

Revansiddappa Vs. Susheelabai

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Court : Karnataka

Decided On : Oct-01-1991

Reported in : ILR1992KAR318; 1991(4)KarLJ685

Judge : K.A. Swami, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 21(1); Karnataka Rent Control Rules - Rule 9

Appeal No. : C.R.P. No. 4230 of 1991

Appellant : Revansiddappa

Respondent : Susheelabai

Advocate for Def. : Ashok Kalyana Shetty, Adv.

Advocate for Pet/Ap. : B.R. Vishwanath, Adv.

Disposition : Revision petition allowed

Judgement :

ORDER

K.A. Swami, J.

1. At the stage of admission, respondent has put in appearance. Therefore, the C.R.P. is admitted & it is heard for final disposal.

2. This Civil Revision Petition is preferred under Section 115 C.P.C. against the order dated 28-8-1991 passed by the learned Additional District Judge, Bijapur in R.R.No. 11/1986 confirming the order dated 6-1-1986 passed by the learned.Principal Munsiff, Bijapur in H.R.C. No. 89/1981.

3. The respondent-landlord filed the aforesaid H.R.C.No. 89/1981 for eviction of the petitioner-tenant under Section 21(1)(a) and (h) of the Karnataka Rent Control Act (hereinafter referred to as the 'Act'). The petitioner-tenant resisted the petition.

4. The trial Court rejected the case of the landlord pleaded under Section 21(1)(h) of the Act. However, it allowed the petition and passed an order of eviction under Section 21(1)(a) of the Act. Aggrieved by the aforesaid order of the trial Court, the petitioner-tenant preferred a revision petition before the District Court under Section 50(2) of the Act. The revision was decided by the learned Additional District Judge, Bijapur, who as already pointed out confirmed the order of eviction passed by the trial Court under Section 21 (1) (a) of the Act,

5. The contention of the petitioner-tenant is that the eviction order passed under Section 21 (1) (a) of the Act is not justified in law. The facts necessary for the purpose of deciding this contention are no more in dispute.

6. The respondent-landlord purchased the schedule premises on 27-3-1981. She issued a notice under Section 21(1)(a) of the Act on 1-5-1981 stating that the petitioner-tenant was in arrears of rent for the months of April and May 1981. Therefore, he was to pay a sum of Rs. 32/- towards the arrears of rent for the months of April and May 1981 as the rent was Rs. 16/- per month. This notice (Ext.P-4) issued on 1-5-1981 was served upon the tenant on 4-5-1981. The eviction petition was filed on 10-7-1981. Of course, the tenant did not pay the amount as claimed in the notice within two months from 4-5-1981 nor did he pay immediately on service pf notice of the eviction petition filed by the landlord on 10-7-1981. He deposited the arrears of rent during the proceeding on 18-3-1982 upto date. Thereafter, he went on depositing or paying the rent not regularly every month as and when it became due, but once in three months, four months or six months in lump sum.

7. The contention urged on behalf of the tenant is that as the notice issued under Section 21(1) (a) of the Act is not in accordance with law inasmuch as the tenant could not be said to have been in arrears as on 1-5-1981. Therefore, it is contended that the proceeding initiated under Section 21(1) (a) of the Act itself is not maintainable.

8. In answer to this, it is contended by Sri Kalyana Shetty, learned Counsel for the landlord that as per the petition averments, rent was required to be paid in advance on the first day of the tenancy month; therefore, the rent for the month of April 1981 became due on 1st April 1981. Similarly, the rent for the month of May 1981 became due on the 1st May 1981. Therefore, the notice issued on 1-5-1981 claiming arrears of rent for a period of two months was in accordance with law and it did not contravene the provisions of Section 21(1) (a) of the Act. As the tenant did not pay the arrears of rent within two months after the service of notice and he did not even pay the arrears and did not even comply with the order, the Court below had no option but to proceed to pass an order directing eviction under Section 21(1)(a) of the Act.

9. The respondent-landlord, as already pointed out purchased the premises on 27-3-1981. The vendor of the respondent-landlord has not been examined to prove that there was an agreement to the effect that the rent was to be paid in advance on the first day of the tenancy month. There, is no finding recorded by the Court below that the rent was to be paid in advance on the first day of the tenancy month. It was not the case of the landlord that the rent was to be paid on the first day of the tenancy month. Therefore, the case of the landlord that the rent was due to be paid in advance on the first day of the tenancy month has only remained to be an assertion and it has not been proved. Hence this is a case in which we have to proceed on the basis that the rent for a month became due only at the end of the tenancy month.

10. However, the contention of the learned Counsel for the respondent is that even accepting that the rent for April 1981 became due on the 1st May 1981, the landlord was justified in issuing the notice on 1-5-1981 under Section 21(1) (a) of the Act.

11. It is further contended that even though the landlord-claimed arrears of rent for two months, the tenant was at least required to pay the arrears of rent for the month of April 1981 within two months from the date of service of the notice.

12. Therefore, the question that falls for consideration is as to whether on the 1st of May, 1981 the petitioner was said to be in arrears of rent. .

13. It is one thing to say that the rent becomes due on a particular date and another thing to say that the tenant is in arrears of rent. Section 21(1)(a) of the Act uses the words 'arrears of rent' and it reads thus:

'Section 21(1)(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of payment for the arrears of rent has been served on him' by the landlord by tender or delivery either personally to the tenant or to a member or servant of his family at his residence (or if such tender or delivery is not practicable) by affixture to a conspicuous part of the premises.'

The dictionary meaning of 'arrear/arrears' that which remains unpaid or undone; condition of being behind. The Legislature has advisedly used the words 'arrears of rent'. In other words, the intention of the Legislature is to enable the landlord to issue notice under Section 21(1)(a) of the Act for payment of rent only when the tenant falls in arrears of rent and to file eviction petition in case the tenant fails to pay the arrears of rent within two months from the date of service of such notice. No doubt, on 1-5-1981 the rent for the month of April, 1981 became due, the landlord became legally entitled to recover and the tenant became also liable to pay on 1 -5-1981. But it is not possible to hold that on that day the payment of rent had remained behind and the tenant was in arrears of rent. In the normal course, the tenant is expected to pay the rent within a reasonable time from the date it becomes due.

14. Rule 9 of the Karnataka Rent Control Rules, 1961, (hereinafter referred to as 'the Rules') in the case of payment of rent by the tenant to contest the application filed by the landlord before the Court for eviction under Section 21 of the Act prescribes a period of 15 days from the last date fixed in the agreement of tenancy

with the landlord, for payment of the rent or in the absence of such agreement fifteen- days from the last date of the month next following that for which the rent is payable, for complying with Section 29(1) of the Act. It is true, Rule 9 is not applicable to payment of rent during the period when there is no proceeding under Section 21 of the Act pending before the Court. I am of the opinion that there is no provision contained in the Act and the Rules which comes in the way of the Court to determine as to what would be the reasonable period for payment of rent as and when it becomes due for the purpose of Section-21 (1)(a) of the Act. Therefore, I fail to understand as to why the same statutory standard should not be applied for payment of rent as and when it becomes due for the purpose of determining as to when the tenant can be held to have fallen in arrears of rent to enable the landlord to issue notice of two months under Clause (a) of Sub-section (1) of Section 21 of the Act. Therefore, I am of the view that for the purpose of Section 21(1)(a) of the Act, the tenant can be held to have been in arrears of rent only if he fails to make payment within a reasonable time i.e., within a period of 15 days from the date the rent becomes due, as otherwise it will enable an unscrupulous landlord to unnecessarily harass the tenant by issuing notice under Section 21(1) (a) of the Act on the date the rent becomes due as has been done in the instant case. This conclusion of mine is not on the basis that Rule 9 of the Rules is applicable to Section 21(1)(a) of the Act. One of the objects of the Act is to protect the tenant from arbitrary eviction. Therefore, the interpretation which advances the object of the Act must be preferred. At the same time, it may also be pointed out that the interpretation placed on the words 'arrears of rent' occurring in Section 21(1)(a) of the Act does not also affect the right of the landlord as it is always open to the landlord to issue notice under Section 21 (1) (a) of the Act if the tenant fails to pay the rent within 15 days from the date it becomes due.

15. Of course, it is contended on behalf of the landlord that the interpretation placed on the words 'arrears of rent' occurring in Section 21(1)(a) of the Act results in extension of the period by 15 days for payment of rent from the date it becomes due. Consequently, it amounts to reading something more into Section 21(1)(a) of the Act which the Legislature has not intended. In this case we are concerned with the question as to when a notice under Section 21(1)(a) of the Act can be issued by the landlord calling upon the tenant to pay the arrears of rent. The above

interpretation does not prevent the tenant from payment of rent as and when it becomes due and the landlord to recover it in accordance with law. The landlord can only issue notice under Section 21(1)(a) of the Act if the tenant falls in arrears of rent. Therefore, the contention of the landlord cannot be accepted.

16. Learned Counsel for the landlord placed reliance on the Decisions in JACOB CORLINO v. PRABHA V. SHENOY, 1984(2) KLC 225; RAMAIAH v. NARASIAH, : ILR 1985 KAR2325 ; and ULLAL RAGHUVIR RAO v. MRS. SAVI THRI BAI, : ILR 1986 KAR931 . At the out set, it may be pointed out that in none of these Decisions the meaning of the words 'arrears of rent' occurring in Section 21(1)(a) of the Act has been considered. It is true, in Jacob Corlino's case it has been observed that Rule 9 of the Rules speaks of deposit of rent under Section 29 of the Act. I have already pointed out that Rule 9 of the Rules is not applicable to payment of rent during the period when there is no proceeding pending before the Court under Section 21 of the Act.

17. In the light of the interpretation placed on the words 'arrears of rent', the notice issued by the landlord on 1 -5-1981 - the date on which the rent became due for the month of April 1981, cannot be held to be valid, because the tenant cannot be held to have been in arrears of rent on 1-5-1981. The question raised for determination is answered accordingly. Thus, it follows that no eviction order could have been passed under Section 21(1)(a) of the Act on the basis of such invalid notice.

18. For the reasons stated above, this Revision Petition is allowed. The orders of the two Courts below are set aside. The eviction petition is rejected. However, it is made clear that if subsequently the tenant has fallen in arrears of rent, this order shall not come in the way of the landlord to seek eviction on that ground in accordance with law.