
(1980) 05 PAT CK 0004
In the Patna High Court
Case No : A.F.A.D. No. 21 of 1973

Mohanlal Sah

APPELLANT

Vs

Sabitri Devi Poddar

RESPONDENT

Date of Decision : 01-05-1980

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 — Section 13(1)
Contract Act, 1872 — Section 38

Citation : AIR 1980 Patna 282 : (1980) PLJR 359 : (1981) 1 RCR(Rent) 129

Hon'ble Judges : Nagendra Prasad Singh, J;M.P. Varma, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh and B.P. Gupta, for the Appellant; L.K. Bajla and Hari Shanker, for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Prasad Singh, J.—The defendant is the appellant in this second appeal. The plaintiff had instituted the suit in question for eviction of the defendant from the premises fully described in Schedules 1 and 2 of the plaint.

2. It appears that the defendant was a tenant of the suit premises at a monthly rental of Rs. 16/- for the portion described in Schedule 1 and Rs. 3/- for the portion described in Schedule 2. The plain-tiff purchased the house along with the aforesaid portions under a registered sale deed dated 1-12-1960. A notice u/ s 106 of the Transfer of Property Act was given by the plaintiff to the defendant on 31-1-1961. Ultimately, the suit in question was filed on 18-4-1963, The eviction was sought for, on the ground of default in payment of rent as well as on the ground of personal necessity. The defendant contested the suit, and, according to him, neither there has been any default in the payment of rent nor there was any personal necessity on the part of the plaintiff.

3. At the trial however, it was an admitted position that the defendant had been sending the rent of the premises in question by postal money order before the institution of the suit in purported compliance of the requirement of Section 13 of

the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (hereinafter to be referred to as "the Act"). It was also admitted that instead of sending Rs. 19/- for each month, which was admittedly the rent in respect of the premises in question, the defendant was remitting a lesser amount after deducting the postal money order commission. The trial court, on a consideration of the materials, came to the conclusion that the plaintiff has failed to prove personal necessity, one of the grounds urged on her behalf for the purpose of eviction of the defendant. However, the learned Subordinate Judge held that having not remitted the rent at the rate of Rs. 19/- each month, there was no valid tender, and, as such, the defendant was a defaulter within the meaning of Section 11 (1) (d) of the Act, and, therefore, liable for eviction. The appeal filed on behalf of the defendant against the aforesaid finding was dismissed by the learned District Judge, who affirmed both the findings of the trial court.

4. This appeal was referred to Division Bench for consideration of the question as to whether while remitting rent by money order a tenant is entitled to deduct the postal money order charges out of the rent payable for each month.

5. Learned Counsel appearing for the appellant submitted that in the facts and circumstances of the present case there has been a valid tender and Section 13 has been observed in substance and spirit and the defendant cannot be branded as a defaulter so as to be liable to be evicted. Sub-section (1) of Section 13 of the Act, which is relevant for the present case, is 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."

This sub-section provides that whenever landlord refuses to accept any rent lawfully payable to him then the tenant may remit such rent and continue to remit any subsequent rent by postal money order to the landlord. It may be mentioned at the outset that in this section or in any other section of the Act there is no specific provision as to whether in such a situation the tenant will be liable to bear the cost of the postal money order from his own pocket. According to the learned Counsel appearing for the appellant, however, in absence of any such provision, the tenant is entitled to deduct that amount out of the rent which was payable because such procedure has to be adopted by the tenant as the landlord has refused to accept the rent lawfully payable to him.

6. Sub-section (1) of Section 13 of the Act incorporates the principle of tender as understood in the general law the sole purpose being that a landlord should not be allowed by his own act of refusal in accepting the rent to make the tenant a defaulter. Whenever any such situation arises, a tenant may tender the rent which will be a valid tender in eye of law and will amount to payment of such rent even in cases where such tender is not accepted by the landlord. But, it is equally established that in order that such offer is a valid tender in eye of law, it

must be in terms of Sub-section (1) of Section 13. Same is the position under the Contract Act. Section 38 of the Contract Act, which also contains a provision regarding tender, makes it clear that any such offer must be unconditional and "must be whole of what the person of-ferine is bound by his promise to do". In other words, the offer must not be of part only. In my opinion, when Sub-section (1) of Section 13 of the Act requires the tenant to remit "such rent" it means the rent payable by him. Then it is not open to him to deduct out of that amount the postal money order charges, because in that situation the amount tendered shall not be the rent which was payable. This is a statutory requirement and it has to be complied with in its terms. As I have already pointed out above, under Law of Contract in view of Section 38 in order that an offer is valid it must not only be unconditional but entire, i. e., it must be an offer of the whole payment or performance that is due. In the case of *Beharilal Biswas v. Nasimannessa Bibi* (AIR 3923 Cal 527) a Bench presided over by Mookerjee and Rankin, JJ. had to consider the question of valid tender. In that connection, it was observed :

"It is well settled that a creditor is not bound to accept less than his whole debt, and there can be no valid tender of part of an entire and indivisible debt; *Dixon v. Clark* ((1848) 5 CB 365) : *James v. Vane* 1860 2 E. & E 883)."

In the case of *Bank of Mysore Ltd., Avenue Road, Bangalore City by its Manager, B. V. Narayana Reddy v. B. D. Naidu* (AIR 1954 Mys 168) a Bench of Mysore High Court expressed the same view.

7. Learned Counsel appearing for the appellant urged that the defendant has been remitting the rent by postal money-order deducting the money order charges under good faith and as the plaintiff has accepted the said amount for several months it will be deemed that that was the rent which was payable by the defendant to the plaintiff. In this connection, he has referred to the case of *Charles Rickards Ltd. v. Oppenheim* 1950 1 KB 616. In that case in the original contract there was a stipulation as to time. On materials on record, it was found that the defendant had led the plaintiffs to believe that he would not insist on the stipulation regarding time and if they carried out the work, the defendant would accept it. On that belief, the plaintiffs carried out the work. In that connection it was observed that it was not open later to the defendant to set up the stipulation as to time against the plaintiffs. It was observed :

"Whether it be called waiver or forbearance on his part, or an agreed variation or substituted performance, does not matter. It is a kind of estoppel. By his conduct he evinced an intention to affect their legal relations. He made, in effect, a promise not to insist on his strict legal rights. That promise was intended to be acted on; and was in fact on. He cannot afterwards go back on it."

In my opinion, the aforesaid principle is not applicable in the facts and circumstances of the present case. There is no question of plaintiff giving any assurance or representation to the defendant that even if a lesser amount is sent by money order he shall accept it. Similarly, there is no question of defendant

acting on any such assurance. The defendant was required by the Statute to remit a particular amount as rent and in a particular manner. Having not remitted that amount which he was required, the consequence will be that in eye of law there was no valid tender, which shall render the defendant a defaulter. In my view, the courts below have rightly come to the conclusion that the defendant having defaulted in payment of rent was liable to be evicted from the premises in question. Accordingly, this appeal fails and it is dismissed, but, in the circumstances of the case, there will be no order as to costs.

M.P. Varma, J.

8. I fully agree with my learned Brother. The question of valid tender of rent has been elaborately dealt with in the Judgment. I go a little further in putting some of my own reasons. The Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 does not provide any mode of payment of rent. Section 13 of the Act lays down a mode of payment only in case when the landlord refuses to accept the rent, and the mode prescribed is that the rent should be tendered by postal money order,

9. Shri Balbhadra Prasad Singh, learned Counsel appearing for the appellant, has raised an interesting point by making a submission that the tender of rent by deducting the legitimate money order commission must be deemed to be accepted as valid tender of full rent. To strengthen his point Shri Singh submitted that every landlord is to collect rent from his tenant and in case if the landlord does not employ a collector for the purpose, it would be quite reasonable for the tenant to make deduction of the commission/charges in tendering the rent. If such an interpretation, as canvassed at the Bar, is to be accepted, then a tenant may one day come out with the palm to deduct conveyance charges or such other charges which may at the time the tenant had to incur in tendering the rent to the landlord, and this will be opening a flood gate for cases of making adjustments and counter adjustments in tendering the rent.

10. Every landlord u/s 14 of the Act has to grant receipt for the rent which he receives. It is the prime duty of a tenant to pay rent and in proof of the same he is to obtain receipt from the landlord. Non-grant of receipt is penal for the landlord. The tenant becomes liable for eviction if he defaults in payment of rent for two consecutive months. He is liable to be evicted. So the tenant has to satisfy the court that he is not a defaulter. Section 13 only provides that in case of refusal by the landlord to accept rent, the tenant shall tender it by money order which by itself provides a good proof of either acceptance or of refusal of rent by the landlord and nothing beyond. The full rent has to be tendered. Section 13 admits of no "fall short" in rent. If there is any deduction of postal commission or otherwise, it cannot be accepted as a valid tender and/or unconditional tender. In the instant case, as pointed out above by my learned Brother in the Judgment, the tenant did not remit the full rent which was contracted between the parties, and he, therefore, must be deemed to be a defaulter and liable to be evicted. As such, the appeal fails.