

Sudhakar Vs. Lakshamma

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SooperKanoon Citation : sooperkanoon.com/383415

Court : Karnataka

Decided On : Feb-28-1990

Reported in : ILR1990KAR2269; 1991(1)KarLJ90

Judge : Shivashankar Bhat, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 29, 29(1) and 29(4)

Appeal No. : C.R.P. No. 4950 of 1988

Appellant : Sudhakar

Respondent : Lakshamma

Advocate for Def. : G. Vedavyasachar, Adv.

Advocate for Pet/Ap. : Mahabalesh Gowda, Adv. for Shivaraj Patil, Adv.

Judgement :

ORDER

Shivashankar Bhat, J.

1. Civil Revision Petition is filed by the tenant against an order of eviction made under Section 29(4) of the Karnataka Rent Control Act (hereinafter referred to as the Act).

2. The landlord has filed an eviction petition seeking eviction of the tenant under Section 21(1)(a) and (h) of the Act. During the pendency of the proceedings the landlord also filed an application under Section 29 of the Act since the tenant was in arrears. On 30-3-1987 the Court made an order under Section 29 of the Act determining the rate of rent and the arrears payable by the tenant as Rs. 39,200/- as on the said date. The tenant was given a month's time and accordingly he deposited the same within the time given by the Court. In fact, there was 6 days delay there also. The rate of rent determined by the Court was Rs. 1,400/- per month. The tenant, thereafter did not deposit the rent till 15-9-1987 on which date he deposited a sum of Rs. 7,600/- being 5 months rent. Subsequently, the payments were as follows:

26-11-1987 Rs. 2,800/- 3-2-1988 Rs. 4,200/- 27-3-1988 Rs. 1,400/- 21-6-1988 RS. 4,200/- and on 30-8-1988 Rs. 2,800/-

The landlord having realised the consistency on the part of the tenant, in not paying the rent in time, filed the present application under Section 29(4) of the Act on 30-8-1988 praying that all further proceedings be stopped and the respondent in the trial Court (tenant) be directed to hand over possession of the premises to the petitioner. The tenant filed objections to this application wherein he has given the above dates and the payments made by him and submitted that I.A. II filed by the landlord be dismissed accepting the rent paid by that time. Not a single explanation has been offered by the tenant as to why rents were deposited after due dates and not in time. The trial Court allowed the application of the landlord, rejecting the contentions of the tenant that the application is not maintainable and held that the same is maintainable even though the rents have been deposited by the tenant. In the trial Court, the tenant had been persistent in delaying the payments of rent as is clear from these dates and the tenant has nowhere explained the cause for such a delay and has also not offered any reason as to why proceedings should not be stopped and he be directed to hand over possession. This order is under challenge in this Civil Revision Petition.

3. Mr. Mahabalesh Gowda, learned Counsel for the petitioner contended that (1) the application under Section 29(4) of the Act was not maintainable because the

tenant had paid rents upto date by the time the application was filed; (2) the trial Court erred in ordering eviction without affording an opportunity to the tenant to show cause against it by a separate proceedings under Section 29(4) of the Act; and (3) the trial Court should have accepted the explanation of the tenant to the effect that he has been paying rents regularly and the delays were only marginal.

4. The learned Counsel for the petitioner, in regard to Section 29(4) of the Act, urged that whenever an application is filed, the Court will have to determine the arrears first and thereafter the tenant should be given an opportunity to deposit the arrears and afford him an opportunity to offer explanation for the delay. Making an order of eviction straightaway, on the basis of an application filed under Section 29(4) of the Act is nothing but a composite order as held by this Court in *ABDUL RASHEED v. SYED MOHAMAD*, 1983(2) K.L.J. 525. It is not possible for me to agree with this contention. There is no composite order at all. There was already an application earlier. The dispute as to rent was determined by the Court and the arrears as on 30-3-1987 was determined and the tenant was given time to deposit the same. The question of determining the quantum of rent arises only when there is a dispute about the arrears. After the Court had determined the rate of rent, there remains nothing to be determined further as and when tenant chooses to abstain himself from paying the rent under Section 29 of the Act. Section 29(1) of the Act directs the tenant to pay all the arrears of rent and continue to pay or deposit any rent which may subsequently become due in respect of the premises. The continuity in the payment of rent will have to be maintained by the tenant because the payment of rent is a 'Must' to participate in the proceedings. A Bench of this Court in *SYED ABDUL WADOOD v. STATE OF KARNATAKA* : AIR1988 Kant194 ; has pointed out that if the rent is not paid by the tenant without a valid cause, he fails to discharge his basic obligation, in order to gain the benefit under the lease. His right to enjoy the demised property, depends upon this obligation to pay the rent. The purpose of Section 29 of the Act is to compel the tenant to discharge this basic obligation in the matter of paying the rent and it provides for withdrawal of the statutory protection given to the tenant under Section 21 of the Act whenever it is found that the tenant has acted inequitably, arbitrarily or capriciously in the matter of discharging this basic obligation and Section 29 of the Act is a guarantee offered to the landlord in the matter of compensating him. It

may be noted here that the Act has bestowed vast protection to the tenant. While bestowing such a protection the Legislature guaranteed a minimum protection to the landlord by guaranteeing him regularity in the payment of rent. Any tenant who seeks protection of this statutory provision has to discharge the basic obligation fastened on him by the statute. There was absolutely no cause at all for the tenant not to pay the rents in this case in time. The rate of rent was already determined by the Court. The payments were made on several dates (extracted above) and there were delays between 5 months to two months, the regularity shown by the tenant was in making delayed payments.

5. Mr. Mahabalesh Gowda, pointed out that even under the Bombay Act, wherein the relevant provision stated that the tenant should pay the rent regularly, the Supreme Court held that regularity does not contemplate clock-like precision and the marginal delay should be ignored. For this proposition *MOHAN LAXMAN HEGDE v. NOORMOHAMED ADAM SHAIKH*, : [1988]3SCR461 was referred. Emphasis was laid on the following passage extracted in the said decision at page 1114:

'It enjoins a payment or tender characterised by reasonable punctuality, that is to say, one made at regular times or intervals. The regularity contemplated may not be a punctuality, of clock-like precision and exactitude, but it must reasonably conform with substantial proximity to the sequence of times or intervals at which the rent falls due. Thus, where the rent is payable by the month, the tenant must, if he wants to avail of the benefit of the latter part of Clause (b), tender or pay every month as it falls due, or at his discretion in advance. If he persistently defaults during the pendency of the suit or appeal in paying the rent, such as where he pays it at irregular intervals of 2 or 3 or 4 months - as is the case before us the Court has no discretion to treat what were manifestly irregular payments, as substantial compliance with the mandate of this clause, irrespective of the fact that by the time the Judgment was pronounced all the arrears had been cleared by the tenant.'

The above passage was noted from an earlier decision in : AIR 1980 SC954 , *Mrunalini B. Shah v. Bapulal Mohanlal Shah*. Thereafter, at para-7 the Supreme

Court analysed the facts of the case before it and held thus:

'On this basis there are undoubtedly a few defaults committed by the Appellant in the sense that in respect of the first month to which the deposit relates, there is some delay amounting to from two or three days upto a maximum of 23 days. But, on the other hand, the rent for most of the months has been deposited in advance. In these circumstances, applying the principle laid down in the aforesaid decision referred to, we are of the view that the rent has been deposited by the Appellant with reasonable punctuality and hence the Appellant/tenant can be regarded as having deposited the rent 'regularly' as contemplated in Clause (b) of Sub-section (3) of Section 12 of the Bombay Rent Act. We are of the view that exact or mathematical punctuality was required in the deposit of rent by a tenant to take advantage of the provisions of Section 12(3)(b) of the Bombay Rent Act.'

Relying upon this observation read with the language of the Bombay Act, contrasted with the language of the Karnataka Rent Control Act, it was contended that the Karnataka Rent Control Act was not as stringent as the Bombay Act, while Bombay Act expected the tenant to pay rent regularly, the Karnataka Act has not used the requirement of regularity in the matter of payment of rents; on the other hand, Section 29(4) of the Act indicates that tenant may explain the delay in the payment of rent and get immunity against eviction under the said provision. It is true that the language of Section 29(4) of the Act is different from the Bombay Act and a provision similar to Section 29(4) of the Act is not found in the Bombay Act. But, the language of Section 29(1) of the Act is substantially the same as employed by the Bombay Act, Though the word regularly is not found under Section 29(1) of the Act, the purport of Section 29(1) of the Act is to insist that the tenant should pay rent regularly and promptly. This has been noticed by this Court in the year 1965 itself in THOMAS VEIGAS v. LEELAVATHI @ RAJAN BAI, 1965(2) Mys.L.J. 371 wherein it was observed that a tenant, who wants to avail the benefits of the Act, is placed under an obligation to perform his part of the duty namely, the prompt payment of rent within the time allowed by law. Therefore, promptness in the payment of rent is implicit in Section 29(1) of the Act. It is only for the reasons beyond his control or for bona fide reasons, if the tenant was prevented from paying the rent promptly, the Statute comes to his rescue in case

he makes out a case under Section 29(4) of the Act. The Act nowhere contemplated the tenant to take his own time and plead that he has discharged his obligation. The principle stated by the Supreme Court arising out of a case from the Bombay Act equally applies to a case under Section 29(1) and Section 29(4) of the Act.

5. The facts before the Supreme Court were analysed at para-7 of the decision referred above. It says that the delays therein were only marginal, i.e., a few days ranging from 2 to 3 days upto a maximum of 23 days. This was compensated by the conduct of the tenant in depositing the rent in advance for most of the months. It is under these circumstances, the Supreme Court held that the payment of rent by the tenant in the said case cannot be held to be irregular lacking in clock-like precision. If the said principle were to apply to the present case, the result will be something quite different. Court has determined the rate of rent on 30-3-1937. The arrears as on the said date were directed to be paid within a month which he paid on 3-4-1937. Thereafter he took 5 months to make payment of rent for the next five months. Thereafter, there was a delay of two months and again there were delays of 3 months twice and another two months delay on another occasion. The delays here cannot be held to be marginal. The tenant has not attempted to pay any rent in advance to compensate the hardship caused to the landlord by other delayed payments. Therefore, the facts before the Supreme Court were different from the facts in the instant case.

7. I have already observed that there is no question of one more opportunity to the tenant because, here, question of any determination of rent due, did not arise. The tenant has not challenged either, the quantum of the arrears or the rate of rent payable by him because the rate of rent has already been determined. The contention of the learned Counsel for the petitioner-tenant that whenever there is an application under Section 29(4) of the Act, the Court should go into the question of arrears once again and grant once again time or adjourn the matter to enable the tenant to explain the cause for delay is entirely unwarranted. It is also not correct to say that the application is not maintainable because the rents have been already paid on the date of the application. The factum of payment on the date of application may be a relevant factor when the tenant has given some

reason explaining the delay. Such an acceptable explanation as cause for the delay read with the conduct of the tenant in making the payment or making the deposit would, certainly aid his case. But, here the conduct of the tenant is something different. The attitude of the tenant seems to be that, because he has paid the arrears of rent already, there remains nothing for the Court except to dismiss the application of the landlord and that there is no obligation for him to explain the delay in the payment of rents. While filing objections to the I.A. and giving the several dates of deposits, he could have shown cause as to why the application should be rejected. The payment of rent and the explanation for the delay are to be an integrated process in the matter of defence by the tenant. This process cannot be divided into different stages. I am of the view that the order under revision is unassailable. Revision petition is accordingly dismissed.

8. While arriving at this conclusion, I have also borne in mind that the provision of Section 29(4) of the Act empowering the Court to strike out a defence of a tenant in an eviction proceeding is in the nature of a penal provision and should be exercised sparingly and in extreme cases as observed by the Supreme Court in *MISS SANTOSH MEHTA v. OM PRAKASH AND ORS.*, : [1980]3SCR325 . That principle will have to be borne in mind while considering the explanation offered by the tenant for the default or delay committed by him. When he has not offered any explanation, question of invoking the said principle does not arise. The learned Counsel for the petitioner states that his client has deposited rent upto date in this Court of which the learned Counsel for the respondent-landlord denied knowledge. The details of deposit be furnished to the Counsel for respondent and he is permitted to withdraw the same. The tenant shall continue to pay the future rents in advance till the time of vacating the premises. Time to vacate is given till the end of June 1990.