

BOMBAY HIGH COURT

Dharamraj Mahadeo

Vs

Additional Deputy Commissioner

(Mudholkar and Kotval, JJ.)

19.12.1956

ORDER

(Mudholkar, J.)

1. This is a petition under Article 226 of the Constitution by a tenant against an order passed in a proceeding under the C. P. and Berar House Rent Control Order permitting the landlord to terminate his tenancy. During the course of the proceeding before the Rent Controller the parties came to an agreement that the landlord will withdraw the application if the rental arrears amounting to Rs. 65/- were paid by the tenant in the Court by 5-8-1955. The order-sheet of the case which embodies the agreement reads as follows :

"I grant time to N. A. to deposit the amount of Rs. 65/- by 5-8-55 in Court. Failing which permission will be granted. If amount is paid the applicant says he will withdraw other grounds. Case for 5-8-1955."

Sd/- Rajendraprasad 13-7-1955. On 5-8-1955, the case was taken up by the Rent Controller at 12 noon. The order-sheet of that date runs thus : "Applicant by agent Sakharam. N. A. absent. He had admitted Rs. 62/- including taxes are due and was given time to deposit by today. No amount has so far been paid to applicant nor has it been deposited. It is established that N. A. is habitual defaulter. I therefore grant applicant permission to terminate the right as required under Clause 13 (3) (v) and (ii). N. A. to pay cost Rs. 3/- to applicant. Sd/- Rajendraprasad. At about 2 p.m. on that day the tenant appeared before the Rent Controller whereupon the Rent Controller passed the following order ; "This applicant appeared before me at 2 p.m. while the order was already passed at 12 noon (today). The order cannot be reviewed by me and there is no such provision in the Rent Control Order.

Rejected and filed.

Sd/- Rajendraprasad, House Rent Controller, Akola."

2. An appeal was preferred by the tenant against this order before the Additional Deputy Commissioner, Akola, but that appeal was dismissed.

3. In our opinion, the legal position is clear that where a party is given time to do an act, i.e., to make a payment by a particular date he is entitled to do that during the course of that day. In other words, that date is not to be excluded. The learned Additional Deputy Commissioner took the view that the act had to be done before that date. In our opinion, that view is incorrect and is not in consonance with the principle underlying Section 9 of the Indian General Clauses Act and Section 8 of the Central Provinces and Berar General Clauses Act, 1914. That this principle can be applied to the orders and decrees of the Court has been held in *Devi Das v. Sadur-Ud-Din*¹, and some other cases. We may also refer to the decision of Niyogi J. in *Shekh Nuroo v. Meghraj*², to the effect that the word "by" when used with reference to a particular date does not exclude but includes the day. The same view has been taken by a single Judge of the Madras High Court in *Janakumara v. Periaswatny* AIR 1949 Mad 376 (C).

4. It was however argued by Shri Kherdekar for the landlord that the act had to be done, i.e., the payment had to be made before the case was called by the Court. We do not think that there is any substance in this contention. If the whole of that day is available to the party to make the payment then he is free to do it till the expiry of that day. In our opinion, the Rent Controller had no power to pass an order on 5-8-1955 granting permission to the landlord to terminate the tenancy of the tenant. He had to wait till the expiry of the day. We set aside the order of the Additional Deputy Commissioner as well as the Rent Controller and remit the case to the Rent Controller. The result of this order would be that the landlord and the tenant will be in the same position on the date to be fixed for hearing before the Rent Controller as they would have been on 5-8-1955 before the Rent Controller passed his order. The tenant will have therefore an opportunity to make the payment during that day. If he does not make the payment during that day, the Court can proceed to pass such order as it thinks proper on the succeeding day.

5. The petition is accordingly allowed with costs. Counsel's fee Rs. 50/-. The outstanding amount of security deposited by the petitioner will be refunded to him.

6. Petition allowed.

Cases Referred.



1ILR 16 Lah 1082: (AIR 1935 Lah 291) (A)

2ILR: 1937 Nag 214: (AIR 1937, Nag 139) (B)