
(1971) 04 OHC CK 0024
In the Orissa High Court
Case No : O.J.C. No. 855 of 1970

Bijaya Kumar Mohanty

APPELLANT

Vs

Saraswati Subudhi and Others

RESPONDENT

Date of Decision : 19-04-1971

Acts Referred:

Orissa House Rent Control Act, 1967 — Section 7(2), 7(3)

Citation : (1971) 37 CLT 593

Hon'ble Judges : G.K. Misra, C.J.; S.K. Ray, J

Bench : Division Bench

Advocate : B. Kr. Mohanty, S.V.R. Murty, S.R. Das and D.K. Panda, for the Appellant; A.G., B.B. Rath and A.K. Jena, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—Saraswati Dubudhi (Opposite Party No. 1) claims to be the landlord of the disputed house. In his written statement the Petitioner took the stand that he was the owner in possession and opposite party No. 1 had no title in the disputed house and the Petitioner was never inducted as a tenant and as such there was no question of being in arrears of rent. The House Rent Controller passed an order dated 27th of April 1970 directing the Petitioner to deposit the arrear rent of the suit house as claimed by opposite party No. 1 in her petition dated 13-4.1970 within a week failing which the Petitioner would not be allowed to contest the case. The Petitioner did not deposit the arrears of rent and carried an appeal. The appeal was dismissed. The present writ application has been filed against the appellate order.

2. The sole question for determination in this writ application is whether the Petitioner was rightly debarred by the House rent Control Authorities from giving his defence for failure to deposit rent as directed.

3. Section 7(3) of the Orissa House Rent Control Act, 1967 lays down that where an application is made for the eviction of any tenant on the grounds specified in

Clause (1) of Sub-section (2) the tenant shall remit the arrear rent as admitted by him up to the date of such remittance to the landlord or deposit the same with Controller railing which he shall not be entitled to contest the proceedings.

Sub-section (i) relates to a case where rent due has not been paid in time. It has been held by a number of decisions of this Court that the expression "as admitted by him" must relate to an admission by the tenant in the proceeding for eviction itself that he was in arrears of rent. There is no such admission in this case. On the contrary, the Petitioner took the defence that the house belonged to himself and he was not a tenant under opposite party No. 1.

4. The House-Rent Control Authorities therefore exercised their jurisdiction illegally in debarring the defence of the Petitioner u/s 7(3). The impugned orders are quashed. A writ of certiorari be issued accordingly.

5. In the result, the writ application is allowed; but in the circumstances without costs.

As the matter is long pending the House Rent Controller is directed to dispose of the case within three months from the date of receipt of the records.

S.K. Ray, J.

6. I agree.