

Inter State Transport

Vs

Bibi Habiba Khatoon (dead)

(Dr. A. S. Anand, S. P. Bharucha JJ)

24.03.1998

ORDER

1. The respondent instituted Title Suit No. 6 of 1974 for eviction of the appellant on ground of default in payment of rent. That suit was dismissed on 31.1.1978. The first appeal preferred by the respondent before the District Judge succeeded vide judgment and order dated 31.3.1979. The appellant filed second appeal in the High Court, being Second Appeal No. 404 of 1979. During the pendency of that appeal, landlord - respondent filed an application under Section 15 of the Bihar Building Control Act (hereinafter the Act) for deposit of arrears of rent accumulated during pendency of the appeal and future rent during the pendency of the appeal. An order came to be made by the High Court on 25.9.1979 to deposit the arrears of rent by 15.11.1979. The appellant, however, deposited the arrears of rent on 9.2.1980 and that amount was subsequently withdrawn by the respondent landlord. While the second appeal was pending in the High Court, the respondent instituted Title Suit No. 100 of 1980 seeking eviction of the appellant on the ground that during the pendency of the appeal in the High Court arising out of the earlier suit, the appellant had not complied with the directions of the High Court to deposit the rent made on 25.9.1979, in the application under Section 15 of the Act within the prescribed time and was thus in default in payment of arrears of rent and, therefore, liable to be evicted. The appellant contested the suit and in his written statement inter-alia raised the plea that the default in the deposit of rent pursuant to the orders passed by the High Court in the application under Section 15 of the Act within the prescribed period could not be a ground for his eviction. It was also averred that since the respondent had withdrawn the rent amount, she had waived her right to complain about the delayed deposit of rent. The trial court decreed title suit No. 100 of 1980 on 29.3.1985. An appeal filed by the appellant before the District Judge was dismissed on 10.5.1990. His second appeal failed before the High Court on 6.2.1991. Hence this appeal by special leave.

2. We have heard learned counsel for the parties and gone through the records. The consequence of non-compliance with a direction made under Section 15 of the Act is contained in Section 15 (1) of the Act. The court could order the defence against ejection to be struck off and to place the tenant in the same position as if he had not defended the claims to ejection in the matter or cause in which the direction was made. For non-compliance of the directions in the second appeal, recourse could not be had to seeking ejection under Section 11 of the Act. Delay in the deposit of rent is not covered by Section 11 of the Act, particularly after the rent was withdrawn without demur by the landlord. The trial court, the first appellate court and the High Court fell in error in not noticing the distinction between the remedies available under Section 11 of the Act and those available for non-compliance with the directions under Section 15 of the Act. The courts below ought to have held that the suit for eviction was not maintainable on the ground of delay in deposit of rent in violation of the directions given in the second appeal arising out of Title Suit No. 6 of 1974. The impugned

order, under the circumstances, cannot be sustained. Consequently , we allow this appeal and set aside the impugned order. As a result, Title Suit No. 100 of 1980 shall stand dismissed. No costs.