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Court : Patna

Decided On : Jul-28-1999

Judge : M.Y. Eqbal, J.

Appeal No. : Civil Appeal No. 71 of 1988(R)

Appellant : Naba Kumar Sarkar and ors.

Respondent : Smt. Raj Devi and ors.

Advocate for Pet/Ap. : Mr. N.K. Prasad

Disposition : Appeal Dismissed

Judgement :

M.Y. Eqbal, J.

1. This appeal by the defendants tenant is directed against the judgment and decree dated 25-3-1988 passed by the 3rd Additional District Judge, Dhanbad in Title Appeal No. 21 / 80 confirming the judgment and decree dated 6-3-1980 passed by Munsif, 1st Court, Dhanbad in Title Suit No. 92 of 1979, whereby suit filed by the plaintiff/respondent for a decree for eviction on the ground or default in payment of rent has been decreed.

2. This appeal was admitted on the following substantial questions of law:

Whether the appellants can be said to be defaulter when he used to remit rent before it became due and which used to be refused by the landlord.

3. The case of the plaintiffs inter-alia is that the defendant were inducted in the suit premises on monthly rent of Rs. 25/- and the tenancy was running according to English calendar month. It is alleged that defendants paid rent up to November 1977 to the deceased Parmeshwar Dutt Pandey who died on 2-1-1978. From December 1977, defendants stopped payment of rent to the plaintiffs and thereby they have deliberately become defaulter. Plaintiffs also alleged the breach of the terms of tenancy. Defendants/appellants contested the suit by filing written statement stating inter-alia that Parmeshwar Dutt Pandey used to collect rent from the father of defendant and also used to grant rent receipt in token of the acceptance of the rent. Defendant's further case is that Defendant No. 1 tendered rent to the plaintiff in the month of December 1977, and on his refusal he remitted the monthly rent by Money Order and from the month of December, 1977 defendants have been regularly remitting the rent to the plaintiffs by postal Money Order. The defendants however, denied the allegation of breach of the terms of tenancy.

4. The trial Court framed the following issues for decision:

1. Is there cause of action for the suit ?
2. Is the suit bad for want of valid and legal notice under Section 106 T.P. Act ?
3. Is the suit legally maintainable in its present form ?
4. Is the suit bad for defect of the parties ?
5. Is there any relationship of landlord and tenant between the parties.
6. Are the defendants make default in payment of rent from more than 2 months ?
7. Have the defendants made breach of the terms of the tenancy ?
8. Are the plaintiffs entitled for the decree of the eviction and the arrears of rent as alleged by them ?

9. To what other reliefs, if any, are plaintiffs entitled ?

5. The trial Court decided all the issues in favour of the plaintiffs and decreed the issues. While deciding the issue of default the trial Court examined the Money Order coupons which have been filed and marked Exts. 'A' series. From Ext. 'A' series, it was found that the defendants remitted the rent from the month of December, 1977 onwards. By Ext. A/ A defendants remitted rent of November 1978 December 1978 and January, 1979 on 12-2-79 which was refused on 15-2-79. Similarly the trial Court found that in subsequent month the defendants remitted the rent of two months in the 3rd month. The trial Court, therefore, held that the defendant became defaulter and decreed the suit. The defendant/appellant filed Title Appeal 21 / 80 which was eventually disposed of by the IIIrd Additional District Judge, Dhanbad. The Appellate Court after reconsideration and reappraisal of the entire facts and evidence affirmed the finding arrived at by the trial Court. The Appellate Court examined the entire Money Order coupons which have been marked Ext. 'A' series and came to the following findings:

I may refer Money Order coupons by which rent for December 1977 and January, 1978 amounting to Rs. 54/- was remitted by the defendants which was refused as per report of the postal peon. By this Money Order, rent for the month of December 1977, and January 1978 was remitted by the defendants on 23-1-1978 which was refused on 2-2-78.

The Appellate Court, therefore, held that remittance of rent of January 1978 in the same month is not valid for the reason that the rent of January 1978 did not become due in the same month.

6. The Appellate Court further came to the following finding:

Similarly, the defendants remitted the rent for the months of December 1978 and February, 1978 on 27-2-78 by M.O. (vide Ext. Ap 17) although the rent for the month of February 1978 had not become due on the day of remittance. The M.O. was refused by the plaintiffs on 9-3-78 which is apparent from the report of the postal peon (Ext. Bp 17) and for the reasons stated above and in view of the

decision cited above, the remittance was not a valid remittance since the M.O. was remitted on 27-2-78 on account of the rent for the month of February 1978 which had not become due on that day.

It further appears that rent for the month of February 1978 and March, 1978 was remitted by the defendants on 4-4-78 vide M.O. coupon (Ext. A) which was refused on 12-4-78 as per the endorsement of the postal peon (Ext. B) and likewise rent for the month of March (page 7 begins) and April 1978 was remitted on 4-5-1978 (vide Ext. A/1) rent for the month of April, 1978 and May, 1978 was remitted on 6-6-78 (vide Ext. A/2), rent for the month of May and June, 1978 was remitted on 6-7-78 (vide Ext. A/3), rent for the months of June and 1978 was remitted on 4-7-78 (vide Ext. A/ 4), rent for the months of August and September, 1978 was remitted on 9-10-78 (vide Ext. A/6), rent for the months of August; 78, November, 78 and December, 78 was remitted on 29-12-78 (vide Ext. A/7), rent for the months of November, December 1978 plus January 1979 were remitted on 12-2-79 (vide Ext A/8), rent for the month of February March 1979 was remitted on 14-4-79 (vide Ext. A/9), rent for the month of March and April, 1979 was remitted on 9-5-79 (vide Ext. A/10) rent for the month of May, 79 and April, 1979 was remitted on 8-6-79 (vide Ext. A/11), rent for the months of May and June, 1979 was remitted on 11-7-79 (vide Ext. A/12), rent for the months of June and July, 79 was remitted on 11-8-79 (fide Ext. A/13), rent for the months of July and August, 1979 was remitted on 14-9-79 (vide Ext. A/15), rent for the months of August, and September, 1979 was remitted on 15-10-79 (vide Ext. A/ 15). Out of the aforesaid remittance, it again appears that the rent for the month of December, 78 was remitted on 29-12-78 (vide Ext. A/7) which was not a valid remittance.'

7. The Appellate Court, therefore, held that the defendants became defaulter for non-payment of rent since December, 1977 and therefore, the judgment and decree of the trial Court was affirmed and the appeal was dismissed.

8. Mr. N.K. Prasad, learned Counsel for the appellant has drawn my attention to the pleading of the plaintiffs/ Respondents and submitted that there is no pleading by the plaintiffs that the remittance of rent by the defendants was not valid, According to learned Counsel in absence of any pleading of validity of remittance

in the plaint the Courts below had no jurisdiction to make out third case holding that remittance of rent was not valid. Learned Counsel further submitted that invalidity of the remittance was not even argued by the plaintiffs-landlord in the Courts below but the said question was taken up by the Court at their own and decided it against the defendants. I do not find force in the submissions of the learned Counsel. It is well settled that in the pleading landlord has only to assert and plead the month and year when the tenant has not paid or remitted the rent. The onus is on the tenant to prove that rent was either paid or validly remitted in accordance with law. It is well settled that while deciding the issue of default, the Court has to examine the evidence both oral and documentary and has to give the finding as to whether the rent of the building was either paid or validly remitted in time and in the manner provided under the provisions of Bihar Building (Lease, Rent & Eviction) Control Act.

9. From the finding recorded by both the Courts below, it appears that rent for few months have been paid in advance and rent of few months have been paid on the 3rd month when it ought to have been paid by the last day of the next following month. Therefore, question of law in this case would not have been only that whether payment of rent in advance is valid payment. So far as payment of rent for few months in advance is concerned, there is no dispute that defendants cannot be held to be a defaulter but so far payment of rent for the month of February 1978, March, 1978, May, 1978 and for other months admittedly rent for those months have not been paid by the last day of the next following month but on the 3rd month. The trial Court and the Appellate Court rightly held that defendants have become a defaulter by not paying or remitting the rent by the end of the next following month, I do not find illegality in the said finding of the Courts below. Besides above, admittedly there was no contract between the parties regarding mode and time of payment of rent. In absence of any contract tenant is bound to remit the rent on the next following month failing which he will become a defaulter. In this connection, reference may be made to the decision of the Supreme Court in the case of *Sadanand Dass v. Md. Hussain and Ors.* 1986 PLJR 46 (SC).

10. Be that as it may both the Courts have come to a concurrent finding of fact that defendant-tenant has become defaulter for non-payment of rent. In such

circumstances this, Court is not justified in interfering with the concurrent finding of fact. In this connection reference may be made to a decision of Supreme Court in the case of Gitarani Paul v. Dibyendra Kundu @ Dibyendra Kumar Kundu, : AIR 1991 SC395 .

11. Having regard to the facts and circumstances of the case, I am of the opinion that no substantial question of law is involved in the appeal, which is accordingly dismissed. However, there shall be no order as to costs.

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