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Court : Rajasthan

Decided On : Feb-13-1986

Reported in : 1986(1)WLN421

Judge : Kishore Singh Lodha, J.

Appeal No. : S.B. Civil Revision No. 32 of 1986

Appellant : Devi Singh

Respondent : Ravi Shankar

Disposition : Petition dismissed

Judgement :

Kishore Singh Lodha, J.

1. This is a tenant's revision against the order of the learned District Judge, Bhilwara dated 7.11.83 dismissing his appeal against the order of the learned Munsif, Bhilwara dated 2.8.83 by which he refused to extend the time for deposit of rent for the month of August, 1982 and striking out his defence against eviction under Section 13(5.) of the Rajasthan Premises (Control of Rent & Eviction) Act (here in after referred to as 'the Act').

2. I have heard the learned counsel for the parties.

3. The plaintiff's suit was inter alia based on the ground of default. The rent was determined under Section 13(3) of the Act upto 31.7.82 on 28.8.82 and the tenant was granted time of three months to deposit the same and this amount was deposited on 25.11.82. The rent of the month of August, 1982 fell due for deposit on 15.9.82 but was not deposited by that day but was deposited on 17.9.82 that is two days late. The ground put forward for condonation of delay of these two days was that the tenant had filed an appeal against the order dated 28.8.82 determining the rent and that appeal was pending and the tenant was under the hope that it will be accepted. The first date fixed in that appeal was 17.9.82, however the appeal was not heard on that day and it was adjourned to 23.9.82 and therefore on 17.9.82 itself the rent for the month of August, 1982 was deposited. The learned Munsif did not accept this ground for condonation of delay holding that there had been a default in the deposit of the rent of the month August, 1982 the tenant had incurred the liability of his defence against eviction being struck off and he accordingly struck off the defence. It is urged by the learned counsel for the petitioner-tenant that the provisions of Section 13(4) and (5) should be construed very liberally and in favour of the tenant keeping in view the purpose for which these provisions have been made as these beneficial legislation are for the tenant & a hypertechnical view should not have been taken by the Munsif and upheld by the learned District Judge. In support of his contention he has placed reliance upon Lalchand v. Sant Ram 1978 R.L.W. 119 and Jagannath v. Jodha Ram 1980 RLW 42. On the other hand, the land-lord non-petitioner supported the orders of the courts below.

4. I have given my careful consideration to the rival contentions. It is true that these provisions have to be given a liberal meaning and if there are sufficient grounds for condonation of the delay, the court should lean towards extending the time for deposit of the rent. However, it does not mean that even if there is no sufficient or reasonable ground the court should always condone the delay merely because it has the power to condone the delay by 15 days so far as the deposit of the monthly rent Section 15(4) of the Act is concerned. In the present case the ground put forward by the tenant was that since his appeal was pending against the order dated 28.8.82 and he was hopeful of the success of the appeal, he did not deposit the rent for the month of August, 1982 by 15th of September, 1982.

this ground did not weigh with the learned Munsif and the learned District Judge and I do not see any reason to take a different view. It may be noted that tenant had filed the appeal against the order dated 28.1.82 and 17-9-82 was the first date fixed for the hearing of the appeal. There was no certainty that the appeal would be heard on that very day because the service of the respondent and the receipt of the record were conditions precedent for the hearing of the appeal on that day and, therefore, the tenant could not have been under any bonafide belief the appeal would be heard on 17-9-1982. His ground that he was hopeful that the appeal would be accepted also does not appeal to be the reasonable ground for his not depositing the rent by the 15th of September, 1982 because if that was so he would not have deposited the rent on 17.9.82 also because on 17.9.82 the appeal was adjourned to 23.9.82 when there was every likelihood of the appeal being heard. In these circumstances when the courts below did not find bonafides on the part of the tenant in not depositing the rent in time and refused to extend the time this Court sitting in revision would not be justified in interfering with that order. The authorities relied upon by the learned counsel do not appeal to be at all application to the facts and circumstances of this case. In Lalchand's case (supra) the court interfered because the application for extension of time was refused only on the ground that it had been filed after the period of 15 days had already expired and in the opinion of this Court the trial court had not become functus officio and could have exercised its power of extension of time even after the expiry of the original period.

5. In Jagan Nath's case (supra) this court was of the opinion that the time for depositing of the rent fixed by the court expired during the period of winter vacation and, therefore,' the deposit of the rent on the opening day was within time and the tenant was not guilty of any default. In the course of the judgment the court has of course observed that 'this revision deserves to be accepted, on yet another ground. When the legislature has allowed discretion to court to allow maximum 3 months time under set. 13(4) of the Act for depositing the amount of arrears of rent the court should not be conservative and strict, by depriving the tenant of this benefit for doing social justice. Unless in a given case, exceptional reasons warrant it, invariably and generally the Court should allow maximum time by extending it on the slightest bonafide ground.' The learned counsel for the

petitioner has led great stress on this observation. Having considered this observation I am of the opinion that even if this observation does not help the petitioner in as much as it also clearly says that this leniency has to be extended to the tenant on the slightest bonafide ground. Thus even though the time may be extended on the slightest ground that slightest ground must be bonafide and if it is not bonafide then the court cannot extend the time merely on the ground that it is a beneficial legislation for the tenant. In Lalchand's case (supra) also, while exercising the discretion in favour of the tenant the court had observed that 'in my view, the provisions of Section 13 have been amended so as to remove the hardship to the tenant, where he is unable to deposit the rent month by month within the specified time on account of some genuine difficulties or unforeseen obstacle in his way or for reasons beyond his control and beneficial construction should be given to the amended provisions of sub- section(4). Thus it is clear that the time cannot be extended merely for asking and the tenant has to show some good and bonafide reason for the extension of time. This having not been done in this case the courts below were justified in refusing the extension.

6. The revision, therefore, fails and is hereby dismissed.

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