

Masthan Vs. SirajuddIn and ors.

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Court : Karnataka

Decided On : Oct-01-2001

Reported in : 2002(1)KarLJ224

Judge : K. Sreedhar Rao, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 21(1), 29(1), 29(2), 29(4) and 50(2)

Appeal No. : House Rent Revision Petition No. 285 of 2001

Appellant : Masthan

Respondent : SirajuddIn and ors.

Advocate for Def. : R.S. Ravi, Adv.

Advocate for Pet/Ap. : Pradeep, Adv.

Disposition : Order accordingly

Judgement :

ORDER

The Court

1. Heard the Counsel for the petitioner and the respondents. On going through the impugned order of the Principal District Judge, Mysore in Rent Revision No. 43 of

1984 which is under challenge in this revision, I find that the learned District Judge has not considered all the grounds and issues involved in the revision. Only on the technical ground of non-compliance of direction of the Trial Court in depositing the arrears of rent within one month's time granted, it was held that the revision was not maintainable. The Counsel for the petitioner relied on the ruling of the Supreme Court in P.R. Deshpande v. Maruti Balaram Haibatti, to contend that the non-deposit of rent as directed by the Trial Court entails dismissal of the revision on technical grounds. I find that the said ratio of the said decision is not applicable to the facts and circumstances of the case. The material observations of the Supreme Court in para 18 are reproduced hereunder:

'18. Learned Counsel for the appellant made an attempt to raise a contention that though the appellant did not deposit the arrears of rent along with filing the revision petition, he has subsequently paid rent arrears on 27-5-1991 and hence the revision must be treated as preferred on that date. We are not disposed to countenance the said contention in this particular case for two reasons. First, that the landlord-respondent filed an application under Section 29(4) of the Act before the District Court and the tenant has not taken up such a ground in the petition filed by him thereto. Secondly, even in the special leave petition he has not adopted any such contention and hence the landlord, has no occasion to meet the factual situation on the basis of which the aforesaid contention is raised'.

2. After carefully going through the said observations and the underlined words in the observations do not lay down as a ratio that under all circumstances the filing of a revision without deposit of rent should necessarily result in dismissal of the revision. The Supreme Court, on the basis of peculiar facts involved in the case, rejected the contention of the revision petitioner to treat the subsequent deposit of rents as a deposit made along with the petition. The said request was rejected, in view of the peculiar conduct of the tenant. The ground urged before the Supreme Court for non-deposit was not the ground urged in the counter filed to an application under Section 29(4) and also in the special leave petition, the ground contended was not one of the grounds mentioned which was a factual situation. Therefore, in the absence of necessary opportunity to the other side to meet the factual situation, the request to consider the delay in deposit of rent relating back

to the date of filing of the revision was rejected. Therefore, from the observations it is clear that it does not take away the discretion of the Court to condone the delayed deposit even if it is not made simultaneously with the filing of the revision.

3. In the present case, the tenant, while filing the revision, did make a request along with the revision petition to permit him to deposit the arrears of rent. Accordingly, the permission was granted and for obtaining the receipt and for making necessary deposit, it took about three days time and on 18-2-1999 the deposit of arrears was made although the revision was filed on 15-2-1999. Therefore, it cannot be said that the deposit made cannot be related to the date of filing since on the date of filing, the request was made and necessarily the official procedures require the grant of permission and time taken in the legal procedures for the deposit cannot be considered as an intentional delay. In that view, the dismissal of the revision as not maintainable by the first revision Court is untenable.

4. The effect of delay in depositing of arrears is a question of fact that has to be looked into. Besides the first revisional Court should have also considered the grounds under Section 21(1)(h) of the Karnataka Rent Control Act. Without going into the merits and the dismissal of the petition formally on the technical ground is bad in law. Therefore, the order is set aside and the matter is remitted to the first revisional Court to dispose of the same in accordance with law within two months from the date of receipt of this order. The parties are directed to appear before the District Court by 29-10-2001. No fresh notice need be issued to the parties.