

(1971) 07 PAT CK 0018
In the Patna High Court
Case No : A.F.A.D. No. 674 of 1967

Mahabir Prasad Saraogi and Others	APPELLANT
Vs	
Bibhuti Mohan Bhattacharjee and Others	RESPONDENT

Date of Decision : 19-07-1971

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 — Section 11(1), 13(1)

Citation : AIR 1973 Patna 83

Hon'ble Judges : Shiveshwar Prasad Sinha, J; Shambhu Prasad Singh, J

Bench : Division Bench

Advocate : Rameshwar Prasad and B.P. Gupta, for the Appellant; Sudhir Chandra Ghose, for the Respondent

Final Decision : Dismissed

Judgement

Shambhu Prasad Singh, J.—This second appeal by the plaintiffs arises out of a suit for eviction from a house situate in the town of Dehri-on-Sone and for arrears of rent. Eviction was claimed on all the possible grounds available, namely, personal necessity, default in payment of rent for the months of October and November, 1962, expiry of the term of the lease and also breach of the conditions of the tenancy. The defendants-respondents denied all the allegations. According to them, there was no personal necessity, there was no default in payment, of the rents for the months of October and November, 1962 which, were remitted by postal money order, there was no breach, of any of the conditions of the tenancy and the tenancy not being for a fixed term there was "no question of expiry of the lease. The suit has been decreed so far as arrears of rent are concerned, but has been dismissed in respect of the claim for eviction. On all the questions relating to eviction both the Courts below have concurrently found against the appellants.

2. Mr. Rameshwar Prasad, learned counsel for the appellants has submitted that the findings of the Courts below on the questions of personal necessity, default and breach of condition of the tenancy were wrong. The personal necessity

alleged and pressed in the Courts below was that the appellants required at least a portion of the land on which, the house was situated for constructing another house on the vacant land behind the house which is the subject-matter of the dispute in the present suit. Such a necessity cannot be a ground for eviction under the Bihar Buildings (Lease, Rent and Eviction) Control Act (hereafter referred to as "the Act"). Section 11 of the Act lays down the grounds on which a tenant can be evicted. He cannot be evicted on grounds not mentioned in that section. The ground commonly known as personal necessity is stated in Clause (c) of Sub-section (1) of Section 11 which reads as follows:--

"Where the building is reasonably end in good faith required by the landlord for his own occupation or for the occupation of any person for whose benefit the building is held by the landlord".

It is manifest from the language of this clause that if the landlord does not require the building for his own occupation or for the occupation of any person for whose benefit the building is held by him. he cannot get the tenant evicted on the ground of personal necessity. Thus. the Courts below do not appear to have committed any mistake in recording a finding against the appellants on this question.

3. It was urged by the appellants in the Courts below that the respondents committed breach of conditions of the tenancy as they constructed a cow-shed. It was denied by the respondents and the Courts below have accepted the case of the respondents. Apart from it unless it is alleged and proved that there was a contract between the landlord and the tenant that the tenant cannot make even any temporary constructions on the premises, that cannot be a ground for eviction because there being no such condition there cannot be any breach of it, The relevant clause of Section 11 (1) dealing with breach of the conditions of the tenancy is Clause (a) and there is nothing in it on the basis of which it can be said that a tenant in absence of an express condition is not entitled to make temporary constructions. The matter will be governed by general law, i.e., Transfer of Property Act. The Courts below, therefore, do not appear to have erred in holding against the appellants even on the question of breach of the conditions of the tenancy.

4. The main point urged by learned counsel for the appellants which, it appears, led to reference of this case to the Division Bench, is on the question of default Clause (d) of Section 11 (1) of the Act provides that where the amount of two months' rent lawfully payable by the tenant and due from him is in arrears by not having been paid within the time fixed by contract, or in the absence of such contract, by the last day of the month next following that for which the rent is payable or by not having been validly remitted or deposited in accordance with Section 13, the landlord will be entitled to get the tenant evicted. Section 13 (1) of the Act runs as follows:

"When a landlord refuses to accept any rent lawfully payable to him by a tenant

in respect of any building, the tenant may remit such rent, and continue to remit any subsequent rent which becomes due in respect of such building, by postal money order to the landlord".

In the instant case the respondents firstly remitted by postal money order the rent for the month of October, 1962 and when it was refused by the appellants then again remitted by postal money order the rents for the months of October and November, 1962. Mr. Rameshwar Prasad has contended that the remittances were not valid remittances u/s 13 (1) of the Act inasmuch as, according to him before remitting the rent by postal money order the tenant must tender the rent hand to hand to the landlord and only if the landlord refuses to accept the rent, the former may remit it by postal money order. Firstly, this point does not arise for decision in this case. The suit was instituted on the 14th of December, 1962. Even if the respondents would have tendered the rent by the 31st of December, 1962. they would not have been defaulter within the meaning of Section 11 (1) (d). Thus, the suit was premature and the appellants cannot get the decree in this suit on the ground of default in the payment of rent for the months of October and November, 1962. However, as the case has been referred to Division Bench for decision of the aforesaid point, I would like to express my opinion on that point as well. In construing a statute one has to look to its substance and the real intention behind the enactment. The substance of Section 13 (1) and the real intention behind it in my opinion, are that once the rent is remitted by postal money order within the time mentioned in Section 11 (1) (d) of the Act, the landlord cannot claim eviction of the tenant on the ground of default in payment of rent. Therefore in my opinion, a tender by the tenant to the landlord before remitting rent by postal money order is not a condition precedent to such remittance. There may be cases where the landlord is living at a distant place and rent can be sent to him only by remittances by postal money order. However, even if it be assumed in favour of the appellants that tender of the rent is a condition precedent for remittance by postal money order, as was held in Second Appeal No. 405 of 1960. (Chalitar Prasad v. Badri Narain) decided on 26-9-1961 (Pat) tender by postal money order is a valid tender and if it is refused by the landlord the tenant becomes entitled "to remit such rent and continue to remit any subsequent rent which becomes due in respect of such building, by postal money order to the landlord". It was so held in that case on which the learned counsel for the appellants relies:--

"Section 13 (1), as a matter of fact does not speak of any tender of the rent by the tenant to the landlord. It speaks only of refusal of the rent by the landlord. But, as a refusal implies a tender, because unless there is a tender there can be no refusal of it, it is inherent in Section 13 (1) that there should have been a tender of the rent and then refusal of it by the landlord. No doubt. Section 13 (1) does not provide the mode of tender, and, that sending of rent by money order does amount to its tender, but in my opinion, in order to satisfy the requirements of Section 13 (1), it is necessary that the rent, which is sent by money order, in the first instance, but, is refused, should be re-sent to the landlord, again by

postal money order and unless that is done there can be no compliance with Section 11 (1) (d) read with Section 13 (1) of the Act. Clause (d) of Section 11 (1) speaks of the rent due having been "Validly remitted" in accordance with Section 13, It is only when the landlord has refused to accept the rent and then the tenant has remitted the rent so refused to the landlord by postal money order, that the rent can be said to have been "validly remitted" within the meaning of Section 11 (1) (d) read with Section 13 (1) of the Act",

In the instant case, as observed earlier, the respondents having first tendered the rent for the month of October, 1962 by postal money order and after its refusal by the appellants having re-remitted the rent for the month of October, 1962 together with the rent for the month of November, 1962 they have complied with the requirements of Section 13 (1) of the Act. It may further be stated that the point in this form has been taken for the first time in this Court. From the cross-examination of D. W. 5 it appears that even the rent for the month of October, 1962 was sent by money order only after there was a refusal of tender by the landlord. The Courts below, therefore do not appear to have erred even on this point.

5. In the result. I find no merit in the appeal and it is accordingly dismissed with costs.

Shiveshwar Prasad Sinha, J.

6. I agree with my learned brother that the appeal has to be dismissed. An impression is created by the wordings of Section 13 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 that the initial tender of rent by the tenant to the landlord should be personally by the tenant and it is only when the landlord refuses to accept the rent so tendered that the tenant may send the rent by postal money order. The wordings of the section have already been quoted by my learned brother in this judgment and I need not repeat them here. I however, think on reading the section carefully that rent could be tendered in two ways, either personally or by an agent. The post office is equally an agent and, therefore. I think that rent could initially be tendered through postal money order and even on the refusal of such tender the tenant was entitled to take recourse to send the money by postal money order. This having been done in the instant case, there is no merit in the contention of learned counsel for the appellants that the tender of rent should first be a personal tender by the tenant to the landlord and only when the landlord refuses to accept such tender that the rent could be sent by postal money order.