
(1980) 02 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 106 of 1979

Kailash Industrial Mills

APPELLANT

Vs

Shanti Swarup and Others

RESPONDENT

Date of Decision : 04-02-1980

Acts Referred:

Rajasthan General Clauses Act, 1955 — Section 11

Rajasthan Premises (Control of Rent and Eviction) Act, 1950 — Section 13(4)

Citation : AIR 1981 Raj 61 : (1980) RLW 262 : (1980) WLN 45

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Advocate : Rajendra Mehta, for the Appellant; H.M. Parekh, for the Respondent

Final Decision : Allowed

Judgement

M.C. Jain, J.—This is an appeal by the defendant against the order dated 16-10-1979 passed by the Additional District Judge No. 1, Hanumangarh, whereby the defendant's defence against his eviction was struck out under Sub-section (5) of Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as "the Act").

2. The facts leading to the present appeal, may briefly be stated as follows:

The plaintiff-respondents instituted a suit for arrears of rent and ejectment, in the court of Additional District Judge, No. 1, Hanumangarh. On 23-4-1979 the Court determined the arrears of rent and interest thereon under Sub-section (3) of Section 13 of the Act. A sum of Rs. 9,000/- as rent and Rs. 832.50 p. as interest thereon, total Rs. 9,832.50 p was paid by the defendant to the plaintiff Shanti Swarup. The rent paid was up to 31-3-1979. The defendant was further directed to make payment of monthly rent of Rs. 250/- by the fifteenth of every succeeding month to the plaintiff and in case the plaintiff refuses to accept the same, the defendant may deposit the amount of rent in court. The defendant paid rent for the month of April 1979 to the plaintiff Shanti Swarup on 7-5-1979.

On 2-7-1970 a sum of Rs. 500/- was deposited by the defendant in court being the rent for the months of May and June 1979. On 13-7-1979, the plaintiffs moved an application u/s 13 (5) of the Act for striking out the defence, on the ground that the defendant had committed default in the payment of rent for the month of May 1979. A reply to the application was filed to the effect that civil courts were closed on account of Summer Vacation and the courts reopened on 2-7-1979, on that date the amount of rent for the month of May 1979 as well as for the month of June 1979 was deposited. Thus, no default was committed and the defence against eviction, is not liable to be struck out. The learned Additional District Judge, after hearing the arguments on the application, passed the impugned order striking out the defence against eviction. The learned trial court proceeded to pass the impugned order on the basis that it was open to the defendant to make payment of rent to the plaintiff. This alternative available to the defendant, was not availed of, so the defendant cannot take advantage of the court being closed on account of Summer Vacation. Dissatisfied with the order of the learned trial court, the defendant has preferred this appeal.

3. On behalf of the defendant-appellant Shri. Rajendra Mehta, learned counsel for the appellant, submitted that u/s 13 (4) of the Act the defendant had the option either to pay the amount, of rent to the plaintiffs or to deposit the same in court. The amount of rent for the month of May 1979 was to be paid or deposited by 15-6-1979, but the court was closed so it could not be deposited and when the court reopened on 2-7-1979, the amount of rent for the month of May 1979 was deposited along with the rent for the month of June 1979. He urged that Section 11 of the Rajasthan General Clauses Act is attracted to the present case and the defendant could only deposit the amount of rent when the court reopened, so his act of depositing of rent should be deemed to have been performed within time as provided in Sub-section (4) of Section 13 of the Act. It was also urged that when the law gives option either to make payment to the plaintiff or to deposit the amount of rent, it was not necessary for the defendant to offer the amount of rent to the plaintiff, although the order of the court passed on 23-4-1979 was to the effect that in case the plaintiff refuses to accept the amount of rent, the defendant may deposit the same in court. In support of his contention Shri Mehta placed reliance on *Bhagwandas Tiwari v. Gaya Prasad* 1975 Ren CJ (SN) 21 (Madh Pra) and *Mst. Sakina Bi v. Smt. Shambhoo Bai* 1977 Ren CJ 230 and an unreported judgment of this Court in Civil Revn. Petn. No. 611 of 1975 -- *Lakhpatrij v. Dr. Narendrapal Gupta*, decided on 21-2-1979.

4. Shri Parekh, on the other hand, submitted that in a case like the present one, in the light of the order passed on 23-4-1979, Section 11 of the Rajasthan General Clauses Act cannot be attracted. The defendant cannot take advantage in case he has not availed of an alternative available to him. u/s 13 (4) as well as under the order dated 23-4-1979 it was open to the defendant to make payment to the plaintiff of the amount of rent for the month of May 1979, which became payable by 15-6-1979. He urged that the order dated 23-4-1979 is very clear in its terms. Under that order the defendant was required to first make an offer of

the amount of rent to the plain-tiff and it is only in case of refusal by the plaintiff he was required to deposit the amount of rent in court. The defendant did not make any such offer as contemplated in the order, so it is not open to him to contend that as the court was closed on account of Summer Vacation, so the amount could not be deposited before 2-7-1979. He also urged that under the orders of the High Court, the Civil Court work was not completely suspended. Urgent civil work is required to be performed by the civil court. When the time for depositing of rent was expiring, the matter was urgent and so the amount could be deposited even during the summer vacation. Shri Parekh supported the order of the learned District Judge, for which reliance has been placed on a judgment of the Allahabad High Court in Kunj Behari Singh and Others Vs. Bindeshri Prasad Singh and Others and he also referred to a decision of the Madhya Pradesh High Court in Pt. Krishna Chandra Sharma v. Pt. Ramgulam AIR 1958 Mad295

5. Having heard the learned counsel for the parties, I now proceed to examine the respective contentions advanced before me.

6. Before dealing with the respective contentions, it would be profitable to read Sub-section (4) of Section 13 of the Act, Section 13 (4) reads as under:--

"Section 13 -- Eviction of tenants --(1) Notwithstanding anything contained in any law or contract, no Court shall pass any decree, or make any order, in favour of a landlord, whether in execution of a decree or otherwise, evicting the tenant so long as he is ready and willing to pay rent therefore to the full extent allowable by this Act, unless it is satisfied --

XX xx XX XX (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)."

7. It would appear from the above provision that under Sub-section (4) after depositing the rent determined under Sub-section (3), the tenant is further required to 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, under Sub-section (3), 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). This provision casts an obligation on the tenant to continue to deposit or pay rent of every succeeding month after the payment of the amount determined under Sub-section (3). The time-limit within which the amount of

rent is to be deposited or paid is by the fifteenth of each succeeding month or within such time as may be extended by the court, not exceeding fifteen days. Admittedly the amount of rent for the month of May 1979 became due to be paid or deposited in accordance with the above provisions up to 15-6-1979, or 30-6-1979, if the time is extended by the court, but the defendant did not pay to the landlord or deposit in the court the amount of rent for the month of May 1979 by 15-6-1979 or 30-6-1979 under any order of extension by the court. Thus, considering the time-limit there has been a default in the payment of rent for the month of May, 1979, on the part of the defendant. The question that emerges for consideration is whether the defendant is entitled to take advantage of the period during which the civil court remained closed on account of summer vacations.

8. Before directly dealing with the above question I may first advert as to the nature of the obligation of the tenant to make payment of rent under Sub-section (4) of Section 13. From the language of Sub-section (4) of Section 13 it would be evident that it gives an option to the tenant either to deposit the amount of rent in the court or to pay the same to the landlord. Sub-section (4) of Section 13 does not contemplate that before deposit is to be made in court, the amount of rent should be tendered or offered to the landlord and in case of refusal by the landlord, the same is required to be deposited. It is completely at the option of the tenant either to pay to the landlord or to deposit. If the order dated 23-4-1979 is examined in the light of the provisions of Sub-section (4) it would be clear that the order is not in harmony with the language of Sub-section (4). In my opinion, in the light of the expression used in Sub-section (4), the court could not have given the direction to the tenant first to make an offer to the landlord and in case of his refusal to accept, he should deposit the amount of rent in court. The argument built by Shri Parekh on the basis of language of the order of 23-4-1979, is not tenable in the light of the provisions contained in Sub-section (4), as considered above. Thus, even when the amount of rent is not offered by the defendant to the plaintiff, as contemplated by the order of 23-4-1979, it was open to the defendant to deposit the amount of rent in court. Having considered that the amount could be deposited in court, without making any offer to the landlord, it is to be seen as to whether the defendant can take advantage of the period during which the civil court remained closed. In this connection it would be proper to advert to the provision contained in Section 11 of the Rajasthan General Clauses Act, which reads as under:--

"11. Computation of time.-- Where, by any Rajasthan law, any Act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period, then, if the court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court or office is open :

Provided that nothing in this section shall apply to any act or proceeding to which

the Indian Limitation Act, 1908, (Central Act IX of 1908) applies."

9. The aforesaid provision is in terms applicable to the present case. It would appear that Sub-section (4) of Section 13 of the Act requires the tenant to deposit the rent by the fifteenth of each succeeding month, but this act of the tenant could not be performed by him, as the court was closed. The tenant performed this act on the opening of the court and on such performance it would be considered to have been performed in due time, as provided in Section 11 of the Rajasthan General Clauses Act. In my opinion, Section 11 of the Rajasthan General Clauses Act would be attracted despite the fact that there was an alternative with the tenant to pay the amount of rent to the landlord. When the alternative was optional, then it cannot be said that Section 11 of the Rajasthan General Clauses Act can have no application. The cases which have been cited by Shri Parekh, in my opinion, are clearly distinguishable. In *Krishna Chandra Sharma v. Ramgulam* (AIR 1958 Madh Pra 295) (supra) it was observed that where the plaintiff has two courses open before him, one of paying the amount directly to the defendant and the other of depositing the amount in court, he is not entitled to take advantage of Section 10 of the General Clauses Act, if the last date of the deposit happens to be a holiday. It may be stated that the Madhya Pradesh High Court simultaneously observed that the provisions of Section 10 of the General Clauses Act would apply to a case where the act itself is directed or allowed to be done or taken by an Act of the Parliament. In the case before the Madhya Pradesh High Court no act was required to be directed or allowed to be done under any law, it was required to be done under a contract.

10. Similarly in *Kunj Behari Singh and Others Vs. Bindeshri Prasad Singh and Others* there was a compromise decree and the amount due was to be paid in instalments on fixed dates and there was a default clause to the effect that on default of payment of one instalment the whole amount was to become due. On the date of the payment of first instalment the Court was closed and a tender was filed when the court reopened. There was a clause in the compromise decree giving option of payment directly or to deposit the same in court, On the facts it was held that there was a default in the payment of the first instalment as the defendants who had the option to make the payment direct to the decree-holder or to deposit the amount in court, could not take advantage of the circumstance that the Court was closed on the date of payment.

11. In *Bhagwandas Tiwari v. Gaya Prasad* 1975 Ren CJ (SN) 21 (supra) a similar question arose for consideration and it was observed as under:--

"Held that Section 13 of the Madhya Pradesh Accommodation Control Act, 1961, in so far as it is material, requires the defendant-tenant "to deposit or pay month by month, by the 15th of each succeeding month a sum equivalent to the rent". This provision thus means that tenant can either pay the rent to the landlord by the 15th of each succeeding month or can deposit the same in Court by the 15th of each succeeding month. The choice is left to the tenant. The requirement that the rent should be deposited in Court by the 15th of each succeeding month has

to be read along with Section 7 of the Madhya Pradesh General Clauses Act, 1957. The benefit of the section applies where, by any Madhya Pradesh Act, any act or proceeding is allowed to be done or taken in any court or office on a certain day or within a specified period. The making of deposit in Court is an act, the prescription u/s 13 of the Madhya Pradesh Accommodation Control Act, 1961, that the deposit should be made by the 15th of each succeeding month, is a prescription that the act of deposit should be done within a specified period. The condition for applicability of Section 7 of the General Clauses Act is, therefore, satisfied. As a result if the Court is closed on the 15th, a deposit can be made on the next day on which the Court opens. The word "allowed" used in Section 7 suggests that even if the act is permitted to be done in Court and it is not compulsory that it should be so done, still the section applies. It cannot be denied that Section 13 of the Accommodation Control Act, allows the act of making the deposit to be done in the Court by the 15th of each month. The benefit of Section 7 of the General Clauses Act will be available to this act even though instead of depositing in Court the defendant had the choice of paying the same amount out of Court to the plaintiff. Further there is no substance in the argument that the office was open during the vacation and therefore, the defendant could make the deposit in the office even though the Court was closed. An order of the presiding officer is necessary for making a deposit in the Court. It was, therefore, not possible for the defendant to deposit the rent during the vacation."

12. In *Mst. Sakina Bi v. Smt. Shambhoo Bai* 1977 2 Ren CJ 230 (supra) the same view has been reiterated, though *Bhagwandas Tiwari's* case 1975 Ren CJ (SN) 21 has not been referred. The view reiterated is as under : --

"The provisions of Section 13 of the Act provide that the tenant may either pay the rent to the landlord or may deposit the same in the Court by 15th of each succeeding month. There is nothing in the Act to suggest that the provisions of Section 7 of the M. P. General Clauses Act cannot be applied in such circumstances. The making of deposit in Court is an act and the provision that the deposit should be made by 15th of each succeeding month is a prescription that the act of deposit should be made within the specified period and therefore, the conditions of applicability of Section 7 are satisfied. Since the tenant has made a deposit on the opening day, he will get the benefit of Section 7 of the M. P. General Clauses Act and it will be held to be due compliance of Section 13 of the M. P. Accommodation Control Act."

13. In *Lakhpatt Raj v. Dr. Narendrapal Gupta* (C.R.P. No. 611 of 1975, D/-21-2-1979) (supra) this Court too has taken the view that Section 11 of the Rajasthan General Clauses Act will be attracted when the amount of rent has been deposited on the opening of the court. In that case the rent for the month of May, 1974, was to be paid or deposited on or before 15th June, 1974, but the civil court was closed in the month of June due to summer vacation up to 30th June, 1974, and immediately on reopening of the court. On 1st July, 1974, the

amount of rent was deposited in the court. A question arose as to whether Section 11 of the Rajasthan General Clauses Act can be made applicable? Answer to this question was given in the affirmative and it was held that the provisions of Section 11 of the Rajasthan General Clauses Act are clearly attracted.

14. In the light of what I have discussed above, I do not find any force in the contention of Shri Parekh that Section 11 of the Rajasthan General Clauses Act is not attracted. The decisions of this Court in Lakhpatraj's case (supra) in this regard does not require reconsideration and I am in respectful agreement with the view taken in that case.

15. In Lakhpatraj's case (supra) this court, after considering the relevant General Rules (Civil), 1952, has held that during vacation the amount of rent could not be deposited by the tenant. The amount could be deposited only by an order of the court and the order of the court could not be obtained during vacation. Under the Circular of the High Court civil work of an urgent nature alone can be performed. When by application of Section 11 of the Rajasthan General Clauses Act, the act can be considered to have been done in due time, it cannot be said that the act of depositing of amount of rent was of an urgent nature. As such, as well, for depositing the amount of rent; the circular cannot be pressed into service. This question too has been considered in Bhagwandas Tiwari's case 1975 Ren CJ (SN) 21 (supra) and it has been held that as an order of the presiding officer is necessary for making a deposit in the court, so it was not possible for the defendant to deposit the rent during the vacation.

16. No other point has been pressed before me.

17. In the result, I allow this appeal and set aside the order of the learned Additional District Judge No. 1, Hanumangarh. In the circumstances of the case, I leave the parties to bear their own costs of this appeal.