

**D.S. Sachdev Vs. B.V. Chitti Babu**

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**Court :** Karnataka

**Decided On :** Feb-14-2000

**Reported in :** ILR2000KAR764

**Judge :** V.P. Mohan Kumar, J.

**Acts :** Karnataka Rent Control Act, 1961 - Sections 3, 5, 6, 21(1), 29 and 44

**Appeal No. :** House Rent Revision Petition No. 986 of 1997

**Appellant :** D.S. Sachdev

**Respondent :** B.V. Chitti Babu

**Advocate for Def. :** Sri K.N. Dayalu, Adv.

**Advocate for Pet/Ap. :** Sri D.S. Sachdev, Adv.

**Judgement :**

ORDER

1. This revision petition discloses the defiant attitude of the landlord with respect to an allotment of a residential building by the House Rent and Accommodation Controller, Bangalore. As per proceedings of the House Rent and Accommodation Controller, the residential premises in question was allotted to the petitioner. This allotment was obviously disliked by the landlord the respondent herein. He challenged the same before the Appellate Authority namely the Deputy

Commissioner, Bangalore District, Krishi Bhavan, Bangalore unsuccessfully. That appeal was rejected which resulted in his filing W.P. No. 15311 of 1995 before this Court that writ petition was also dismissed on 19-9-1995. A writ appeal was filed by the landlord as W.A. No. 3662 of 1995; the appeal was also dismissed on 16-10-1995. Subsequent thereto, steps were taken by the tenant to secure possession of the premises. The key of the premises was handed over to the tenant on 25-10-1995 but at the time of delivery it was discovered that the building was completely damaged. Thereupon, the tenant made a complaint to the House Rent and Accommodation Controller to take appropriate action and restore the premises in a habitable stage.

Apparently on this complaint the competent authority passed an order on 29-11-1995; therein the authority had stated as under:

2. Finding that nothing transpired, on 25-12-1995 the petitioner submitted a complaint stating as under:

'2. All the doors of the house removed window 5 Nos., removed by breaking the walls of the house, water and electricity cut and damaged, lavatory English Type damaged and now finally removed by damaging the floor water tap removed and water pipecut, light holder, bulbs removed and switches damaged very badly electric fittings all removed, cuboards, door 10 Nos. on the top of the bed room and 10 Nos. in the kitchen of about 2' x 2' removed and made it unfit and unsafe for a family to live.

3. I made a complaint to a goodself in writing and in turn on 2-11-1995 your goodself issued orders to the landlord directing him to restore everything within 15 days and handed over to Mr. Sachdev the allottee.

4. On 18-11-1995 at about 19.40 hrs, landlord's son Mr. B.C. Lokabiram comes and hands over two keys to me of the above said premises in the Police Station, Indiranagar, and I took the keys under protest in a damaged unfit and unsafe condition as it was on 26-10-1995, except 5 windows and 1 main door restored. Handing over taking over notes were prepared and signed (copies attached)'.

3. It is seen from the above complaint of the tenant which is extracted, the order passed by the competent authority dated 29-11-1995 referred to above had not been complied with by the landlord. Apparently, as it was alleged that the landlord had completely damaged the building and on the ground that the premises did not tally with the premises allotted the tenant did not pay the rent. Thereupon, proceedings were initiated by the landlord as HRC No. 2526 of 1996 for eviction of the tenant under Section 21(1)(a). This application for eviction was filed on 26-3-1996 on the heels of the earlier proceedings. Later on, the application was amended as one under Section 21(1)(h). Pending the application I.A. I was made by the landlord for orders under Section 29(1) and (4) of KRC Act seeking direction to the tenant to pay the arrears of rent from 18-11-1995 up to date of filing of the I.A. and with a prayer for further direction to pay the future rent. Therein he also sought for an order to the effect that an order be made under Section 29(4) of the Act. That application was contested by the tenant; the tenant admitted that he is in occupation of a premises owned by the landlord he having been allotted by the Accommodation Controller on a monthly rent of Rs. 1,500/-. He alleged that building has been completely damaged and pulled down by the landlord after the disposal of the writ appeal referred to above; that there did not exist doors, windows etc., for the house and that this ceased to be a premises to be described as a dwelling house. He alleged that since the dwelling house has been damaged and not repaired by the landlord and not in a fit position for use and occupation as such, the landlord cannot claim the rent.

4. The matter was contested, it is seen from the proceeding papers that the tenant had produced several documents to sustain his contentions. The first set of documents were produced on 10-4-1971; the endorsement in the proceeding paper states that the tenant produced a file for consideration; again on 13-5-1997 it records that the tenant produced certain documents; there is an endorsement of the Court to that effect. Again on 26-6-1997 it records that the tenant produced yet another set of documents. It is also recorded on that day that the same would be kept in safe custody. I am making reference to the endorsements only to show that the tenant had produced several documents to sustain his allegations that the dwelling house in question has been substantially and materially damaged by the landlord before possession was given to the tenant and that it required substantial

repair.

5. The Court below did not consider the defence contentions; it merely took the view that a dwelling house belonging to the landlord has been allotted to the tenant at a rent of Rs. 1,500/- and the tenant has occupied the same. By virtue of this occupation, according to the Court below, the tenant has become liable to pay the rent and the tenant admittedly had not paid the rent. It therefore ordered that the tenant being the occupant of the rented premises at the stipulated rent, is liable to pay the rent every month and if there is any failure to do so it would attract the consequences of the Section 29(4) of the Act. It has therefore ordered payment of the arrears as contemplated under Section 29(1) of the Act. This order is challenged in this proceeding.

6. The petitioner appeared in person and addressed the argument. I have heard Mr. Dayalu, learned Counsel for the respondents at length.

7. Here, in this proceedings we are mainly concerned with the right of the landlord to claim arrears of 'rent' under Section 29(1) of the Act. The liability of the tenant to discharge the obligation under Section 29(1) would arise if he is in occupation of a residential or non-residential premises of the landlord. Admittedly, what is allotted to the petitioner for occupation is a residential accommodation owned by the respondent. The contention of the tenant, is that, the residential premises let out has been materially damaged even at the time of induction, in that, the doors and windows were removed, the sanitary fittings were damaged etc. Could such a premises be treated as a residential premises let out to the tenant?

8. The first question to be considered would be, in such case whether such a building (sic) occupied by the allottee under KRC Act attracts the description of a residential building. Incidentally, a question would arise as to whether an enquiry into such allegation raised by the tenant can be gone into in a proceedings under Section 29(1) of the Act. The answer has to be in the affirmative as the arrears of rent is claimed with reference to the building that has been let out to the tenant. Such an enquiry raises essentially a question as to the subject-matter of contract between the landlord and the tenant. That would lead to the question as to whether the contract still subsists when there is a substantial change in the

subject-matter of contract. As such, the Court has to consider, if a dispute is raised, is to the nature of dwelling house let out. A building has been defined in the Act to mean that:

'3(a) Building means any building or hut or part of a building or hut other than a farm house, let or to be let separately for residential or non-residential purposes and includes-

(i) the garden grounds and cut-houses, if any, appurtenant to such building, hut or part of such building or hut and let or to be let along with such building or hut or part of a building or hut;

(ii) any furniture supplied by the landlord for the use in such building or hut or part of a building or hut;

(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or a lodging house'.

9. A perusal of Section 3 of the Act, with particular emphasis to (a)(iii), shows that fittings affixed to such building or part of the building for the more beneficial enjoyment thereof would be integral part of a residential building. In other words, the doors, windows, toilets etc., or the fittings attached to the buildings are required for convenient and beneficial enjoyment of the building which is being let out for residential occupation. It is not possible to conceive of a residential accommodation without these fittings. Residential premises should be understood as to mean a premises which is convenient for human occupation. One cannot conceive of a premises for human habitation without doors, sanitary connection electricity etc. In *Nil Kamal Bkattacharjya and Another v Kamakshya Charan Bkattacharjya and Another*, their Lordship stated that the term 'house' would embrace, not merely the structure or building built but includes also the adjacent buildings, cartilages, garden, courtyard, orchards etc., that are all necessary for the convenient occupation of the house. If we have to include the various structures as described above are needed for convenient occupation of human beings in a building or part of the building, necessarily it cannot be conceived of a

building without doors, windows etc., intended for the convenient residence. If the expression building could have that extended meaning, it is impossible to understand that a residential premises sans doors, windows, sanitary fittings etc., would still be a building let out for human habitation.

10. The question thus in this case is whether such a house fitted with all necessary appendages has been handed over to the tenant in pursuance to the order of allotment? The order passed by the Controller referred to supra, and the complaint of the tenant, prima facie show that out of 10 doors in the house only 1 existed, toilets are made unfit for use, damages has been caused to the kitchen and power supply has been disconnected. If these allegations are true, it will be difficult to presume that there existed a residential building fit for human occupation which has been occupied by him in pursuance to the order of allotment to the petitioner.

11. Would this circumstance absolve the tenant from paying the agreed rent? I am of the view that it would. Rent has not been defined under the Act. What is the connotation of the expression rent? In *Konchada Ramamurthy Subudhi (dead) by L.Rs v Gopinath Naik and Oth-ers*, their Lordships indicated that rent should be understood to mean the amount payable or any payments to be made for the use of a building hired. The building hired admittedly is a residential premises. It would therefore be appropriate to state that, the 'building' as understood with reference to the use for which alone it has been hired would alone attract the payment of rent. The tenant contracts to pay the agreed rent if he is inducted into possession of a 'residential building' fit for human habitation. The contract rent payable was Rs. 1,500/- for the building as a whole i.e., an integral unit consisting of doors, sanitary fitting, power supply etc. If the structure which is different from what is ordered be handed over, has been handed over then it would frustrate the agreement to pay the stipulated rent. Unless, the building which is agreed upon and which is suitable for habitation with all existing fittings needed for the occupation of the tenant has been handed over it would not attract the liability for the payment of the contracted rent.

12. In this context, we may also advert to the Section 44 of the Act which is a cognate provision. Section 44 of the Act confers a right on the tenant to claim the

cost of repairs effected if the landlord fails to do. It provides that in the event the repairs are not effected by the landlord and tenant makes repairs, he is entitled to deduct the amount incurred by him from the rent payable. The principle behind Section 44 is that, the landlord is bound to repair the tenanted premises and if there is a failure on his part the tenant can appropriate the amount incurred from the rent payable. In this behalf, Section 44(2) confers a right on the tenant to claim to set off with respect to the expenses incurred for repairs by him. Thus the statute itself has recognised in principle the right of the tenant to claim reimbursement of the expenses incurred for the purpose of keeping the house in good repair. Here, we may advert to sub-sections (2) and (3) of Section 44. It reads thus:

'(2) If the landlord neglects to make, within a reasonable time after a notice by the tenant is served upon him by registered post, any repairs which he is bound to make under sub-section (1), the tenant may make the repairs himself and deduct the cost of such repairs from the rent or otherwise recover it from the landlord:

Provided that where the tenant makes the repairs himself, the amount so deducted or recoverable in any year shall not exceed one-twelfth of the rent payable by the tenant for that year.

(3) Where the cost of such repairs exceeds one-twelfth of the rent payable by the tenant for that year or where the building is directed to be leased under Section 5 or Section 6, the Court may, by order, direct the landlord to execute such repairs which he is bound to make under sub-section (1), and as may be specified in the notice within such reasonable time as may be mentioned therein; and if the landlord fails to execute repairs in pursuance of such order the Court may permit the tenant to cause the repairs specified in the order, to be executed at the expense of the landlord and the cost thereof may, without prejudice to any other mode of recovery, be deducted from the rent payable to the landlord'.

13. Sub-section (2) expressly reserves a right to recover the amount spent for the repair by way of deducting the same from the rent payable. There the quantum of amount is restricted to one-twelfth of the rent payable in a year. But, when the amount exceeds sub-section (3) operates. The tenant has to approach the Court in this behalf. Thus in the event the tenant establishes that the residential building

has to be repaired but it had not been repaired by the landlord and, (in the words of the statute itself) 'if the landlord fails to execute repairs in pursuance of such order, the Court may permit the tenant to cause the repairs specified in the order to be executed at the expense of the landlord and cost thereof may be deducted from the rent payable to the landlord'. If the statute confers a right for adjustment, can he then retain the rent due against the quantum needed for effecting the repair? The answer has to be in the affirmative. If this be the statutory right conferred on the tenant, then when the question of investigation of, quantum of arrears of rent arises, then I do not see how an order can be made under Section 29(1) of the Act, without an enquiry into the claim set up under Section 44(3) of the Act. In appropriate circumstances Section 44(3) can be treated as a subsidiary provision of Section 29(1) of the Act, and if any claim under Section 44(3) is set up by the tenant in a proceedings under Section 29(1), the Court has to adjudicate the same before any order is made under Section 29(1) of the Act. If a larger amount is required for effecting repair, certainly the tenant is not expected to carry out the repair; it is up to the landlord to make the same. And if there is a failure so to do, then the tenant should secure an order under Section 44(3). But if by course of event, the landlord forecloses the right of the tenant to invoke Section 44(3) independently, and sets in motion Section 29(1) proceedings, then, the tenant can invoke the relief under Section 44 of the Act, in the said proceedings. In such a situation, the tenant can always withhold the payment of the rent till the question is investigated and adjudicated. He will not be treated as in arrears of rent within the meaning of Section 29(1) to attract the consequence of Section 29(4). If the right under Section 44, that the tenant enjoys may permit him to withhold the rent, then when the Court quantifies arrears of rent under Section 29(1), it has a duty to conduct an enquiry contemplated under Section 44(3) of the Act. Section 29(1) states that the tenant cannot contest the proceedings under Section 21, unless he deposits the arrears of rent. It does not mean, that he cannot contest the application made under Section 29(1) itself without deposit. He can do so, and if he can do so, he can raise all legal and legitimate pleas. A recognition of such a right is not opening the Pandora's box.

14. The order of the Court below suffers from a patent error. When a plea was urged, the Court below was bound to have examined and decided the question as

to whether there existed any default on the part of the landlord in effecting the repairs. As noticed earlier, several documents have been produced by the tenant before the Court to sustain his plea. It is strange that none of the documents have been adverted to by the Trial Court and they have been brushed aside by the Court even without adverting to the same. A finding has to be entered as to whether the building was damaged by the landlord and was unfit for occupation on the date on which the key was handed over to the petitioner and a finding is also implicit to the effect whether any repairs have to be effected to render the house let out for occupation as a residential premises. If the repairs have to be effected what would be the amount to be expended is also a question that has to be gone into. By virtue of Section 44(3) of the Act, the Court does have a power to examine the same and enter a finding. The finding on this issue is sine qua non to continue the proceedings under Section 29(1) and to make the tenant liable to pay the rent for residential accommodation. If the tenant is able to use it as a dwelling place fit for human habitation then alone the contract to pay the agreed rent comes into existence. The contract between the landlord and tenant is to lease out a residential accommodation for occupation in return of which, the tenant agrees to pay the stipulated rent. Unless, the premises leased out is a residential accommodation suitable for habitation, the landlord cannot seek to claim the performance of that part of the agreement regarding payment of rent. This is a crucial finding that the Court below has failed to enter. Hence, I set aside the order of the Court below and I remit the matter to the Trial Court to conduct an investigation as to what was the state of the dwelling house ordered to be let out to the petitioner as on 29-11-1995 the date of his occupation. The tenant has produced several documents to show that the landlord had caused material damages to the dwelling house and that the tenant incurred expenses to restore premises in this behalf. While entering a finding, the documents produced by the tenant should be adverted to. The liability of the tenant to pay the rent of Rs. 1,500/- arises only when the Trial Court finds that the building ordered to be let out to the petitioner had not been damaged as alleged by the tenant as on 29-11-1995 the date of alleged occupation and that it was fit for human habitation on that date. If the finding be that there has been vandalism caused to the building by the landlord, then till the building is restored to a habitable stage with all the fixtures

referred to in order dated 29-11-1995 is fixed, the contract of letting do not come into existence and the tenant is not liable to pay the rent. The application filed under Section 29(1) of the Act would be examined treating a finding under Section 44 of the Act as the basic finding.

15. The learned Counsel for the respondent-Mr. Dayalu, repeatedly urged that the landlord is very aged person and that he is incapable of doing the alleged acts. It is too much to believe this contention. In this context if we are to accept what the landlord wants this Court to believe, one can only recall the words of Serutton L. J.:

'When you invite a person to use the staircase, you do not invite him to slide down the staircase'.

If one lets out a dwelling house to a tenant, one does not expect him to occupy a ramshackle.

16. The order impugned is set aside. The H.R.R.P. is allowed. The matter is remitted back to the Trial Court for fresh disposal. The learned District Judge would transfer the proceeding to the file of another officer, other than the officer who disposed of this case, at the earlier stage as the learned Judge has already expressed his view in the matter. The petitioner is entitled to his cost which is fixed at Rs. 1,000-00.

Parties to appear on 6-3-2000.

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