

Naresh Kumar and ors. Vs. Pyar Chand

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Court : Rajasthan

Decided On : May-05-1995

Reported in : 1995(2)WLN389

Judge : J.R. Chopra, J.

Appeal No. : S.B. Civil Second Appeal No. 158 of 1981

Appellant : Naresh Kumar and ors.

Respondent : Pyar Chand

Disposition : Appeal allowed

Judgement :

J.R. Chopra, J.

1. This appeal is directed against the judgment of the learned Addl. District Judge, Bhilwara dated 16.5.1981 whereby the learned first appellate court has held that the defendant-respondent Pyarchand has not committed any second default and so, he cannot be evicted from the suit-premises.

2. In this case, the learned trial court i.e. learned Munsif and Judicial Magistrate, Bhilwara vide his Judgment dated 6.1.1981 has held that the defendant has already taken the benefit of Section 13(4) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short 'the Act') and, therefore, he being a second

defaulted, he is liable to be evicted from the suit premises.

3. In this case, the following substantial question of law has been framed on 2.12.1981:

Whether on the facts and in the circumstances of the case, the learned Addl. District Judge, Bhilwara was not right in holding that the tenant respondent did not commit default in payment of rent for the period between 1.1.1978 to 31.8.1978? If the answer to this question is in the affirmative, whether the plaintiffs-appellants are entitled to evict the defendant as it is a second default?

4. I have heard Mr. R.C. Maheshwari, the learned Counsel appearing for the plaintiffs-appellants and M/s N.P.Gupta and R.Chouhan for the defendant-respondent and have carefully gone through the record of the case.

5. In this case, admittedly defendant-respondent pyarchand is the tenant of plaintiffs-appellants and tenancy starts from first of each month and the monthly rent payable is Rs. 70/-. It is also not disputed that earlier a suit on the basis of default was filed and that suit came to be decreed vide judgment dated 16.5.1977 passed by the learned Addl. Munsif and Judl. Magistrate, First Class, Bhilwara in case No. 207/77, wherein the defendant admitted his first default and wanted to take benefit of the provisions of Section 13(4) of the Act. He had deposited a sum of Rs. 1021/- as arrears of rent and, therefore, giving him the benefit of Section 13(4) of the Act, the suit for eviction filed against him was dismissed.

6. Now, it has been claimed that the tenant-defendant-respondent has committed the second default in not paying the rent from 1.1.1978 to 31.8.1978. However, the defendant-respondent has taken the plea that he has always been ready to pay the rent but the plaintiffs-appellants did not accept the rent. Not only he paid two months rent to him which was accepted by him but later on, he returned back the amount of rent to him after 2-3 days at the behest of his father and, thereafter, he deposited the rent under Section 19-A of the Act in the Court. According to the defendant-respondent, rent from 1.1.1978 to 30.6.1978 was deposited by him in Court under Section 19-A of the Act on 26.6.1978 and the rent for the months of July to October, 1978 was deposited by him on 6.11.1978 and the rent for the

months of November and December, 1978 was deposited by him on 18.12.1978 and, therefore, he has committed no default. It was pleaded that the rent was offered to the plaintiff; which was accepted by him but it was returned back to him after 2-3 days. It has not been stated in para 3 of the written statement as to whether this has happened prior to the deposit of rent upto December 1977 under Section 19A of the Act or it has happened as regards the deposit of rent for the months of January and February, 1978. This assertion has been probably intentionally kept vague. However, in para 12 of the written statement, it has been clarified that the rent for the months of January and February 1978 was paid to the plaintiff but the plaintiff after 2-3 days returned it back to him at the behest of his father. Whether this rent was paid to plaintiff Naresh Chandra or plaintiff Suresh Chandra, it has not been specifically disclosed in the written statement filed on behalf of the defendant respondent.

7. About this plea, Issue No. 2 was framed. It has been contended by Mr. Maheshwari that the plaintiff-appellant gave a notice to the defendant that he has committed default in payment of rent upto 31.8.1978, on 10.8.1978. A reply to this notice has also been sent to the plaintiff by the defendant on 28.8.1978, in which, it has been stated that the tenant-defendant-respondent has tried to pay the rent number of times to the plaintiff-appellant but he has not accepted the rent intentionally because he wants to harass the defendant-tenant. He has further stated that the matter went to the extent that initially the rent was accepted but it was returned after 2-3 days and thereafter, the rent was deposited in the court. Application Ex.A. 2 dated 14.4.1977 was filed by Shri P.L. Ajmera, Advocate and this application pertains to the deposit of rent under Section 19-A of the Act regarding rent for the months of May, June and July, 1977. Application Ex. A. 1 dated 27.5.1978 has also been filed by Shri P.L. Ajmera, Advocate under Section 19-A of the Act for despositing the rent for the months of January 1978 to June 1978. In para 3 of this application, it has also been stated that although the defendant was ready to pay the rent but the plaintiffs in order to increase the rent were not ready to accept the rent and therefore, rent for these six months may be allowed to be deposited in the Court. It has not been mentioned in this application that the rent for two months was paid to the plaintiff and it was accepted by him and after about 2-3 days, it was returned back to him. It has also not been

mentioned in this application that at whose behest, rent of two months was returned back to him. This application is prior to the filling of the reply to the notice sent by the plaintiff before filing of this suit. This reply to the notice was sent on 28.8.1978 whereas this application is dated 27.5.1978. Be that as it may, when plaintiff Suresh Chandra entered in the witness box as P.W. 1, it was suggested to him in his cross-examination that the rent for the months of February and March 1978 was paid to him. He has denied this fact and had stated that no such rent was ever paid to him. Now, when defendant Pyarchand entered in the witness box, he has stated that the rent for the months of January and February, 1978 was paid to the plaintiff and it was kept by him for 4 days and thereafter, plaintiff Naresh Chandra came and returned back that amount of rent and told him that they will not keep the rent with them and will get the shop vacated from him but when he was cross-examined, he has changed his version and has stated that he has paid the rent to plaintiff Suresh Chandra and plaintiff Suresh Chandra alone came to him and returned back the amount of rent for two months to him. Thus, the statement of defendant Pyarchnad in his cross-examination is contradictory to the statement given in his examination-in-chief.

8. Defendant Pyarchand has further stated that before depositing this amount of rent in Court, he sent 5-6 money orders to the plaintiff but copies of those money orders sent to the plaintiffs and the receipt showing that money orders were not received by the plaintiff have not been filed. Thus, this contention of defendant-respondent Pyarchnad that he has paid the rent for the months of January and February, 1978 to the plaintiff, which was kept for 4 days and was returned back to him appears to be an after-though plea. There is no mention about this fact in his application filed before the court on 27.5.1978. Moreover, the statement of defendant Pyarchand is also contradictory and he has not disclosed as to whom, the rent was paid by him, which was returned back to him after 2-3 days at the behest of his father. As stated above, in his examination in chief defendant Pyarchand has stated that rent for the two months was paid to plaintiff Nareshchand whereas in his cross-examination, he has stated that it was paid to plaintiff Suresh Chandra and was returned back to him by Suresh Chandra. Such an evidence cannot be believed. The evidence of D.W. 2 Mst. Jhamuku, who is a maid servant cannot be believed. Mst. Jhamku (D.W. 2) has stated that two

months rent was paid and it was returned back by plaintiff Suresh Chandra. In view of the discussion made hereinabove, I am firmly of the view that the evidence of D.W. 2 Mst. Jhamku has rightly been disbelieved by the learned trial court because firstly when the defendant has failed to prove that the rent has ever been offered to the plaintiff and it has been sent through money orders and secondly, the defendants has not asked the plaintiff to disclose his Bank A/c where the amount of rent can be deposited.

9. Section 19-A of the Act provides that every tenant shall pay rent within the time fixed by the contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable. Sub-section (2) of Section 19-A further provides that every tenant who makes a payment on account of rent shall be entitled to obtain a receipt for the amount paid duly signed by the landlord or his authorised agent. Sub-section (3) of Section 19-A further provides that a tenant may, apart from personal payment of rent to the landlord, remit or deposit rent by any of the following methods: (a) he may remit the amount of any rent due from him by postal money order at the ordinary address of the landlord; or (b) he may by notice in writing require the landlord to specify within ten days from the date of receipt of the notice by the latter, a bank and account number into which the rent may be deposited by the tenant to the credit of the landlord. If the landlord specifies a bank and account number, the tenant shall deposit the rent in such bank and account number and shall continue to deposit in it any rent which may subsequently become due in respect of the premises; or (c) Where he has remitted the rent by postal money order under Clause (a) and the money order is received back by him under a postal endorsement of refusal or unfound and where the landlord does not specify a bank and account number under Clause (b) or where there is bonafide doubt as to the person or persons to whom rent is payable the tenant may deposit such rent with the court within fifteen days of the expiry of the period of ten days referred to in Clause (b) and in the case of such bonafide doubt as aforesaid, within fifteen days of the time referred to in Sub-section (1) and further continue to deposit with the Court any rent which may subsequently become due in respect of the premises. Thus, either the rent is to be paid in person or is to be sent by money order or it may be deposited in the bank account of the landlord. It is only when the rent is not accepted either personally or through

money orders or the landlord does not specify the bank and his account number then the rent can be deposited in the Court under Section 19-A of the Act. Unless these conditions are complied with, it is not a valid tender of rent and deposit of rent under Section 19-A of the Act will not absolve the tenant of his responsibility to pay the rent. This is what has been held by a learned single Judge of this Court in *M/s Batliboi and Company Pvt. Ltd. v. Govind Naratn* 1981 RLW-225 that a tenant without taking recourse to the modes mentioned in Section 19-A of the Act cannot deposit the rent in court under Section 19-A of the Act.

10. Of course, it is true that this Court has held in *Martin and Harris (P) Ltd. v. Prem Chand* 1974 RLW-115 that technically speaking, when the tenant once offers the rent and the landlord refused to accept it, that is the first tender. Thereafter if the rent is deposited by the tenant in Court, then it discharges him of his liability because he is not required to seek his refusal to accept the rent every month and thus, the landlord is given repeated options to ask for the rent directly, if he so wishes. In this case, it has not been proved that the rent was tendered or offered to the plaintiffs. Of course, it has been alleged by the defendant that he has offered two months rent for the months of January and February, 1978 to the plaintiff but he has returned back to him after keeping it with him for 2-3 days. That evidence is totally unreliable and unbelievable. No other evidence is on record to show that the rent has been tendered to the plaintiff and it has been refused. Thus, to this extent, the authority of this Court in *Batliboi and Company Pvt. Ltd.'s* case (*supra*) holds the field.

11. Moreover, it is an admitted case of the defendant that 6 months rent was deposited by him on 26.6.1978 and the rent for the months of July to October, 1978 was deposited by him on 6.11.1978 and the rent for the months of November and December, 1978 was deposited by him in Court on 18.12.1978. Section 19-B of the Act lays down that no rent deposited with the court under Section 19-A shall be considered to have been validly deposited under that section unless the deposit is made within the time specified in Clause (c) of Sub-section (3) of the said section. Clause (c) of Sub-section (3) of Section 19-A clearly provides that where the tenant has remitted the rent by postal money order under Clause (a) and the money order is received back by him under a postal endorsement of

refusal or unfound and where the landlord does not specify a bank and account number under Clause (b) or where there is bonafide doubt as to the person or persons to whom rent is payable, the tenant may deposit such rent with the court within fifteen days of the expiry of the period of ten days referred to in Clause (b) and in the case of such bonafide doubt as aforesaid, within fifteen days of the time referred to in Sub-section (1) and further continue to deposit with the court any rent which may subsequently become due in respect of the premises. As stated above, the defendant-tenant has deposited the rent for the months of January to June 1978 on 26.6.1978 and the rent for the months of July to October 1978 on 6.11.1978 and the rent for the months of November and December on 18.12.1978, it cannot be said that the tenant has validly deposited or tendered the rent as required by Sections 19-A and 19-B of the Act.

12. It has been next contended that in this case, the rent which has been deposited in the court has already been withdrawn and, therefore, it amounts to a waiver of default as per Section 19-D of the Act, which provides that when there is no proceeding pending in the Court for the recovery of possession of the premises, the acceptance of rent, in respect of the period of default in payment of rent, by the landlord from the tenant shall operate as a waiver of such default. Here, it is an admitted case of the parties that the rent deposited in the Court under Section 19-A of the Act has been withdrawn after the filing of the suit and, therefore, it does not amount to a waiver.

13. In view of the discussion made here in above, and further judged from every other aspect of the matter, I am firmly of the view that in this case the finding recorded by the learned trial court that the rent has not been deposited as per the provisions of law and deposit of rent under Section 19-A of the Act will not save the defendant from second default has to be sustained and question as framed has to be answered in favour of the landlord-appellants.

14. In the result, we allow this appeal and set aside the judgment of the learned first appellate court i.e. the learned Addl. District Judge, Bhilwara dated 16.5.1981 and maintain the Judgment of the learned Munsif and Judl. Magistrate, Bhilwara dated 6.1.1981. The defendant is liable to be evicted from the suit premises

because he has committed second default in payment of rent and he is not entitled to any benefit under Section 13 (6) of the Act. The defendant-respondent is given two months time to vacate the suit-premises, failing which, the plaintiffs-appellants will be at liberty to get the decree executed against him as per law.

15. In the circumstances of the case, the parties are left to bear their own costs.

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