

Dayal Das Vs. Smt. Sushila Devi

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Court : Allahabad

Decided On : Feb-20-1951

Reported in : AIR1953All755

Judge : Misra, J.

Acts : Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Sections 7B(5)

Appeal No. : Appln. No. 232 of 1950

Appellant : Dayal Das

Respondent : Smt. Sushila Devi

Advocate for Def. : S.D. Misra and ;P.S. Duvedi, Advs.

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

Judgement :

ORDER

Misra, J.

1. These two revision applications are directed against an order passed by the learned Munsif, North Lucknow, under section 7-B, U. P. (Temporary) Control of Rent and Eviction Act (III of 1947). The order relates to a house situate on No. 1,

Jagat Narain Road and occupied by Dayal Das, a refugee from Sind. The house was allotted to the aforesaid tenant on 29-4-1949, under Section 7(1)(a) of the Act. On 30-9-1950, Srimati Sushila Devi, purporting to act as a landlord applied to the learned Munsif for issue of notice to the tenant under Sub-section 3 of Section 7-B calling upon him to pay arrears of rent amounting to Rs. 1625/- at the rate of Rs. 125/- p.m. from 29-8-1949, till 29-9-1950. The application contained the particulars enjoined by Sub-section (2) (a). It was verified in the ordinary way and the learned Munsif issued the notice prayed for. The rent was not deposited within the time specified.

The tenant, however, attempted to file objections regarding the maintainability of the application by Sushila Devi and the rate of rent claimed by her but, in view of the proviso to Sub-section (7) which says :

'That the tenant shall not be permitted to file any objections unless he has deposited in Court the amount mentioned in the notice'

the learned Munsif refused to consider them. He, nevertheless, satisfied himself by reference to the municipal assessment list that Sushila Devi is the real landlord and was, therefore, entitled to the aid of Section 7-B of the Act. But instead of ordering the tenant's eviction and directing him to pay the costs of the application as he should have done in view of Sub-section (5) the learned Munsif gave the tenant ten days from the date of his order for paying the sum of Rs. 1625/- if he desired his objections to be entertained and ordered that if the tenant failed to deposit the amount within the period stated, the application would be treated as unopposed and an order for the eviction of the tenant would be issued under Section 7-B, Sub-section (5). Both the tenant and the landlord are dissatisfied with the aforesaid order and they have come up to this Court by way of revision under Section 115, C. P. C.

2. On behalf of Dayal Das, an attempt is made by his learned counsel to persuade me to look into the grounds of objection and to determine whether or not the rate of rent claimed is the proper rent and further whether Sushila Devi is the real landlord. It has already been stated that the condition upon which the tenant's objections against the notice could be entertained has not been complied with

inasmuch as the sum of Rs. 1625/- was not deposited by him. It is, therefore, not possible to consider the objections on merits.

3. On behalf of the landlord it is contended that the learned Munsif had no jurisdiction to grant extension of time for payment of Rs. 1625/- beyond the period specified in the notice and further in view of Sub-section (5) which mandatorily enjoins that on the failure of the tenant to make the deposit or to file objections, the Court must make an order for payment by the tenant of the costs of the application his omission to do so is unwarranted. The argument, in my opinion, is sound. Failure to make the deposit of the amount mentioned in the notice renders a tenant's objections unentertainable and that being so, it must be held that Sub-section (5) came into operation.

That sub-section provides :

'Where the tenant has been duly served with the notice under Sub-section (3) but has failed to deposit the amount mentioned within the time allowed therein, and he does not file any objection, the Munsif shall, notwithstanding anything in the Transfer of Property Act, 1832, make an order directing that the tenant be evicted from the accommodation and pay the costs of the application.'

There is no provision either in the Act or elsewhere which would justify an order for affording another opportunity to the tenant to make the deposit in order to have his objections heard. The order passed by the Court below is, therefore, set aside.

4. The result is that Section 115-Application No. 38 of 1951 is allowed and Section 115 Application No. 232 of 1950 is dismissed. Dayal Das shall be evicted from the accommodation and he shall pay the costs of the application to the landlord. Having regard to the circumstances of this case, the test of this Court shall be borne by the parties themselves. The stay order dated 15th November, 1950, is discharged and Civil Miscellaneous Application No. 1418 of 1950, is dismissed.

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