

Deo Kumar Bannerjee and ors. Vs. Ashok Kumar Keshri and ors.

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Court : Jharkhand

Decided On : Jan-27-2003

Reported in : [2003(2)JCR48(Jhr)]

Judge : M.Y. Eqbal, J.

Appeal No. : AFAD No. 60 of 1997 (R)

Appellant : Deo Kumar Bannerjee and ors.

Respondent : Ashok Kumar Keshri and ors.

Advocate for Def. : P.K. Prasad and; V.K. Prasad, Adv.

Advocate for Pet/Ap. : V. Shivnath, Adv.

Disposition : Appeal dismissed

Judgement :

M.Y. Eqbal, J.

1. This second appeal is directed against the judgment and decree passed by the Courts below whereby the suit for eviction filed by the plaintiffs-appellants on the ground of default has been dismissed.

2. At the very outset I must indicate that both the Courts below have come to concurrent finding of facts that the defendants are not defaulter. In that view of the

matter the High Court, in second appeal, cannot disturb such findings of fact.

3. Notwithstanding the settled law referred to hereinabove I would like to go into the facts of the case. The plaintiffs filed the suit alleging that the defendants are the, habitual defaulters and have adopted a novel method to show remittance by money order and in collusion with the postal peon used to get endorsement of refusal on the money order coupons so the same amount may be kept in circulation. It is therefore clear that the plaintiffs themselves admit that the defendants are in the habit of remitting rent by money order. The defendants proved the money order coupons to show that rent was continuously remitted by money order. It is well settled that tender of rent is not a condition precedent for remittance. It is equally well settled that it is not necessary to call the postal peon and other authorities of the post office for the purpose of proving the money order coupons. Money order receipts are public documents which is the conclusive evidence of remittance of rent by money order. The lower appellate Court has very correctly recorded finding of fact in paragraphs 20 and 21 of the judgment which is quoted hereinbelow. The learned counsel for the appellants has contended that inspite of the fact that there are endorsements over exhibits A and A/2 to A/8 that the postal peon did not or could not meet the landlord and Exts A/4 to A/6 and A/8 have endorsements that the landlord had gone outside, but the defendants did not make any endeavour to pay the rent for the suit period. There is no provision of law that the tenant would go on making endeavours to pay rent to the landlord even after he has remitted the rent by money order and even if the landlord has gone outside. It is also not obligatory on the part of the tenant to request all the co-owner-landlords to accept the rent. This contention of the learned counsel cannot be accepted.

There is substance in the case of the defendants that it is the habit of the plaintiffs to go on instituting false cases against their tenants one after another. The plaintiffs have failed in their earlier attempts to evict the defendant No. 1 from the suit premises. Exts F, G, H, I and J bear the testimony to the effect that the plaintiffs have made several futile attempts to evict the defendant No. 1 from the suit premises. They instituted title suit No. 115/80 and eviction suit No. 11/88 for the eviction of the defendant No. 1 but lost the cases in the trial Court as well as in

the appellate Courts. There was a reasonable apprehension that the landlord may try to make the tenant a defaulter and therefore the defendant No. 1 remitted the rent by postal money order. It cannot be said to be novel method adopted to pay rent by sending it through money orders.'

4. In my opinion the question of law formulated at the time of admission to the effect that whether without any endorsement by the postal peon in the money order coupon there will be presumption of tender of money remitted by money order to the landlord is answered accordingly. Since tender is not a condition precedent for remittance of rent, the substantial question of law formulated at the time of admission in this appeal does not arise.

5. For the aforesaid reason there is no merit in this appeal which is accordingly dismissed.

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