7(3) of the Act submitting that the appellant's defence be struck off and he be debarred from contesting the proceedings as he had not paid the admitted rent. That application was moved by the landlord on 6-12-1985 before the Rent Controller. The tenant resisted the said application by his written objections dated 13-12-1985 stating that he had been remitting the rent at the agreed rate but the landlord had deliberately refused to accept the same; postal receipts evidencing refusal of money orders by the landlord were produced before the court; some arrears that had accumulated subsequently were undertaken to be cleared. On 17-1-1986, the Rent Controller allowed the landlord's application under Section 7(3) of the Act and debarred the tenant from contesting the eviction proceedings. Section 7(3) of the Act reads as under :

"7. (3) When an application is made for the eviction of any tenant on the grounds specified in clause (i) of sub-section (2) the tenant shall remit the arrears of rent as admitted by him up to the date of such remittance to the landlord or deposit the same with Controller failing which he shall not be entitled to contest the proceedings."

It is this order of the Rent Controller which is on the anvil of scrutiny in this proceedings as will be clear from the narration of subsequent stages of the proceedings between the parties.

6. The appellant-tenant filed an appeal before the appellate authority (being HRC Appeal No. 1 of 1986) against the order dated 17-1-1986 but the Appellate Tribunal dismissed the said appeal by its order dated 21-1-1987. That resulted in the first writ petition being OJC No. 620 of 1987 filed by the tenant in the High Court of Orissa on 16-2-1987. Pending this writ petition, the proceedings before the Rent Controller were continued further and on 17-2-1987 when the landlord was examined before the Rent Controller, the tenant was not allowed to cross-examine him on the ground that his defence was already struck off and he was not permitted to contest the eviction proceedings. Not only that but as a consequence on 27-2-1987, an ex parte decree for eviction came to be passed against the tenant on two grounds, namely, (i) that the tenant was in wilful default of payment of rent; and (ii) that the premises had been impaired by the outlets for exhaust fans constructed by the tenant in the hotel premises. The High Court in the aforesaid pending writ petition was apprised of this fact. The High Court by its order dated 19-3-1987 disposed of the writ petition filed by the tenant by observing that as the ex parte decree was already passed, the tenant may challenge the same in appeal and may urge all possible grounds including the contention that the order debarring him from contesting the proceedings was bad in law. Accordingly, on 25-3-

1987, the tenant challenged the ex parte decree before the Appellate Tribunal wherein he challenged not only the ex parte decree dated 27-2-1987 but also the order dated 17-1-1986 debarring him from contesting the proceedings. Pending this appeal the tenant by his application dated 29-6-1987 requested the appellate court to permit him to cross-examine the landlord and to adduce evidence in defence on the ground that the order dated 17-1-1986 debarring him from contesting the proceedings was erroneous. The appellate court rejected this application. Consequently, the tenant filed second writ petition before the High Court on 19-7-1987 challenging the aforesaid order of the appellate authority. The High Court disposed of that second writ petition on 21-7-1987 by allowing the same and quashed the order dated 29-6-1987 passed by the appellate court against the tenant. It was held by the High Court that the appellate authority should consider the application of the tenant for leading further evidence after determining whether the tenant was illegally debarred from contesting the eviction proceedings, in view of the High Court's earlier order dated 19-3-1987. In the pending appeal before the Tribunal the tenant accordingly was heard on merits and by its order dated 24-2-1988, the appellate authority held that the order dated 17-1-1986 passed by the Rent Controller debarring the tenant from contesting the case was incorrect. The appellate court consequently allowed both the sides to lead evidence in support of their respective contentions on the merits of the eviction petition. For that purpose, the matter was adjourned to 11-11-1988 when the landlord did not present himself in the court for cross-examination. His testimony recorded earlier, therefore, was found to be of no avail and as a result the appellate court set aside by its order of even date the ex parte order dated 27-2-1987. The eviction petition was dismissed by the appellate court. In the meantime, the landlord expired. His legal heirs, the present respondents, filed a writ petition in June 1990 before the Orissa High Court challenging the order dated 24-2-1988 passed by the appellate authority by which the landlord's application under Section 7(3) was dismissed by the appellate court and they also challenged the order dated 11-11-1988 passed by the appellate authority expunging the evidence of the landlord and dismissing the eviction petition. The High Court allowed the writ petition filed by the respondents by its order dated 5-10-1993 holding that the order dated 17-1-1986 debarring the tenant from contesting the eviction petition was a correct order and the tenant was, therefore, not entitled to contest the eviction proceedings and consequently it was held that the orders of the appellate authority dated 24-2-1988 and 11-11-1988 were liable to be set aside. However, the High Court held that as the appellate court had not examined the merits of the ex parte order of eviction even in the light of the order not permitting the tenant to contest the proceedings, the matter was required to be remitted to the appellate authority for examining the legality of the ex parte order for eviction in the light of the material on record. It is this order of 5-10-1993 which is the subject-matter of appeal by special leave arising out of SLP (Civil) No. 8896 of 1996. In the meantime, the remanded proceedings before the appellate authority as per the order of the High Court dated 5-10-1993, were disposed of by the appellate authority by taking the view that as the tenant was debarred from contesting the proceedings, the evidence of the landlord had to be accepted and the tenant even could not be permitted to cross-examine the landlord. Accordingly, the ex parte order of eviction as passed by the Rent Controller on 27-2-1987 was once again restored by the appellate authority. The said order of the appellate authority dated 29-10-1994 was carried in third writ petition being OJC No. 7468 of 1994 by the tenant before the High Court of Orissa. The said writ petition came to be dismissed by the High Court on 14-11-1994 whereby the High Court confirmed the ex parte decree for eviction as passed by the Rent Controller on 27-2-1987 which in its turn was confirmed by the appellate authority by its order dated 29-10-1994. The said order of the High Court dated 14-11-1994 is the subject-matter of appeal arising out of SLP (Civil) No. 5268 of 1995.

7. The aforesaid narration of facts shows that the entire dispute and controversy between the parties

centres round the legality and validity of the order dated 17-1-1986 passed by the Rent Controller whereby the tenant was not permitted to contest the eviction proceedings, in the light of Section 7(3) of the Act. The legality and validity of this order was not accepted by the appellate authority by its order dated 24-2-1988. The High Court vide its order dated 5-10-1993 however upheld the validity of the order dated 17-1-1986. If the said order of the Rent Controller dated 17-1-1986 as passed under Section 7(3) of the Act is found to be bad then the impugned order of the High Court dated 5-10-1993 confirming the same and all the subsequent orders dated 29-10-1994 and 14-11-1994 would fall through.

8. A mere look at Section 7(3) of the Act shows that when an application was moved by the landlord under Section 7(2) for evicting the tenant on the ground that the tenant had not paid or tendered the rent due from him in respect of the house within thirty days after the expiry of the time fixed in the agreement of the tenancy with the landlord for payment of rent, the tenant will be required to remit the arrears of admitted rent and if he does not remit the admitted arrears of rent to the landlord or deposits the same with the Controller, he shall not be entitled to contest the proceedings.

9. Now it may be noted that when the landlord moved an application under Section 7(3) of the Act before the Rent Controller on 6-12-1985, the tenant filed his written objection and pointed out that prior to the filing of the eviction proceedings he had been remitting the rent at the agreed rate of Rs. 1000 every month by money orders but the landlord deliberately refused to accept the same. Not only he raised this objection but he produced the postal receipts evidencing refusal of rent by money orders during the relevant months when the rent was so tendered. Under these circumstances, the Rent Controller could not have persuaded himself to take the view that the tenant had not remitted the arrears of rent. In fact, he had not admitted the arrears of rent. He, on the other hand, contested the existence of such arrears of rent which had given rise to the eviction proceedings against him. In this connection, it would be relevant to note the contention of the landlord before the appellate court which was rejected by its order dated 24-2-1988 and by which the appellate court earlier had taken the view that the order of the Rent Controller dated 17-1-1986 was bad in law. The contention of the landlord in support of the application under Section 7(3), as noted by the appellate authority in the said order, was to the effect that if for one month the rent remitted by the opposite party that is the tenant is not accepted by the applicant-landlord, it does not mean that the tenant's responsibility of offering the rent ceases and in such a case he should go on resubmitting the admitted rent every month, also sending with it the arrears of rent and in this case as it was not done by the tenant, the application under Section 7(3) of the Act was maintainable. The appellate authority in the said order of 24-2-1988 rightly took the view that there was no obligation on the tenant while remitting the rent for the current month that he should also remit with it the arrears of rent refused by the landlord every month and accordingly the Rent Controller was wrong in debarring the tenant from contesting the case. In our view this was the correct approach on the applicability of Section 7(3) of the Act on the facts of the present case and the appellate court was justified at that stage in holding that the order of the Rent Controller dated 17-1-1986 debarring the tenant from contesting the proceedings was erroneous. It is this order of the appellate authority which was set aside by the High Court by the impugned order dated 5-10-1993 which is placed for our scrutiny in the present proceedings. The High Court's reasoning in the impugned order dated 5-10-1993 is found at p. 36 of the paper-book, which reads as under :

"... The tenant becomes evictable on proof of the allegation of wilful default in the payment of rent. But Section 7(3) of the Act wants a tenant to pay or deposit arrears of rent as admitted by him. If the landlord refused to accept rent for which reason the

rent could not be paid by the tenant, it would not amount to wilful default within the meaning of Section 7(2) of the Act, for which reason he may not be evicted on that ground. But, the tenant in such a case will still be in arrears of rent. The aforesaid sub-section (3) of Section 7 gives absolute liberty to the tenant either to admit or deny as to whether he is in arrears of rent. The tenant in this case has not stated in the written statement that he is not in arrears of rent. On the contrary, he filed an application before the Controller praying for time to deposit the arrear rent. That apart, the Controller also took into account the fact that the rent remitted by the tenant was not accepted by the landlord for which reason this rent has not been paid and is outstanding as arrears. As already stated, the House Rent Controller may not be justified in making any investigation or inquiry whatsoever as to whether the rent is in arrears because it is the admission of the tenant which alone would make him liable to deposit the arrears of rent pursuant to the requirement of Section 7(3) of the Act. Application of the tenant before the House Rent Controller praying for time to deposit the arrear rent amounts to a clear admission on his part, the order of non-deposit of rent would visit the consequences envisaged in that section. We are, therefore, of the view that there was enough justification for the House Rent Controller to debar the tenant from contesting the proceeding under Section 7(3) of the Act, as the tenant admitted to be in arrears of rent and did not deposit the same as required by Section 7(3) of the Act."

10. It is also interesting to note what the respondents have to say in connection with the landlord's application under Section 7(3) of the Act. In their counter-affidavit filed in the present proceedings by Sripati Pati, son of the landlord, it has been stated in paragraph 3 as under :

"... As regards the refusal of the money orders it is stated that the agreed rent was Rs. 2500 per month (not Rs. 1000 per month as averred by the petitioner); hence the landlord refused to accept the same. That apart, the tenant did not send the house rent (as admitted by him) duly as will be evident from the record of the case. Assuming for the sake of argument that the rent was Rs. 1000 per month which was sent by the tenant/petitioner to the landlord which was alleged to be refused then the petitioner should have sent the current rent due along with the arrears which was refused earlier. However, the petitioner has failed to fulfil his obligation in this regard."

In our view the said stand clearly implies an admission on the part of the respondents that the landlord had refused to accept the rent sent by money orders at the rate of Rs. 1000 per month and on the contrary it was expected by the landlord that the tenant must send the rent not only for the current month but also the earlier months' rent which was in arrears and was refused by the landlord earlier. The said stand is patently wrong and cannot be sustained for supporting order under Section 7(3) of the Act.

11. In our view the aforesaid reasoning of the High Court is clearly unsustainable on the record of the case. In the first place the tenant had never admitted that he was in arrears of rent. On the contrary he had contested the claim of the landlord under Section 7(3) of the Act by submitting documentary proof of coupons of money orders to show that for the relevant months prior to the filing of the eviction proceedings from April 1984 onwards every month he went on sending the agreed rent at the rate of Rs. 1000 per month by money orders which were consistently refused by the landlord. In order to avoid further complication, he might have requested the Rent Controller to permit him to deposit the arrears of rent and that would not be an admission on his part that he was

a defaulting tenant. It is also interesting to note that even the High Court held on the stand taken by the tenant that eviction petition itself may fail and the tenant would not be liable to be ejected yet according to the High Court such an important defence which went to the root of the maintainability of the eviction proceedings could not be permitted to be raised by the tenant by contesting such prima facie incompetent eviction proceedings and the tenant would be told off the gates under Section 7(3) of the Act. To say the least, such reasoning is self-contradictory. On facts we find that the tenant from the inception of the proceedings by filing written statement as well as by filing written objection to application under Section 7(3) of the Act was unequivocally pointing out that he was not admitting that he was in arrears of rent. On the contrary, he was contesting such claim of the landlord. Consequently, on the facts of the present case, Section 7(3) of the Act was not attracted at all. The Rent Controller was, therefore, patently in error in granting the application of the landlord by its order dated 17-1-1986. The order was rightly set aside by the appellate court by its order dated 24-2-1988 and that order of the appellate authority was wrongly set aside by the High Court by its order dated 5-10-1993. The impugned order of the High Court dated 5-10-1993 is, therefore, set aside as being found to be patently erroneous. Once this conclusion is reached, it necessarily follows that the subsequent order of the appellate authority dated 29-10-1994 passed pursuant to the order dated 5-10-1993 of the High Court which is set aside by us cannot survive and is, therefore, quashed. Similarly the subsequent order of the High Court dated 14-11-1994 confirming the order of the appellate authority dated 29-10-1994 also would not survive. As a result the subsequent order of the High Court dated 14-11-1994 impugned in the companion appeal is also set aside. Both the appeals are accordingly allowed. The order of the Rent Controller dated 17-1-1986 allowing the landlord's application under Section 7(3) of the Act is quashed and set aside and the said application is ordered to be dismissed. The ex parte decree for possession dated 27-2-1987 is also set aside. The result is that the eviction proceedings filed by the original landlord, the predecessor-in-interest to the respondents, will now stand restored at the stage at which they were pending before the Rent Controller, Panposh, prior to the order dated 17-1-1986. The said eviction proceedings will be permitted to be contested by the appellant-tenant on all permissible grounds on merits. The Rent Controller, Panposh, will permit the respondents as well as the appellant to lead both documentary and oral evidence in support of their respective cases and having given full opportunity to the parties to prove their respective cases on merits, the Rent Controller, Panposh, will decide the eviction proceedings afresh in accordance with law. There will be no order as to costs. Ordered accordingly.