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Ramaiah Vs. Narasaiah

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Court : Karnataka

Decided On : Jun-03-1985

Reported in : ILR1985KAR2325

Judge : Chandrakantaraj Urs, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 21(1) and 21(2)

Appeal No. : C.R.P. No. 2853 of 1982

Appellant : Ramaiah

Respondent : Narasaiah

Advocate for Def. : G.S. Visveswara, Adv.

Advocate for Pet/Ap. : C.B. Srinivasan, Adv.

Disposition : Petition rejected

Judgement :
ORDER

Chandrakantaraj Urs, J.

1. This is a tenant's Revision Petition under Section 115 of the C.P.C. against the order of the learned District Judge, Mysore, bearing the date 26-6 1982 made in HR. CRP. No. 128/1981.

2. The undisputed facts which are necessary for a just disposal of this Revision Petition may be stated and they are as follows:Respondent Narasiah is the owner of the petition schedule premises (non-residential) in which the revision petitioner before this Court is a tenant. The landlord got issued a notice on 12-7-1979 which was served on the tenant on 14-7-1979 claiming arrears of rentfor a period of 1 1/2 years upto 1-7-1979 at the rate of Rs 60/- per mensem. Apparently, that notice was pursuant to the mandatory requirement of Section 21(1)(a) of the Karnataka Rent Control Act, 1961, (hereinafter referred to as the Act). The tenant did not pay or tender the rent demanded nor did he issue any reply to the notice. It was in that circumstance that the landlord presented a petition for eviction in terms of the provisions contained in Clause (a) of sub section(1) of Section 21 of the Act in the Court of the II Additional Munsiff, Mysore. That petition was numbered as H.R.C. 448/1979. On being served with a notice of that petition, the tenant contested the petition solely on the ground that he did not pay the arrears of rent, as the rent demanded by the landlord in the sum of Rs. 60/- per mensem was in excess of the agreed rent of Rs. 25/- per mensem. In other respects, the averments of the petition were admitted by the tenant The matter went to trial on that issue. The learned II Additional Munsiff who tried the petition embarked on an enquirystraightaway as to the quantum of rent payable by the tenant in respect of the premises in question. In that enquiry after recording evidence for both sides, he came to the conclusion that the rent payable was only Rs. 25/- per mensem and not Rs. 60/- per mensem and having regard to the payments made during the pendency of the proceedings by the tenant, he determined that a sum of Rs. 350/- should be paid within one month from the date of his order made on 20 6-1981 and failure to comply with that order, landlord was entitled to seek possession straightaway. The tenant complied with that direction. But the landlord was not satisfied with the order made by the Learned II Additional Munsiff and therefore he preferred a Revision Petition against that order in the Court of the District Judge, Mysore, inter alia contending that the II Additional Munsiff had no jurisdiction to determine the quantum of rent and make a conditional order of eviction having regard to the circumstances of the case and further that the Learned II Additional Munsiff ought to have examined the scope of application of Section 21(l)(a) of the Act to the facts of the case and pass a final order. In other words, the contention

was that as there was no sufficient cause shown by the tenant for not paying the arrears of rent from 1-7-1979 within two months from 14-7-1979, the II additional Munsiff ought to have passed an order of eviction. This contention met with success before the Learned District Judge. On the evidence available on record, the Learned District Judge came to the conclusion that the Munsiff had misdirected himself and passed a conditional order while he ought to have passed on order of eviction unconditionally having regard to the default which remained unexplained showing sufficient cause and directed the eviction of the tenant. Aggrieved by the same, the present revision petition is filed.

3. Shri C.B.Srinivasan, Learned Counsel for the tenant petitioner, has contended that there was no misdirection by the Learned Munsiff and that the Munsiff had done only what was just and necessary in the circumstances of the case. Once the landlord and tenant's relationship was admitted, the only matter in issue before him was the quantum of arrears due and having decided that issue, he had no option but to direct the deposit of those rents and to dismiss the petition subject to the condition that if the rents were not paid, the tenant should be evicted. I do not think there is force in that contention and therefore it is not liable to be accepted by this Court.

4. Clause (a) of sub-section (1) of Section 21 as well as sub-section (2) of Section 21 of the Act have fallen for consideration before this Court in a number of cases and the corresponding provisions have fallen for consideration in other States by the respective High Courts as well as by the Supreme Court. Shri Srinivasan relied upon the decision of this Court rendered in the case of Gulam Rasul Manulwaja vs Susheelamma 1983 (1) K.L.C. 199. In that case, Venkatesh,J., has commended a liberal interpretation of the provisions contained in Section 21(1) (a) of the Act so that such interpretation may ensure to the benefit of the tenant. As a broad proposition of law none can have quarrel with that proposition as by and large the Act is meant for the protection of tenants. But the real question is whether in so construing liberally, the legislative mandate contained in the said sub-section should be totally ignored by the Court so as to rewrite that section. In order to appreciate the contention as well as the Learned Judge's commendation for liberal interpretation, it would be useful to set out sub-section (1) (a) of Section 21 of the

Act. It is as follows :

'(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 lender or delivery either personality 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;'

From the above it is clear the provision creates duties and obligations both on the part of the landlord and the tenant. The landlord in order to secure an order of eviction, has the duty first to issue a written notice to the tenant demanding the arrears of rent and have the same served on the tenant inperson or on a member of his or her family. It is only when on such service of such notice, there is failure on the part of the tenant to pay the rent, the Court gets jurisdiction to pass an order of eviction.

5. Similarly, the tenant is under an obligation to pay the rent in respect of the premises occupied by him within the stipulated period of two months, failure of which would entail with an order of eviction. While on this section, it would be useful to notice that the provision does not provide for payment of the sum demanded in the notice. The language employed is such that rent to which the landlord is lawfully entitled is required to be tendered or deposited as the case may be. Therefore, the duty of the tenant even where and when the quantum of rent is disputed is to tender or pay the admitted rent which according to the tenant would be law-fully due to the landlord. If that obligation is not carried out by the tenant, he cannot be protected by any rule of liberal construction against an order of eviction.

6. I have already set out the undisputed facts of the case. The Court is prevented from passing an order of eviction by sub-section (2) of Section 21 of the Act. It acts as a threshold bar for an order of eviction unless theconditions set out in clauses thereto at (i), (ii) and (iii) are satisfied. Clause (i) of sub-section (2) of Section 21 of the Act contemplates the situation when the Court is bound to pass an order of eviction if in any proceedings taken under Section 29 of the Act, arrears of rents

are not paid by the tenant. Similarly, clause (ii) of sub-section (2) of Section 21 of the Act provides for an order of eviction being passed if sufficient cause is not shown to the Court as to why the rent was not paid within the two months prescribed in clause (a) of sub-section. (1) of Section 21 of the Act after service of notice. Sub-clause (ii) of sub-section (2) of Section 21 of the Act reads as follows :

'(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.....'

7. The simple language used denotes that the Court is not mandated to enquire whether the tenant is a chronic defaulter, whether he had sufficient cause or not for accumulating the arrears of rent. The Court is directed to consider only the default in the period of two months men tioned in clause (a) of sub-section (1) of Section 21 of the Act and if that is not paid within the stipulated period without justifiable cause, then the Court has no choice but to pass an order of eviction. In other words, there is no room for judicial discretion to refuse an order of eviction. Any discretion that the Court has to exercise is only in regard to sufficiency of the cause and no more.

8. Similarly clause (iii) of sub-section (2) of Section 21 of the Act speaks of further amount. That further amount relates to cases where the admitted rent has been paid after notice of demand under clause (a) of sub-section (1) of Section 21 of the Act, but a dispute has been raised in regard to the balance of the difference in the claim and a petition filed on that basis. In such cases an enquiry has to be held as to the quantum of rent payable and only onpayment of such further amount as decided by the Court, the order of eviction made subject to the condition that payment of amounts so decided should be paid within one month.

9. Therefore, there is no difficulty in understanding the scheme of sub-sections (1) and (2) of Section 21 of the Act. I am fortified in the view I have taken in the decisions rendered by this Court in the case of M.R. Ananthaswaray- v. - Puttamma 1974(2) K.L.J. 221 and Shivanna - v. - Gangamma 1977(1) K.L.J 321. In the said two cases this Court has laid down the correct law in the light of the analysis I have made.

10. The only issue which the Munsiff ought to have raised was whether the tenant had paid the admitted arrears of rent within two months after service of notice on him on 14-12-1979 and no other issue. If the tenant had not paid the admitted arrears of rent then he had no choice but to pass an order of eviction. While determining the rent payable at the rate of Rs. 25/- per month, he was correct in his approach to the extent that in all cases where the quantum of rent is disputed, the Court is duty bound to determine the quantum of rent before proceeding further, because under Section 29 of the Act there is a bar for the tenant to allow the tenant to contest the eviction proceedings unless he has paid or deposited the arrears of rent claimed.. But having determined that rent, he should have next proceeded to seek an explanation from the tenant as to what made him to withhold the payment of admitted arrears of rent charged about which there was no dispute. Not having done that, the District Judge was correct in coming to the conclusion that the Learned Munsiff had erred.

11. Shri Srinivasan, however, contended that having regard to the decision of the Supreme Court in the case of S. Sundaram - v. - V.R. Pattabhiraman A.I.R. 1985 S.C. 583, the Learned Munsiff acted correctly. That case arose under the Tamil Nadu Buildings (Lease and Rent Control) Act. Proviso to Section 10(2) of the said Act corresponds approximately to sub-section(2) of Section 21 of the Act. The Supreme Court in that case held that the said proviso to Section 10(2) of the Tamil Nadu Buildings (Lease and Rent Control) Act Would have entitled the Court to examine whether the tenant had willfully defaulted in the matter of payment of arrears of rent even prior to the issue of notice which is also the view I have expressed earlier in the course of this order. But Srinivasan, essentially, relied upon what their Lordships of the Supreme Court said about the wilful default, i.e., need for the presence of the animus to deliberately withhold the rent without justification. I do not think I should reject the contention solely on the ground that there is difference in the language of the Tamil Nadu Buildings (Lease and Rent Control) Act and the Karnataka Act. The expression 'wilful default' or non-payment of rent without sufficient cause in my opinion would not make any difference. In either case the Court has to examine the animus If that is conceded, then the District Judge did not make any error in holding that the very slender and improbable evidence tendered by the tenant such as Doctor's prescription dated

15-12-1979 and purchase of medicine subsequently to withhold the payment of the arrears demanded by the landlord would constitute sufficient cause. If there is to be a liberal approach to favour the tenant it is only in determining what constitutes sufficient cause and in not disregarding the mandate of Clause (a) of sub section (1) of Section 21 of the Act.

12. In this view of the matter, there is no merit in the case of the; petitioner which calls for interference by this Court under Section 115 of the C.P.C. It is, therefore, rejected.

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