

Ratna Bai Vs. N. Narayani

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Court : Karnataka

Decided On : Jun-06-1972

Reported in : AIR1973Kant174; AIR1973Mys174; (1972)2MysLJ185

Judge : V.S. Malimath, J.

Acts : Mysore Rent Control Act, 1961 - Sections 21(2); Civil Procedur Code , 1908 - Sections 148 and 151

Appeal No. : Civil Revn. Petn. No. 390 of 1972

Appellant : Ratna Bai

Respondent : N. Narayani

Advocate for Def. : H.G. Hande, Adv.

Advocate for Pet/Ap. : Tukaram S. Pai, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

V.S. Malimath, J.

1. This is a tenant's revision petition against the order passed by the Principal Munsiff, Mangalore in H. R. C. No. 63 of 1971 on I. A. No. II. The Respondent

landlord made an application for eviction under Section 21 (1)(a) of the Mysore Rent Control Act, 1961, on the ground of non-payment of rent for the period 1-11-1969 to 20-2-1971. After the tenant was served with the notice of the suit, she admitted the claim of the landlord as regards arrears of rent. The Court, therefore, made an order on the 20th August, 1971 under Section 21 (2) of the Act. A month's time was given to the tenant to pay all the arrears of rent. That period expired on the 20th September, 1971. On the 8th Oct. 1971, the tenant filed interim application No. II for extension of time for depositing the arrears of rent till the 15th October 1971. It was explained in the said application that the tenant is an old lady of 60 years and that her son who was looking after her affairs was seriously ill and was admitted to hospital and it is therefore that it was not possible for them to comply with the order of the court and to pay arrears of rent within the prescribed time. It was, therefore, prayed that the time may be extended for making deposit.

2. The lower Court came to the conclusion that it has no competence to extend the time statutorily fixed by Section 21 (2) of the Act. Hence, this revision petition by the tenant.

3. Section 21 (2) which has been substituted by Mysore Act 14 of 1969, reads as follows:--

'No order for the recovery of possession of any premises shall be made on the ground specified in Clause (a) of the proviso to Sub-section (1), if the tenant--

(i) complies with the provisions of Section 29.

(ii) Satisfies the court that he had sufficient cause for the default to pay or tender the rent within the period referred to in the said clause (a): and

(iii) pays to the landlord or deposits in the court such further amount, as may be determined by the court to be due along with a sum not exceeding ten per cent of the rent thereof as may be fixed by the Court, within one month from the date of the order of the Court.'

We are concerned with Sub-clause (iii) of Clause (2) of Section 21 of the Act. The said sub-clause requires the Court to determine the rent and an amount not exceeding ten per cent of the rent that the tenant is required to pay. Once the said amount is determined as being the amount which the tenant is required to pay, the clause enjoins the tenant to make the payment of the said amount within one month from the date of order of the court. The period of one month within which the amount has to be paid is, therefore, statutorily fixed. When the period is fixed by statute the provisions of Section 148 and Section 151 of the Code of Civil Procedure cannot be invoked for extending the time for payment or making deposit. As Section 148 of the Code regulates the power of the Court to extend the time regarding payment of rent etc. it is not possible to invoke Section 151 of the Code. Section 151 of the Code cannot be invoked as the topic of enlargement of time is specifically covered by Section 148. The Court below was, therefore, right in taking the view that it had no competency to extend the time for making payment of the rent directed to be deposited or paid under Section 21 (2) of the Act either under Section 148 or Section 151 of the Code of Civil Procedure. The revision petition has, therefore, to be dismissed, even though I am satisfied on the facts of this case about the bona fides of the tenant.

4. Having regard to the circumstances of the case. I consider it reasonable and proper to grant six months' time from today to the tenant to vacate the premises. No costs.

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