
(1960) 02 CAL CK 0009
In the Calcutta High Court
Case No : Civil Revision Case No. 1525 of 1958

Jamnadas Srinivas Co.

APPELLANT

Vs

Mathuradas Jadavji Gudgud

RESPONDENT

Date of Decision : 12-02-1960

Acts Referred:

West Bengal Premises Tenancy Act, 1956 — Section 25, 25(1), 25(2), 4

Citation : 65 CWN 1025

Hon'ble Judges : Sen, J

Bench : Single Bench

Advocate : Sudhangsu Kumar Bose, for the Appellant; Salil Kumar Dutta, for the Respondent

Judgement

Sen, J.—This revisional application is directed against an order passed against the petitioner landlord u/s 25(2) of the West Bengal Premises Tenancy Act, 1956 directing him to pay the sum of Rs. 20/- as damages for the alleged refusal to grant a rent receipt to the opposite party after receiving one month's rent by postal money order. The case of the tenant Mathuradas Jadavji Gudgud was that he was occupying the second floor of the house at 13, Hanspukuria Lane, under the petitioner Messrs. Jamnadas Srinivas Company at the rent of Rs. 165/- per month according to the Hindi Calendar, and that for the month of Jaistha 2013 S.Y. he sent Rs. 165/- by postal money order on the 28th June, 1956 and this was accepted by the petitioner on whose behalf some body signed the M.O. acknowledgment receipt on or before the 3rd July, 1956 which is the date of the postal seal on the acknowledgment; and thereafter the tenant, opposite party several times requested the petitioner by letter to send him the rent receipt for the month of Jaistha 2013 S.Y. but the petitioner did not comply with the request and did not send any such rent receipt. Accordingly, the opposite party filed an application u/s 25(2) of the W. B. Premises Tenancy Act on the 24th July, 1956 for recovery of damages equal to twice the monthly rent, that is, Rs. 330/- which is recoverable under the provisions of the section. The petitioner landlord appeared and contested the application. He admitted having received the rent for

Jaistha, 2013 S.Y. by money order, but alleged that the rent receipt had been kept ready and the tenant did not come and receive the same, that the tenant sent the rent by postal money order unnecessarily With some motive, and that the petitioner was not bound to send the rent receipt by post to him.

2. The learned Controller however held that having received the rent by postal money order, the landlord petitioner was bound u/s 25(1) to send the rent receipt within a reasonable time to the tenant, and as he failed to do so even in spite of repeated demand by letter he was liable to pay the damages u/s 25(2) ; but he allowed only Rs. 20/-by way of damages to the tenant.

3. There was an appeal by the landlord but the learned Judge of the Calcutta Small Cause Court who heard the appeal held that the order was a good order and dismissed the appeal. Accordingly, the landlord has filed this revisional application.

4. The main point for consideration is whether the provisions of section 25 of the West Bengal Premises Tenancy Act apply when the rent is sent by postal money order. u/s 4 of the Act it is provided that a tenant shall pay to the landlord the rent agreed upon or the fair rent fixed for the premises and that such rent shall be paid within the time fixed by the contract or in the absence of any contract by the 15th of the month next following for which the rent is due. Thus it is only provided that the tenant shall pay to the landlord. The mode of payment is not described in the section, and presumably paying to the landlord means direct payment, that is to say, payment by personal contact. In this connection, reference may be made for comparison to the corresponding provisions of the Bengal Tenancy Act. Section 54 of the B. T. Act expressly provides for payment of rent in two ways, viz.. the tenant may pay rent at the landlord's village office or at such other convenient place as might be appointed in that behalf by the landlord; or pay the rent by postal money order in the manner prescribed. Section 56(1) of the B. T. Act provides that every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a rent receipt signed by the landlord for the amount paid. This subsection therefore corresponds to section 25(1) of the W. B. Premises Tenancy Act. Section 58(1) of the B. T. Act corresponds to section 25(2) of the W. B. Premises Tenancy Act, and it provides that if the landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars required by section 56 for any rent paid by the tenant, the tenant may within three months from the date of the payment institute a suit to recover from him such penalty not exceeding double the amount of the amount of the rent as the court thinks fit. But the provisions of section 56(1) under which the landlord is to grant a rent receipt forthwith in the prescribed form to the tenant on receiving the rent from him, presumably apply to cases of direct payment and not cases of payment by postal money order. For postal money order, it has already been mentioned that payment is to be made in the manner prescribed; and for such payment there is a special form of money order known as the rent

money order form prescribed by the Government and the acknowledgment receipt of that money order form contains the necessary particulars as in a rent receipt; and therefore when rent under the B. T. Act is sent by rent money order the landlord is merely to sign the acknowledgment receipt in the rent money order form itself and he is not required to grant a separate rent receipt. In the W. B. Premises Tenancy Act I have already mentioned that there is no express provision for sending rent to the landlord by postal money order. But by analogy with the provisions of the B. T. Act I would hold that the provisions of section 25 apply to direct payment or personal payment and not to payment of rent by money order in which case the tenant gets an acknowledgment receipt signed by or on behalf of the landlord through the post office. It is true, as pointed out by the learned Rent Controller, that postal acknowledgment receipt does not contain the necessary particulars, viz., the month of the tenancy or the description of the premises of the tenancy. But this is a risk which the tenant has to take if he chooses to send rent by postal money order. The W. B. Premises Tenancy Act does not provide expressly for sending of rent by postal money order. It provides that if the landlord refuses to accept the rent the tenant may deposit the same with the Rent Controller along with an application stating the circumstances making such deposit necessary. Considering the provisions of the Act and the provisions of the B. T. Act I am definitely of the opinion that section 25 does not contemplate that when rent is sent by postal money order the landlord should send a rent receipt by post to the tenant.

5. This conclusion also appears to follow from the use of the word, "forthwith" in section 25(1), viz. that the tenant shall be entitled to obtain "forthwith" from the landlord or his authorised agent a receipt for the rent paid by him. If the rent is received by postal money order, there is no scope for the tenant receiving a rent receipt forthwith. Mr. Salil Kumar Dutt appearing for the opposite party has referred to the Dictionary of English Law by Earl Jowitt, 1959 Edition, where the word "forthwith" is defined as follows:-

When a defendant is ordered to plead forthwith he must plead within 24 hours. When a statute or rule of court requires an act to be done forthwith it means that the act is to be done within a reasonable time having regard to the object of the provision and the circumstances of the case.

6. This definition follows a decision in (1) Ex. P. Lamb, (1881) 19 Chan. Div. 169. Mr. Dutta has therefore urged that the term "forthwith" means within a reasonable time, and that the landlord should send a rent receipt within a reasonable time even when he receives the rent by postal money order. But the expression "the tenant shall be entitled to obtain forthwith from the landlord a rent receipt for the amount" does not seem, in my opinion, to cover the proportion, that when the landlord receives the rent by money order he will within a few days send a receipt for the rent by post. In the absence of any such express provisions I would hold, as indicated already. that section 25, only covers the case when a tenant comes for direct or personal payment to the landlord. In

that case if the landlord or his agent refuses to grant a receipt forthwith, the landlord becomes liable to pay damages to the extent of twice the amount of the monthly rent on an application made by the tenant to the Rent Controller. In the present case, therefore, in my opinion, the award of damages was misconceived. Accordingly, this Rule is made absolute and the order as to payment of damages is set aside. In the circumstances, however, it is ordered that the parties will bear their own costs throughout.