CALCUTTA HIGH COURT

Abdul Majid

Vs

Samiruddin

(K.C. Das gupta and U Law, JJ.)

13.05.1958

JUDGMENT

K.C. Das Gupta, J.

1. The petitioner brought the present suit for ejectment on 25-7-1956 against the opposite party Dr. Samiruddjn on the allegation that the latter was occupying premises No. 54/1, Diamond Harbour Road, Kidderpore, Calcutta, as a monthly tenant according to the English calendar under the plaintiff at a rental of Rs. 40/- per month; that this tenancy has been determined by a notice to quit sent by registered post on 18-5-1956; that the plaintiff reasonably required the suit premises for his own use and occupation and for the benefit of the estate by making substantial addition to and alterations of the front portions of the suit premises; that the defendant without the consent and knowledge of the plaintiff converted the main entrance passage into a kitchen causing serious damage. The summons in the suit was served on the defendant on 11-8-1956. The defendant appeared on 24-8-1956 and filed written statement on 18-9-1956. On 4-12-1956, the plaintiff made an application stating that the defendant had neither deposited, in Court nor paid to the plaintiff "the arrears of rent due to the plaintiff at the rate of Rs. 40/- per month (at the rate at which it was last paid) together with interest calculated at the rate of 8 1/3 per cent, per annum and has also failed to deposit in Court or pay Rs. 40/- (being a sum equivalent to rent) month by month according to Section 17(1) of the West Bengal Premises Tenancy Act 1956".The plaintiff prayed that, in accordance with the provisions of Section 17(3), the Court should pass necessary orders expunging the defence filed by the defendant and proceed with the hearing of the suit. The defendant's reply to this application was that while the defendant had not deposited the rent in Court, he had been depositing the same before the Rent Controller month by month as before. That the rents were being deposited by the defendant before the Rent Controller under the provisions of Section 21 of the West Bengal Premises Tenancy Act, 1956, was not disputed. The learned Munsif held that this deposit of rent before the Rent Controller amounted in law to payment to the landlord within the meaning of Section 17 of the Act. In this view, he rejected the application that the defendant's defence against delivery of possession should be

struck out.

2. It was against this order that the present Rule was issued, the plaintiffs contention being that in refusing to strike out the defence, the learned Munsif has refused to exercise jurisdiction that was vested in him by law. When this matter came up before Sen J., he made an order referring it to the Division Bench in view of the conflicting rulings of this Court, in *Gokul Bala Roy v. Sarat Chandra*[1], and *Ganesh Chandra Gartguli v. Mahahir Prosad*[2], on this very question, namely, whether a valid deposit under Section 21 of the Act amounts in law to payment of rent within the meaning of Section 17(1) and is sufficient compliance with requirement of that section.

3. In the first of these cases, Renupada Mukherjee J. held that if rent is deposited in accordance with the provisions of the West Bengal Premises Tenancy Act, 1956, "then under Sub-section (3) of Section 22, a deposit of rent with the Rent Controller should be taken as equivalent to payment to the landlord, as required by Section 17(1) of the Act."

4. In the other case, Guha Ray, J., after taking into consideration the previous decision of Renupada Mukherjee J., was of opinion that when "the deposit instead of being made in Court is made in the Rent Controller's office, that is certainly not a deposit referred to in Sub-section 1(1) of Section 17, nor can it be said to be a payment to the landlord, for the simple reason that Section 22 has no application to this deposit, because it is not a deposit of rent under Chapter IV."

5. For a proper decision of the question on which there has been such difference of opinion, it will be convenient to set out the provisions of Section 17 and Section 22. Section 17 provides :

> "(1) On a suit or proceeding being instituted by the landlord on any of the grounds referred to in Section 13, the tenant shall, within one month of the service of the writ of summons on him, deposit in Court or pay to the landlord an amount calculated at the rate of rent at which it was last paid, for the period for which the tenant may have made default including the period subsequent thereto upto the end of the month previous to that in which the deposit or payment is made together with interest on such amount calculated at the rate of eight and one-third per cent, per annum from the date when any such amount was payable upto the date of deposit, and shall thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month a sum of equivalent to the rent at that rate.
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> (2) If in any suit or proceeding referred to in Sub-section (1) there is any dispute as to the amount of rent payable by the tenant, the Court shall determine, having regard to the provisions of this Act, the amount to be deposited or paid to the landlord by the tenant in accordance with the provisions of Sub-section (1).

(3) If a tenant fails to deposit or pay any amount referred to in Sub-section (1) or Sub-section (2), the Court shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.

(4) If a tenant makes deposit or payment as required: by Sub-section (1) or Sub-section (2), no decree or order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant shall be made by the Court but the Court may allow such Costs as it may deem fit to the landlord :

Provided that a tenant shall not be entitled to any relief under this sub-section if he has made default in payment of rent for four months within a period of twelve months."

Section 22 is in these words.

"(1) No rent deposited under Section 21 shall be considered to have been validly deposited under that Section for purposes of Clause (i) of Sub-section (1) of Section 13, unless deposited within fifteen days of the time fixed by the contract in writing for payment of the rent or, in the absence of such contract in writing, unless deposited within the last day of the month following that for which the rent was payable.

(2) No such deposit shall be considered to have been validly made for the purpose of the said clause if the tenant wilfully or negligently makes any false statement in his application for depositing the rent, unless the landlord has withdrawn the amount deposited before the date of institution of a suit or proceeding for recovery of possession of the premises from the tenant.

(3) If the rent is deposited within the time mentioned in Sub-section (1), and does not cease to be a valid deposit for the reason mentioned in Sub-section (3), the deposit shall constitute payment of rent to the landlord as if the amount deposited has been valid legal tender of rent if tendered to the landlord on the date fixed by the contract for payment of rent when there is such a contract, or in the absence of any contract, on the fifteenth day of the month next following that for which rent is payable."

6. As Guha Ray J. pointed out, Section 22 and the other sections of Chapter IV deal with deposits of rent while Section 17 does not speak of deposit of rent at all but says ;

"deposit an amount calculated at the rate of rent at which it was last paid for the period for which the tenant made default" and "thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate." Obviously, this choice of language by the legislature in Section 17(1) was deliberate. The difference of payment of an amount as rent and payment of an amount equivalent to rent is well known. When an amount is

paid as rent it will, in many circumstances, have the legal consequence of any previous notice or default being waived and of the acknowledgment of a tenancy being continued or being created. When a similar amount is paid and received not as rent but purely as a sum of money, there is no chance of these legal consequences as regards waiver coming into existence. Even though one could not understand the reason lying behind this distinctive language used in Section 17(1), deliberately distinct from the words used in Chapter IV for deposit of rent, it might be difficult to ignore this distinction lightly. It was this distinction which weighed with Guha Ray J. and it was mainly because of this distinction of language that he decided that deposit of rent in accordance with the provisions of Chapter IV could not amount to payment to the landlord within the meaning of Section 17(1).

7. While I am fully conscious of this distinction, I would have hesitated to base a decision on this distinction alone. For while it is true that a payment of say Rs. 40/- as rent is distinct from payment of Rs. 40/- simpliciter, it might well be contended that the payment of Rs. 40-/ as rent includes in it the payment of Rs. 40/- and that if an amount could be held in law to have been paid as rent, it would be difficult to say that the amount equivalent to rent had not also been paid.

8. A closer examination of the provisions of Section 17, however, makes it clear that the whole purpose and object of the provisions of that section will be frustrated if a deposit under Section 21, in view of the provisions of Section 22(3), be held to amount to payment of rent to the landlord within the meaning of Section 17. I have already set out the contents of Section 17. It is important to notice that no distinction is made in these provisions between cases where there is a contract in writing fixing a date for payment of rent and cases where there is no such contract. Whether there is a contract for payment of rent by a particular date or there is not, the legislature requires that where a suit has been instituted by the landlord on any of the grounds referred to in Section 13, the tenant shall, in addition to paying up the amount in default, "continue to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate." This will be so even if there is a contract in writing fixing the date of payment, say to be the 20th of the next succeeding month. The tenant will not he at liberty to pay in accordance with the contract but will have to pay, if he is to escape the penalty under Sub-section (3), the rent of each month by the 15th of fact succeeding month. This clearly shows the great importance the legislature attached to this fact of payment being made for each month by the 15th of each succeeding month. What happens to this requirement if instead of deposit in Court by the 15th or payment to the landlord by the 15th, a deposit is made under the provisions of Chapter IV, Sub-section (1) of Section 22, which I have already set out, provides that in order to he a valid deposit, the amount has to be deposited within fifteen days of the time fixed by the contract in writing and in the absence of such contract in writing, within the last day of the month following that for which the rent was payable. Deposit in the Kent Controller's office will be a

valid deposit, in a case where there is no contract in writing as regards the date of payment, if paid within the last day of the month following that for which the rent was payable, that is, 13 or 14 or 15 or 16 days after the 15th day of the succeeding month. In spite of this, the effect of Sub-section (3) would be that the rent would be deemed to have been paid on the 15th day of the month next following that for which the rent is payable. Thus, a notional payment on the 15th of the succeeding month would have to be taken as sufficient compliance with the stringent requirement of Section 17(1) that the payment must be made by the 15th of each succeeding month. I am unable to persuade myself that the legislature, having in its Section 17 laid down definitely that payments must be made month by month by the 15th of each succeeding month irrespective of whether there was a contract fixing a date of payment or not, would lightly brush that aside and produce, by the words in Sub-section (3) of Section 22, the effect, that payment even on the last day of the month succeeding that for which the rent was payable, would be sufficient.

9. It is important to remember in this connection that where there is in existence a contract fixing a date for payment of rent, the provisions of Sub-section (3) cannot, in any way, assist the tenant in the contention that it is sufficient compliance with Section 17, for, taking the most favourable view of the tenant's contention, the effect of the provisions of Sub-section (3) would be that the amount deposited would amount to payment on the date fixed by the contract for payment of rent. Where the contract is that the rent should be paid on the 20th of the succeeding month, the effect of Sub-section (3) of Section 22 would be that the deposit in the Rent Controller's office validly made would amount to payment on the 20th of the succeeding month. That, however, would not satisfy the requirement of payment by the 15th of each succeeding month.

10. These considerations clearly show, in my opinion, that the legislature did not intend deposit in the Rent Controller's office to amount to payment of rent to the landlord within the meaning of Section 17(1). It seems to me clear that it was in view of this deliberate intention on the Dart of the legislature that deposit of rent under Chapter IV, should not be considered to be equivalent to payment of rent to the landlord that the distinctive language was used in Section 17 and instead of speaking of deposit of rent or payment of rent, what was said was deposit or payment of an amount calculated at the rate of rent for which there was default and also deposit or payment of an amount equivalent to the rent. Once we understand what the object behind this distinctive language is, every thing becomes clean.

11. On all those grounds, I have come to the conclusion that the deposit of rent in the Rent Controller's office is not legal compliance with the pro visions of Section 17 as it amounts neither to deposit in Court nor to payment to landlord as required by Sub-section (1) of Section 17.

12. The trial Court was, therefore, bound in law to order the defence against delivery of

possession to be struck out. The fact, that this might operate harshly on the person who has, apparently on legal advice, made deposit in the Rent Controller's office, can be no justification for our refusing to interfere with the order passed; for we must guard against hard cases making bad law.

13. I would, therefore, make this Rule absolute, set aside the order passed by the learned Munsif and order that the defence against delivery of possession be struck out and the Court proceeds with the hearing of the suit.

14. In the peculiar circumstances of the case, we direct that the parties will bear their own costs in this Court.

U.C. Law, J.

15. I agree.

Cases Referred.

161 Cal WN 890 (A)
261 Cal WN 893 (B)