

Bulaki Dass Vs. Ram Swaroop

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Court : Rajasthan

Decided On : Feb-16-2009

Reported in : RLW2009(2)Raj1175; 2009(1)WLN64

Judge : Vineet Kothari, J.

Appellant : Bulaki Dass

Respondent : Ram Swaroop

Disposition : Appeal allowed

Judgement :

Vineet Kothari, J.

1. This second appeal has been preferred by the tenant - defendant Bulaki Dass against the concurrent judgments of two Courts below giving eviction decree against him and in favour of the plaintiff Ram Swaroop on the ground of second default being committed in payment of rent by the tenant.

2. The Courts below found that earlier suit filed by the plaintiff land-lord, namely, suit No. 55/1977 was decided on 22.7.1978 giving benefit of first default to the tenant under the provisions of Sections 13(6) of the Rajasthan Rent Control Act, 1950. On other issues, the plaintiff filed an appeal being appeal No. 52/1978 against the said judgment of the learned trial Court which also came to be

dismissed by the first appellate Court on 11.7.1980 and the present second suit was filed by the plaintiff, namely, Suit No. 58/1981 on 4.2.1981 on the ground that the tenant had committed second default in payment of rent for the month of June, 1980 to January, 1981 viz. for seven months. The said suit was decreed by the learned trial Court on 17.12.1986 and the first appeal filed by the defendant - tenant also came to be dismissed, namely appeal No. 3/1987 by the court of learned Additional Dist. Judge No. 2, Jodhpur on 23.10.1992. Being aggrieved by the said judgment and decree of both the courts below, the defendant has approached this Court by way of present second appeal which was admitted by this Court on 1.11.1992 on the following substantial question of law framed by this Court on 1.12.1992:

(i) Whether the sending of the money orders for the rent in relation to the months of September, October, November and December, 1980 and refusal of ' the same by the landlord amounts to valid tender by the tenant under Section 13(1)(a) and, therefore, the tenant cannot be held to be defaulter on account of non-payment of rent for these months and therefore, no decree for eviction can be passed against the appellant?

3. Mr. J.L. Purohit, learned Counsel appearing for the tenant - appellant submitted that the rent for the month of June, 1980 of Rs. 35/- was tendered in the Court of learned Munsif Magistrate on 10.7.1980, but the same was deposited on 14.7.1980 and similarly rent for the month of July, 1980 vide Ex.A/1 was deposited in the same Court on 14.8.1980, whereas the rent for the month of August, 1980 was deposited vide Ex.A/2 on 12.9.1980. He further submitted that for the month of September, 1980, money order of Rs. 35/- vide Ex.A/3 was sent on 16.10.1980 and for October, 1980 vide Ex.A/6 money order was sent on 10.11.1980 and for November, 1980 vide Ex.A/7 money order of Rs. 105 (for three months September to November, 1980) was sent on 10.12.1980. He further submitted that since all these three money orders were returned with remarks 'refused' by the plaintiff landlord vide Ex.A/10, the money order of Rs. 140/- (for four months September to December, 1980) was sent on 10.1.1981. Since the said money orders were refused, he submitted that under Section 19A-of the Act, vide Ex.A/11, a sum of Rs. 175/- was deposited in the court of learned Munsif on 10.2.1981 for the month

of September, 1980 to January, 1981 at the rate of Rs. 35/- per month for five months. He submitted that the Courts below have, therefore, erred in holding against the defendant - tenant that he had committed second default and the said payment of rent was not valid tender in the eye of law and since the defendant tenant was ready and willing to pay rent for the suit premises, no eviction decree could be passed against him. He relied upon the following judgments in support of his submissions.

4. The learned Counsel for the appellant has relied upon the decision of Hon'ble Supreme Court in the case of P.M. Punnose v. K.M. Munneruddin reported in : AIR 2003 SC2993 in which the Hon'ble Supreme Court has observed as under:

16. There appears to be a bona fide dispute as to the quantum of arrears, that is, as to what was the exact amount of rent paid by tenant - appellant to the landlord-respondents and consequent upon which payment the liability for now many number of months came to be extinguished. The facts found indicate the tenant - appellant remitting the amount of rent by money orders before and after and even during the pendency of the proceedings and some of the money orders having been refused by the landlord-respondents. The present one is a fit case where the Controller should have exercised his power under proviso to Sub-section (2) of Section 10 of the Act by passing an order thereunder and giving the tenant - appellant a reasonable time, not exceeding 15 days, to pay or tender the rent due by him to the landlord upto the date of such payment of rent. If such order was complied with by the appellant -tenant, then the application for eviction should have been rejected. The learned Controller has erred in not passing that order.

5. In the case of Shiv Dutt Jadiya v. Ganga Devi reported in : [2002]1SCR1167 , the Hon'ble Supreme Court has observed as under:

On a suit for eviction being instituted, in respect of compliance with Sub-section (4) by the tenant as contemplated by Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, the expression used is 'Court'. The legislature has not chosen to use the words 'trial court' in the framing of Section 13. Ordinarily, an appeal is a continuation of suit. The tenant is bound to comply with the provisions of Sub-section (4) if the claim for eviction on having been denied by

the trial court is pursued in appeal by the landlord. In spite of a decree for eviction having been refused by the trial court, the appellate court may still, in an appeal preferred by the landlord, pass a decree for eviction. On the date of the passing of the decree, the appellate court shall have to see, in view of the obligation cast on it by subsection (6), whether the tenant had made deposit or payment, as required by subsection (4). Any view to the contrary may result in creating an incongruous or inequitable situation.

6. In the case of *Kailash Chandra v. Sri Kishan* reported in , the Full Bench of this Court has held as under:

32. Thus, the golden rule of interpretation i.e. The literal interpretation was violated-and, therefore, the law laid down in the cases of *Hanuman Prasad v. Gairdi Lal* ; *Chait Ram v. Ramdeen* and *Hanspuri v. Bhanwar Lal* 1987 Raj LW 395 is held not to be a good law. The question referred to this Bench is answered accordingly and it is held that as and when a suit, first or subsequent is filed, the Court seized of the suit is required to determine the provisional rent as provided Section 13(3) of the Act.

7. In the case of *Mahendra Raghunathdas Gupta v. Vishwanath Bhikaji Mogul and Ors.* reported in : [1997]3SCR840 , the Hon'ble Supreme Court has observed as under:

8. Two things arise for consideration (1) if the tenant was justified in sending the rent to the lawyer in spite of his notice to send the rent to his client and (2) if the tender of rent by cheque is a valid tender. Taking the second point first merely because the tenant has made payment of rent by cheque, it cannot be assumed that the tenant was not ready or willing to pay arrears of rent.

8. In the case of *Smt. Manak Bai v. Kalyan Bux* reported in 1989(2) RLR 704 : 1988(2) RLW 475, this Court has held as under: When the tenant acts in any of the methods provided in Clause (a), (b) and (c) of Sub-section (3) of Section 19-A, he will be deemed to have paid or tendered the amount of rent and as such ground contained in Clause (a) of Section 13(1) would not be made out as tenant would be deemed to have paid or tendered the amount of rent due from him and in

this manner he can escape the liability from eviction on the ground of default of payment of rent. Even if Sub-section (4) would not have been there, as regard remittance of rent by money order it could not be held that Clause (a) of Sub-section (1) of Section 13 is satisfied and such a finding could not be arrived at, that the tenant has neither paid nor remitted the amount of rent due from him for six months. Thus, if the tenant acts in any of the methods provided in Sub-section (3) of Section 19-A, he can escape the liability from eviction on the ground of default in payment of rent under Section 13, in view of subsection (4) of Section 19-A of the Act.'

9. On the Side opposite, Mr. Jitendra Chopra, learned Counsel appearing for the plaintiff - respondent vehemently submitted that the concurrent findings of two courts below about the second default is finding of fact and as a matter of fact, no substantial question of law arises in the present appeal. However, on the substantial question of law, framed by the Court as quoted above, he submitted that since both the courts below had found that the tenant had failed to pay rent for three months from June, 1980 to August, 1980 as alleged deposit in the Court of learned Munsif without following the procedure under Section 19A of the Act was not deposit at all and since the earlier suit proceedings stood terminated on 11.7.1980 with the dismissal of the appeal of the plaintiff himself by the first appellate Court, the alleged deposit by the tenant on 14.7.1980 three days thereafter for the month of June, 1980 after the decision of said appeal in the Court of learned Munsif is no valid tender of rent in the eye of law. Similarly he submitted that for the month of July, 1980 and August, 1980 also, the alleged deposit in the same Court by the tenant was of no consequence and thus, six months' second default stood completed with the non-payment of rent from June, 1980 to November, 1980. He also submitted that since there was no payment of rent for three months from June, 1980 to August, 1980, the plaintiff landlord was well within his right to refuse money order for the month of September, 1980 to November, 1980 and since the tenant had deposited the said rent for the month of September, 1980 to January, 1981 only on 10.2.1981 under Section 19A of the Act, which too was not in accordance with law, as the procedure required was not followed, the eviction decree passed by two Courts below for the second default is absolutely proper and justified in law and the same does not require any

interference in the present second appeal.

He submitted that the learned trial Court has itself rightly found and which finding has been affirmed by the first appellate Court that the second default for the month of June, 1980 to November, 1980 was enough to pass eviction decree against the defendant - tenant. He submitted that even the so called deposit under Section 19A of the Act on 10.2.1981 was not in accordance with law as requirement of first tendering the same to the landlord-plaintiff and thereafter deposit of same in the Court was not followed by the tenant. He also urged that once the second suit was instituted on 4.2.1981, there was no justification of any payment on the part of the tenant under Section 19A of the Act. He therefore, submitted that such habitual non-payment on the part of the tenant clearly attracted the provisions of Section 13(1)(a) of the Act read with proviso to Section 13(6) of the Act and therefore, the decree on the ground of second default by the two courts below deserves to be upheld and maintained and the second appeal deserves to be dismissed by this Court. He relied upon the following Judgments in support of his submissions.

10. The learned Counsel for the respondent - landlord has relied upon the decision of this Court in the case of Gauri Lal v. Gujar Mal reported in 1992(1) WLC (Raj.) 437 in which this Court has held as under:

It is, therefore, clear that on the one hand, the Legislature has protected the interest of the tenant and has put restrictions on the court's power in ordering eviction of a tenant except on grounds specified in Section 13(1)(a) of Section 13(1)(i) of 1950 Act, on the other hand, it has specifically declared that a tenant who makes a default in the payment of rent of an accommodation for six months for which he has already obtained benefit under Section 13(6) or Section 13A of the Act, shall not be entitled to relief under Section 13(6) of 1950 Act. Thus a tenant who has availed the benefit under Section 13(6) or 'has availed benefit of Section 13A, he cannot claim relief under Section 13(6) that no decree of eviction be passed against him on the grounds specified in Section 13(1)(a). The provision clearly lifts the embargo on passing the decree of eviction on the ground of default in the cases of habitually defaulting tenants.

11. In the case of Choit Ram v. Ramdeen - S.B. Civil Second Appeal No. 38/1991 decided on 28.8.1991, which has however been held to be no longer a good law by Full Bench in the case of Kailash Chandra v. Sri Kishan (supra) this Court as held as under:

In case the suit for eviction is based on the ground set forth in Clause (a) of Sub-section (1) with or without any other ground referred to in that section, but so far as the cases based on second default is concerned, whether it is necessary or not that has to be seen. According to proviso appended to subsection (6) of Section 13, a tenant shall not be entitled to any relief under this subsection if having obtained such benefit or benefits under Section 13-A of the Act in respect of any such accommodation if he again makes a default in respect of such accommodation for six months. It is not in dispute that in the present case, the defendant appellant has already availed the benefit of subsection (6) of Section 13 of the Act in the earlier suit and as he has already availed the benefit of Sub-section (6) of Section 13 and, therefore, in view of the proviso appended to Sub-section (6) of Section 13, he is not entitled to any relief under Sub-section (6). When the defendant - appellant is not entitled to any relief under Sub-section (6) then the determination of rent, in my view, was not at all necessary. When the defendant cannot save himself from ejectment by making payment or depositing the rent under Section 13(4) of the act and the benefit of subsection (6) was not available to him hence the determination of provisional rent under Sub-section (3) of Section 13 of the Act is not at all necessary to be made and if the provisional rent is not determined then that will not, in any way, affect the trial. Similar case came up for consideration before this Court in Hanspuri v. Bhanwar Lal and Anr. 1987 (II) RLR 329 and Hon'ble K.S. Lodha, J. in that case, after considering the law on the point, came to the conclusion that the exercise of the determination of rent under Section 13(3) of the Act in second suit would be futile inasmuch as the proviso to Sub-section (6) of Section 13 of the Act clearly provides that the tenant will not be entitled to the relief under Sub-section (6) if he has already taken the advantage of it in the previous suit.

12. In the case of Stephen D'Silva v. Jaipur Chalchitra Pvt. Ltd. reported in 1992(2) RLW 651, this Court has held as under:

(7) Section 19-A was inserted in the Act in the year 1976 with a view to remove difficulties of tenants in paying rent to the landlord in certain situations. The Section 19-A, therefore, provides for depositing rent in Court. If the rent is deposited in Court after following the procedure laid down under the said section then the tenant will be absolved from paying the rent for that particular period to the landlord, the amount of which has been deposited in Court. It is, therefore, mandatory to follow the procedure laid down in Section 19A to get the advantage of the provisions of this Section. Sub-section (3) of Section 19-A lays down the methods, by which, the rent can be sent by money order or tenant may give notice in writing to the landlord to specify a bank and account number, in which, the rent may be deposited by the tenant to the credit of landlord. Clause (c) of Sub-section (3) provides as under:

(c) ...

In the matter under consideration neither the rent was sent by postal money order nor any notice was given to Mrs. Patricia regarding payment of rent. If there was any bonafide doubt as to person or persons to whom the rent had to be deposited in court within 10 days/15 days referred to in Clause (b) or in Sub-section (1) of the Act. The tenant is thereafter, expected to further continue to deposit any rent, which may subsequently become due in respect of premises. None of this procedure was followed and amount of arrears of rent was deposited in the Court Under Section 19-A of the Act. Since the address/whereabouts of Mrs. Patricia were not known and no notice could be issued to her from Court regarding the deposit of rent, the application Under Section 19A was rightly dismissed. Thus, it is evident that the deposit of rent in the Court' Under Section 19-A was illegal and against the mandatory provisions of Section 19 A of the Act. It can, therefore, be said that the respondent did not exhaust the methods laid down in Sub-section (3) and (4) of the Act, therefore, such deposit of rent is invalid and such account of rent remains outstanding despite its deposit in Court.

13. In the case of Smt. Swaran Devi v. Kailash Chandra Jain reported in 1996(1) RLR 57 : RLW 1996(1) Raj. 292, this Court has held as under:

A tenant, against whom the suit for eviction and arrears of rent has been filed has a right to deposit the rent during the pendency of the suit in the Court itself and on such deposit being made, the provisions of Order 24, rule 2 and 3 C.P.C. will apply. I do not agree with the submission of Mr. Jain that the rent can be deposited only under Section 19A of the Act. In my opinion after the service of summons on the defendants, he should deposit the rent in the suit itself and not under Section 19A of the Act. Question No. 1 framed by this Court is decided accordingly.

14. In the case of *Atma Ram v. Shakuntala Rani* reported in : AIR 2005 SC3753 , the Hon'ble Supreme Court has observed as under:

It will thus appear that this Court has consistently taken the views that in Rent Control Legislations if the tenant wishes to take advantage of the beneficial provisions of the Act, he must strictly comply with the requirements of the Act. If any condition precedent is to be fulfilled before the benefit can be claimed, he must strictly comply with that condition. If he fails to do so he cannot take advantage of the benefit conferred by such a provision.

The Act, therefore, prescribes what must be done by a tenant if the landlord does not accept rent tendered by him within the specified period. He is required to deposit the rent in the Court of the Rent Controller giving the necessary particulars as required by Sub-section (2) of Section 27. there is, therefore, a specific provision which provides the procedure to be followed in such a contingency. In view of the specific provisions of the Act, it would not be open to a tenant to resort to any other procedure. If the rent is not deposited in the Court of Rent Controller as required by Section 27 of the Act, and is deposited somewhere else, it shall not be treated as a valid payment/tender of the arrears of rent within the meaning of the Act and consequently the tenant must be held to be in default.

15. In the case of *Ratan Lal v. LR's of Heera Lal* reported in , this Court has held as under: '13. As has been observed in the preceding paragraphs, in the suit in question, no provision was made in the decree of the first suit about the amount deposited in the first suit. That being the position, the analogy as has been settled by the Hon'ble Supreme Court in *Jadiya's case* (supra) cannot be pressed into service. The law laid down in *Jadiya's case* is to be effect that a tenant should not

be made to make deposits twice. This proposition inheres in it that the deposit of rent has to be one, which is available to the landlord. In the instant case, the advance deposit made in the earlier suit having not been provided for in the decree, are not available to the landlord. Thus, the deposits lose its significance as far as landlord is concerned. If the tenant on its own volition ignores to make a proper deposit, then the mandate of Section 13(1) of the Act of 1950 would not characterise such tenants to be done who is ready and willing to make payment of rent. The money having not been deposited as being able to be assignable to the landlord, cannot be considered to be a deposit of rent and then, the law laid down in *Jadiya's* case would not govern the facts of this case.'

16. In the case of *Kuldeep Singh v. Ganpat Lal and Anr.* reported in 1996(1) RLW (SC) 17, the Hon'ble Supreme Court has held as under.

Under Section 19-A(3)(c) the tenant can deposit the rent in the Court only if the conditions laid down in the said provision are satisfied. It is the admitted case of the appellant that these conditions are not satisfied in the present case. The deposit which was made by the respondent in Court on October 29, 1982 cannot, therefore, be regarded as a deposit made in accordance with Clause (c) of Sub-section (3) of Section 19-A and the appellant cannot avail the protection of Sub-section (4) of Section 19-A and he must be held to have committed default in payment of rent for the months of May, 1982 to October, 1982. This means that the decree for eviction has been rightly passed against the appellant on account of default in payment of rent of the period of six months.

17. In the case of *Bajrang Lal v. Ramdeo* reported in 1988(1) RLR 360 : 1988(1) RLW 343, this Court has held as under:

It is clear from the analysis of Clause (c) that in all cases other than bonafide doubt as to the person or persons to whom the rent is payable, rent can be deposited in the court, if the following two conditions are satisfied namely:

(i) The rent has been remitted by postal money order and it has been received back under a postal endorsement of refusal or unfound and

(ii) the landlord has not specified a Bank and Account Number, deposit notice in writing requiring the same.' If the intention of the Legislature would have been that the rent may be deposited in the Court after the compliance of Clause (a) or Clause (b) only, it could have used the word 'OR' instead of 'AND'. Because of the said difficulties in depositing an amount in the court and its withdrawal therefrom, the legislature provided that the amount should be deposited in the Court only after exhausting both the methods laid down in Clauses (a) and (b).

Reading all the three clauses of Sub-section (3) of Section 19A together, it is clear that the tenant has to comply with the provisions of both these clauses before depositing the rent in the Court. After their compliance, he may deposit the rent in the Court. Thereafter he may continue to deposit the rent in the Court in respect of the subsequent months to escape ejectment on the ground of default of payment of rent.

In both these cases, the defendants did not issue any notice under Section 19-A (3)(b) of the Act requiring the plaintiffs to specify their banks and account numbers. It is thus, clear that the said Condition No. 2 was not fulfilled in any of these cases. As such the deposits of the amount of rent with the court were not valid. They cannot be taken into consideration.

18. Having heard the learned Counsel at length and having gone through the record of the case and the judgments of two Courts below and the judgments cited at Bar, this Court is of the clear opinion that the courts below cannot be said to have erred in any manner in passing the eviction decree against the appellant - tenant on the ground of second default. The deposit in the court of learned Munsif Magistrate without any procedure known to law at all under Section 19A of the Act or otherwise is of no consequence and cannot enure to the benefit of the defendant - tenant. The said deposit, if any, is no deposit and has been rightly treated as not a valid tender of rent by the defendant - tenant by the Courts below, Admittedly, the first deposit itself for the month of June, 1980 was made by the tenant on 14.7.1980 after the suit proceedings terminated on 11.7.1980 with dismissal of the appeal by the first appellate court. Therefore, on 14.7.1980, no proceedings were pending in the Court and therefore, deposit of rent for the month

of June, 1980 in the learned trial Court was not at all a valid tender. Similarly deposits for the month of July, 1980 and August, 1980 were also without any consequence. The present and second suit came to be filed by the plaintiff on 4.2.1981. Though it was required of the learned-trial Court to determine the arrears of rent under Section 13(3) of the Act, since it was a suit on the ground of second default, merely because that is not done, the defendant - tenant cannot take any advantage of that situation. After institution of the suit on 4.2.1981, any deposit under Section 19A of the Act was also not permissible as held by this Court in Swaran Devi v. Kailash Chandra (supra). The provisions of Section 19A of the Act are meant to be resorted if the landlord illegally refuses to accept the rent from the tenant after following the procedure under Clause (a) and (b) both, as has been laid down in the case of Bajrang Lal v. Ramdeo (supra). Nothing of this sort under Clause (b) was followed by the appellant for any of the default months upto January, 1981.

The tenant in order to maintain his tenancy right is allowed to deposit the rent in the Court instead of payment of the same to the landlord only after following the mandatory procedure under Clause (a) and (b) both. In the present case, there is nothing on record to show that the rent atleast for the month of June, 1980 to August, 1980 was tendered to the landlord at any point of time, therefore, deposit for these three months cannot be said to be a valid deposit as per provisions of Section 19A of the Act. Similarly, for the month of September, 1980 to November, 1980, the money order sent by the defendant which were of course refused by the plaintiff landlord for these three months also, there was no deposit of the same by the tenant in the Court under Section 19A of the Act. Thus, for six months from June, 1980 to November, 1980, the second default stood committed by the tenant. The deposit under Section 19A of the Act which came to be made by the defendant- tenant on 10X1981 for 5 months (September, 1980 to January, 1981) was not in accordance with law, after institution of present suit on 4.2.1981 and as procedure both under Clause (a) and (b) was not followed by the tenant and therefore, the said deposit also does not wash away the second default which already stood committed by the defendant - tenant. Admittedly, the law does not permit any leniency and waiver in the case of second default and eviction decree under Section 13(1)(a) of the Act is bound to be passed on commitment of second

default in payment of rent. As already discussed above, the second default for the period of six months from June, 1980 to November, 1980 stood committed by the defendant - tenant on 15th December, 1980 and the eviction decree was bound to be passed and was, therefore, rightly passed by the courts below.

19. The judgments cited by the learned Counsel for the appellant - defendant do not help the case of the appellant in any manner, and they are distinguishable from the facts of the present case, whereas the judgments relied upon by the learned Counsel for the plaintiff-respondent fully support the case of the plaintiff-respondent particularly decision of the Hon'ble Supreme Court in the case of Kuldep Singh (supra), decision of this Court in the case of Bajrang Lal (supra) and the decision of this Court in the case of Swaran Devi (supra) also support the case of the plaintiff respondent.

20. Consequently, this Court is of the opinion that there is no force in the present second appeal filed by the appellant-defendant and the same deserves to be dismissed and the substantial question of law quoted above deserves to be answered against the defendant - tenant and the decree of eviction deserves to be upheld by this Court. Accordingly, this second appeal is dismissed with costs throughout.

21. The appellant-defendant shall handover vacant and peaceful possession of the suit premises to the respondents-plaintiffs, within a period of two months from today. The appellant-defendant shall also pay arrears of rent and mesne profits if any within two months and shall pay further enhanced mesne profit of Rs. 1000/- per month to them with effect from February, 2009 payable every month before 15th of succeeding month till the actual handing over of the vacant and peaceful possession of the suit property to the respondents - landlords. The decree be made accordingly. If the appellant - defendant fails to handover vacant and peaceful possession of the suit property to the respondent-plaintiff within a period of two months from today as aforesaid or fails to pay mesne profit including the arrears of rent and mesne profit as directed above, the plaintiff-respondent shall not only be entitled to seek execution of the decree in normal course, but the appellant-defendant may also render himself liable for action under the contempt

law.

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