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Court : Allahabad

Decided On : Dec-19-1956

Reported in : AIR1957All305

Judge : M.L. Chaturvedi, J.

Acts : Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Sections 7(3), 7(7), 7B and 7B(7); [Constitution of India](#) - Article 19 and 19(1)

Appeal No. : Civil Misc. Writ No. 865 of 1956

Appellant : Haradwar Singh and anr.

Respondent : Satyendra Kumar Gupta and anr.

Advocate for Def. : G.P. Bhargava, Adv.

Advocate for Pet/Ap. : B.N. Sapru, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

M.L. Chaturvedi, J.

1. This is a petition under Articles 226 and 227 of the Constitution.

2. The two Petitioners are tenants of a house situate in the city of Banaras, and the 1st respondent is the owner of the house. The Petitioners took possession of the house as tenants in September 1950, It is said that in some months they sent rent to the 1st respondent at the rate of Rs. 44/8/-per month, but the respondent refused to accept the rent. The reason was that, according to the respondent, the rent of the house was fixed at Rs. 100/- per month. After sending some money orders, the petitioners kept quiet with the result that no amount of rent has so far been paid at all by the petitioners to the respondent for a period of more than six years now.

2. In the counter-affidavit it is stated that the agent of the respondent was instructed to file a suit for the recovery of rent against the Petitioners, and the agent took expenses for the purpose but never filed the suit and kept the landlord under the belief that the suit had been filed and was pending. Whatever it may be no proceedings were taken by the landlord against the petitioners till he filed an application under Section 7B of the Control of Rent and Eviction Act in the court of the City Munsif, Banaras, sometime before September 1955.

Notice was issued to the petitioners and it appears that the 15 days' time allowed for filing objections was to expire on the 1st October 1955. The petitioners filed objections on the 1st October 1955 but before doing that they made an application on the 30th September 1955 with a draft of a security bond asking the court's permission to file the bond in terms of the draft, after having it executed and registered. The order passed on this application was that it should be listed along with the application under Section 7B of the Act.

Some date in December was then fixed, but the case was not taken up, and the application came up for hearing on the 13th April 1956 on which date the court passed the impugned order. It says that the petitioners (opposite parties in the court below) should deposit the amount of the claim made by the landlord in cash by the 22nd April 1956 and that he was not inclined to permit the Petitioners to furnish security for the payment of the amount. The present petition Was filed on the 20th April 1956 praying for the issue of a writ of certiorari quashing the order of the Munsif, mentioned above.

3. The learned counsel for the petitioners contended that the Munsif had no jurisdiction to refuse to accept the security of property, which was sought to be furnished by the Petitioners, and that it is at the option of the tenant either to deposit cash or furnish security but the security should be a good one for the amount claimed. The next contention is that the proviso appears to make it incumbent on the tenant either to deposit the full amount of claim in cash or to furnish security to the satisfaction of the court before he is permitted to file an objection and, as the period provided for filing objections is 15 days from the date of service of notice of the application made under Section 7-B, the restriction put on the right of the tenant to hold the land as a tenant is an un-reasonable restriction and it contravenes the Provisions of Article 19(1)(f) of the Constitution.

4. The first point raised by the learned counsel for the petitioners does not arise for decision in this case, because it appears that the petitioners have not filed any security so far. They simply made an application to the court on the 30th September 1955 praying for permission to file security according to the draft which was also filed.

The proviso does not confer any jurisdiction on the Munsif to extend the time for either depositing the amount in cash or for furnishing security. The proviso, that I have mentioned above, is the proviso to Sub-section (7) of Section 7-B and it has to be read along with the provisions of Sub-section (3). Sub-section (3) says that on the making of an application by the landlord under Section 7-B (1), the court shall serve a notice on the tenant asking him to pay the amount of arrears within 15 days of the date of the service of the notice, or to show cause within the said period why an order directing him to be evicted from the accommodation be not passed against him.

We are not concerned with Sub-sections (4), (5) and (6) in this case, and Sub-section (7) says that if the tenant appears in reply to this notice and files an objection other than an objection as to costs of these proceedings, the Munsif shall inform the applicant that he may exercise the option of treating the application filed under Section 7-B as a plaint in a suit for recovery of arrears of rent. The proviso is important and it is as follows:

'Provided that the tenant shall not be Permitted to file any objection, unless he has deposited in court the amount mentioned in the notice or furnishes security to the satisfaction of the court.'

This proviso prohibits the entertainment of any objection unless the tenant has either deposited the amount in cash or furnished security to the satisfaction of the court. It was the duty of the tenant to have furnished proper security before filing an objection and, as the objection has to be filed within 15 days of the service of the notice, it follows that the money has to be deposited or the security furnished within that period.

The court has no jurisdiction to extend the time for making a deposit or furnishing a security, because the time for filing objections has been fixed by the statute, and the statute further says that the court shall not permit the tenant to file any objection till he has made the deposit or furnished the security. The duty has been cast upon the tenant either to deposit the amount or furnish security within time. There is no provision in the Act or in the Rules made thereunder making the court an adviser of a party so that the court should be asked to tell him whether the security bond, that is drafted, is a good one or a defective one. The responsibility is of the tenant and he must file a proper security bond.

5. The order passed on the application, made by the petitioners for an order of the court approving the draft, was that it should be put up along with the application filed under Section 7-B. The learned counsel says that the court should have decided the matter as soon as the application was made and this was a wrong order to be passed. The order may have been a wrong order, but the powers of the court are limited and it was the duty of the petitioners to have asked the court to decide the application and not to postpone passing of orders any further which does not appear to have been done. It further appears that even if the court had approved of the draft, it was not Possible for the draft to have been filed after having been duly registered the very next day. I won't be surprised that it was all dilatory tactics adopted by the petitioners. I, therefore, think that the petitioners have failed to carry out the provisions of Sub-sections (3) and (7) of Section 7-B of the Control of Rent and Eviction Act, and their objection, therefore, may be taken

to have been not entertainable at all.

6. The other point argued is that this interpretation put upon the proviso to Sub-section (7) by me makes the proviso inconsistent with Article 19(1)(f) of the Constitution. The argument is that the landlord may file a very much exaggerated claim and the tenant has either to give up his tenancy rights or to furnish security for the whole amount or deposit it in cash, and this is an unreasonable direction to give.

But the obvious answer to this argument is that under the general law, the right of a tenant for an indefinite period is a right which can be determined by a landlord after giving 15 day's notice. As soon as the period of notice expires, the tenancy comes to an end. It is the Control of Rent and Eviction Act that has put fetters on the rights of the landlords and granted immunity to tenants from ejectment in certain cases. The Legislature has laid down to what extent this immunity should be granted, and the tenants cannot say that they will have advantages conferred by the Act upon them and call the disadvantages to be inconsistent with Article 19(1)(f) of the Constitution.

7. Neither do I find any reason for holding that there is anything unreasonable in the provisions of Sub-sections (3) and (7). It is true that it is possible that a landlord may make an exaggerated claim. At the same time it is well known that many tenants do not pay their rents.

A landlord has been given a right under Section 7-B to apply for the ejectment of the tenant in case the rent has not been paid for a Period of three months. Notice is then issued to the tenant and the tenant is given an option of filing objections or paying up the amount. If he wishes to contest the application filed by the landlord, then in the interest of the landlord it has been considered proper that before he is permitted to contest the application, he should either deposit the amount of the claim in cash or furnish security to the satisfaction of the court.

No fetters have been put on the powers of the court to accept security, and in a proper case the court may accept any security that it considers reasonable in the circumstances of the case. The discretion that has been conferred is a discretion

conferred on a judicial tribunal. I do not think there is any substance in this objection either.

8. The petition fails and is dismissed with costs in favour of the 1st respondent.

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