

SUPREME COURT OF INDIA

Sri Bhimsen Gupta

Vs.

Sri Bishwanath Prasad Gupta

S.L.P.(C) No.1001 of 2004

(S. H. Kapadia and V. N. Khare CJI.)

03.02.2004

JUDGMENT

V. N. Khare, J.

1. Heard learned counsel for the petitioner.

2. The issue involved in this petition is: whether the plaintiff-landlord was entitled to decree of eviction in a suit filed on 5th September, 1994 on the ground of default in payment of rent for February, 1988 and December, 1990, even though the same fell beyond the period of three years prior to the date of the suit.

3. In the present matter the suit was filed on 5th September, 1994 for eviction of the tenant (petitioner herein) and for recovery of possession on the ground of default in payment of rent under Section 11(1)(d) of the *Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982* (for short the 'Act, 1982') as well as on the ground of personal necessity. The suit was dismissed by the Trial Court. Being aggrieved, the plaintiff-landlord went in appeal before 7th Additional District Judge, Munger who recorded the finding of fact to the effect that the defendant-tenant had committed default for two months namely for February, 1988 and December, 1990 which fulfilled the requirement of Section 11(1)(d) of the said Act, 1982. This finding of fact has been confirmed by the High Court against which the tenant has come by way of the present petition. At this stage we may clarify that the decree of eviction has been sustained by both the courts below on both the aforestated grounds namely personal necessity of the landlord and willful default in payment of rent by the tenant.

4. Learned counsel for the petitioner urged before us that the landlord cannot file a suit for eviction of the tenant on the ground of default in payment of rent by the tenant for the period which was more than three years prior to the institution of the suit. He contended that such a suit was not maintainable and, therefore, no decree could have been passed for eviction under Section 11(1)(d) of the said Act, 1982.

5. We do not find any merit in this argument. We quote hereinbelow Section 11(1)(d) of the said Act, 1982

"11. Eviction of tenants - (1) Notwithstanding anything contained in any contract or law to the contrary but subject to the provisions of the Industrial Disputes Act, 1947 (Act XIV of 1947), and to those of section 18, where a tenant is in possession of any building, he shall not be liable to eviction therefrom except in execution of a decree passed by the Court on one or more of the following grounds:-

(a) to (c)(d) where the amount of two months rent, lawfully payable by the tenant and due from him is in arrears by not having been paid within the time fixed by contract, or in the absence of such contract, by the last day of the month next following that for which the rent is payable or by not having been validly remitted or deposited in accordance with section 16."

6. Section 11 of the said Act, 1982 deals with eviction of tenants. It begins with non-obstante clause. It states that notwithstanding anything contained in any contract or law to the contrary no tenant shall be liable to be evicted except in execution of a decree passed by the court on one or more of the grounds mentioned in Section 11(1) (a) - (f). In this case we are concerned with the ground of default which falls under Section 11(1)(d) and which states that where the amount of two months rent, lawfully payable by the tenant and due from him is in arrears by reason of non payment within the time fixed by the contract or in the absence of such contract by the last day of the month next following that for which rent is payable ten such default would constitute ground for eviction. It is interesting to note that the expression used in Section 11(1)(d) is "lawfully payable" and not "lawfully recoverable" and therefore, Section 11(1)(d) has nothing to do with recovery of arrears of rent. On the contrary Section 11(1)(d) provides a ground to eviction of the tenant in the eviction suit. It is a well settled that law of limitation bars the remedy of the claimant to recover the rent for the period beyond three years prior to the institution of the suit, but that cannot be ground for defeating the claim of the landlord for decree of eviction on satisfaction of the ingredients of Section 11(1)(d) of the said Act, 1982. In the case of *Bombay Dyeing and Manufacturing Co. Ltd. v. The State of Bombay and Others* reported in it has been held that when the debt becomes time barred the amount is not recoverable lawfully through the process of the court, but it will not mean that the amount has become not lawfully payable. Law does not bar a debtor to pay nor a creditor to accept a barred debt.

7. We have gone through the judgment of this Court in the case of *Rashik Lal and others v. Shah Gokuldas reported in¹* and the said case has no application to the facts of the present case. For the foregoing reasons special leave petition is dismissed. J

¹1989 (1) RCR (Rent) 194 (SC)