

Vishandas Vs. Savitri Devi

Vishandas Vs. Savitri Devi

SooperKanoon Citation : sooperkanoon.com/773366

Court : Rajasthan

Decided On : Feb-08-1988

Reported in : AIR1988Raj198; 1988(1)WLN240

Judge : S.N. Bhargava,; D.L. Mehta and; G.K. Sharma, JJ.

Acts : Rajasthan Premises Control of Rent and Eviction Act, 1950 - Sections 13(4) and 13(5); [Limitation Act, 1963](#) - Sections 5

Appeal No. : Civil Revision Petn. No. 477 of 1987

Appellant : Vishandas

Respondent : Savitri Devi

Advocate for Def. : K.N. Tikku, Adv.

Advocate for Pet/Ap. : J.P. Goyal, Adv.

Judgement :

Bhargava, J.

1. This is a reference by the learned single Judge referring the following questions for an authoritative pronouncement. Hon'ble the Chief Justice was pleased to constitute this Bench to decide these questions of law.

(1) Whether the provisions of Section 5 of the Limitation Act can be applied in the matter of depositing of rent under Section 13(4) of the Act, 1950?

(2) Whether the court has no power even in the interest of justice and equity, to extend time beyond the limit prescribed under Section 13(4) of the Act?

(3) Whether Section 13(5) of the Act is directory?'

2. Learned counsel for the petitioner has submitted that a Division Bench of this Court in *Gopal Das v. Nathu Lal* AIR 1983 Raj 222 held that the Act is a special law and does not expressly exclude provisions of the Limitation Act. As Section 5 of the Limitation Act has not b'en expressly excluded under the provisions of the Act, Section 5 of the Limitation Act would be applicable for applications filed under Section 134(b) in view of the Section 29(2) of the Limitation Act. This authority was not brought to the notice of another Division Bench which decided the case *Kriparam Ganeshi Lal v. Vijay Kumar Goyal* 1986 Raj LR 236 wherein the Division Bench held that the court had no power to extend the time beyond three months. Sections 13(4) and 13(5) of the Rent Control Act are imperatively mandatory and not directory or permissive and, therefore, the trial court had no power to extend time but it should strike out the defence for not depositing the arrears of rent determined by the court under Section 13(4) within the extended time.

3. Learned counsel for the petitioner has also brought to our notice *Shyam Charan v. Dharam Das*, AIR 1980 SC 587 where the Bench consisting of Justice V. R. Krishnaiyer, R.S. Pathak and O. Chinnappa Reddy while dealing with the M. P. Accommodation Control Act, held that where a tenant deposits the arrears of rent within time allowed by the court but during the pendency of suit for eviction and appeal thereto deposits the monthly rent a day or two beyond the prescribed date on some occasion, the court had discretion to condone the delay, and if the court granted extension of time -for payment of monthly rent, the tenant would not be liable to eviction and his defence should not be struck out for non-payment of rent before the due date.

4. He has also brought to our notice another judgment of the Supreme Court in *Miss Santosh Mehta v. Om Prakash*, AIR 1980 SC 1664 wherein also, their

Lordships of the Supreme Court while dealing with the Delhi Rent Control Act, held that the striking out defence of a tenant is a harsh extreme and having regard to the benign scheme of the legislation this drastic power is meant for use in grossly recalcitrant situation where a tenant is guilty of disregard in paying rent. There must be Wilful failure, deliberate default or volitional non-performance. It was further held that if a tenant fails or refuse to pay or deposit rent and the Court discerns a mood of defiance or gross negligence, the tenant may forfeit his right to be heard in defence. In that case, it was further observed that if a tenant who was working woman regularly paid rent to an Advocate but he in turn did not deposit the same in court or paid to the landlord in time, it could not be said that she failed to pay or deposit, in any way. No case for punitive exercise or discretion to strike out the defence had been made out.

5. He also brought to our notice still another judgment of the Supreme Court in Ram Murti v. Pholanath, AIR 1984 SC 1392 where also their Lordships of the Supreme Court while considering the Delhi Rent Control Act, relying on Shyama Charan (AIR 1980 SC 587) and Santosh Mehta's cases (AIR 1980 SC 1664) (supra), held that the Rent Controller had power to condone default or extend time.

6. Learned counsel for the petitioner also placed reliance on Ganesh Prasad Shah Kesri v. Laxmi Narain AIR 1985 SC964 where their Lordships were dealing with Bihar Buildings (Lease, Rent and Eviction) Control Act, and while interpreting Section 11-A. their Lordships held that 'word' 'shall' appearing in this Section is directory and not mandatory and must be read as 'may'.

7. All these above judgments of the Supreme Court have been again noticed in a recent decision of the Supreme Court in B.P. Khemka v. Birendra Kumar, AIR 1987 SC 1010 where their Lordships were dealing with the West Bengal Premises Tenancy Act and held that the word 'shall' occurring in Section 17 Sub-section(3) of the West Bengal Act, which is similar to the one in our Act, has to be read as 'may' and the provisions for striking out defence are merely directory and not mandatory.

8. We have given our thoughtful consideration to the whole matter and have also gone through the various authorities cited before us.

9. Section 13(4) and Section 13(5) of the Rent Control Act may be reproduced hereunder : --

'13(4) The tenant shall deposit in court or pay to the Landlord the amount determined by the court under Sub-section (3) within fifteen days from the date of such determination, or within such further time, not exceeding three months, as may be extended by the court. The tenant shall also continue to deposit in court or pay to the landlord, month by month the monthly rent subsequent to the period up to which determination has been made, by the fifteenth of each, succeeding month or within such further time, not exceeding fifteen days, as may be extended by the court, at the monthly rate at which the rent was determined by the court under Sub-section (3).'

'13(5) 'If tenant fails to deposit or pay amount referred to in Sub-section (4) on the date or within the time specified therein, the court shall order the defence against eviction to be struck out and shall proceed with the hearing of the suit.'

10. It is true that under Section 13(4) and 13(5) of the Rent Control Act, the legislation has used the word 'shall' both for depositing rent and also for striking out the defence but merely the use of the word 'shall' will not make these provisions as mandatory, specially in view of the recent pronouncement of the Supreme Court in Birendra Kumar's case (AIR 1987 SC 1010) (supra) where their Lordships were considering Sec. 17 sub-clauses (3) and (4) of the West Bengal Premises Tenancy Act. Section 17(3) reads as under : --

'(3) If a tenant fails to deposit, or pay any amount referred to in Sub-section (1) or Sub-section (2) within the time specified wherein or within such extended time as may be allowed under Clause (a) of Sub-section (2 A) or fails to deposit or pay any instalment permitted under Clause (b) of Sub-section (2A) within the time fixed there for, the court shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.' ,

Their Lordships have held that the word 'shall' occurring in Section 17(3) for striking out the defence has to be construed as directory provision and not mandatory provision as the word 'shall' has to be read as 'may'. In the face of this

authoritative pronouncement it is , not necessary for us to discuss this point in detail or comment on the observations of the Division Bench in Vijay Kumar Goyal's case (1986 Raj LR236) (supra), as in our view, the view of the Division Bench does not hold to be a good law in view of the recent pronouncement of the Supreme Court in Birendra Kumar's case (supra). The court is vested with the discretion to order either striking out of the defence or not, depending upon the circumstances of the case, in the interest of justice, and further since the court has discretion to condone the default, therefore, it has also the power to extend time for payment or for depositing rent in the court. Rent Control Act is a beneficial legislation in favour of the tenants and tenant cannot be punished for not making payment of rent within time on account of some an for seen circumstances. Basically, the Rent Control Laws are designed to protect tenants because scarcity of accommodation is the nightmare for those who own none and il evicted, will be helpless. We must adopt a socially infirm perspective while construing the provisions of the Rent Control Act If one ascertains the intendment of the legislature, the purpose for which these provisions have been enacted, the beneficial nature of the statute and to protect the harassed tenant, obviously, it does not require long argument to hold that the expression 'shall' used in Sections 13(4) and 13(5) of the Rent Control Act was used not with a view to make the provision mandatory or imperative but it was to be directory. Such a construction would advance the purpose for which the Act was enacted, namely, the protection of tenants. It will also not render the Court powerless to extend the time if the tenant is able to satisfy the court that he was prevented in not depositing or paying the rent within time for sufficient cause, and thereafter, the court is justified in not', striking out the defence otherwise it would be nothing sort of miscarriage of justice. The court should adopt such a construction as would not render the court powerless in a situation in which ends of justice demand relief being granted.

11. In view of the above discussion, we are of the opinion that the judgment of the Division Bench in Kriparam Ganeshi Lal(1986 Raj LR 236) (supra) is not a good law and we overrule the same. W e are in agreement with the view expressed in Gopal Das (AIR 1983 Raj 222) (supra). We answer the questions referred to us, as follows : --

(i) provisions of Section 5 of the Limitation Act can be applied in the matter of deposit of rent under Section 13(4) of the Rent Control Act,

(ii) the Court has power, in the interest of justice and equity, to extend time beyond the limit prescribed under Section 14(4) of the Rent Control Act, and

(iii) that Section 13(5) of the Rent Control Act is directory and not mandatory.

12. This reference is answered as indicated above. Now this case will be listed before the learned single Judge for final disposal of the revision petition in accordance with law.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com