

(1988) 04 OHC CK 0002

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1334 of 1987

Moningi Sriramulu

APPELLANT

Vs

Gudisha Trinath Rao and Others

RESPONDENT

Date of Decision : 29-04-1988

Acts Referred:

Orissa House Rent Control Act, 1968 — Section 7(3)

Citation : AIR 1988 Ori 204 : (1988) 66 CLT 96

Hon'ble Judges : H.L. Agrawal, C.J;R.C. Patnaik, J;G.B. Patnaik, J

Bench : Full Bench

Advocate : Y.S.N. Murty and K.T. Rao, for the Appellant; R.K. Patra, Additional Government Advocate 1 for O.Ps. 2 and 3, for the Respondent

Judgement

Agrawal, C.J.—This application by the tenant is for quashing the order dated 4-2-1987 passed by the House Rent Controller u/s 7(3) of the Orissa House Rent Control Act directing him to clear up entire arrears from Nov. 1983 to 8-1-1987 by 17-2-1987.

2. The question that has been referred for consideration of the larger Bench is as to whether the House Rent Controller u/s 7(3) of the Act can direct a tenant for remitting the arrears of rent falling due subsequent to the filing of the eviction application.

3. The eviction application in question was filed before the House Rent Controller on 11-1 -1984 for the petitioner's eviction, inter alia, alleging that the tenant was a defaulter having not paid the rent since Nov. 1983. The case of the petitioner in his written statement in this regard is that since the landlord refused to receive the rents for the months of Nov. and Dec. 1983 and January, 1984 intentionally when it was sent by money order, he had been depositing the rents in a Savings Bank account and thus he was not a defaulter.

4. On 8-1-1987 the landlord filed an application u/s 7(3) alleging that the petitioner had not paid the arrears of rent to him from "November, 1983 till

today", calculating the dues at the rate of Rs. 140/-per month, the arrears would be Rs. 5,320/. He accordingly prayed for a direction to deposit the said amount immediately. In his counter-affidavit, the petitioner had made the following statements : --

"That the petitioner (landlord) having refused to receive house rent when offered and sent by money orders for the months of Nov. and Dec. 1983 and which act of the petitioner prompted the respondent (tenant) to deposit in Bank account regularly with the initial intimation to that effect to the petitioner, now the petitioner cannot treat the respondent a defaulter. Accumulation of amount for a long period is due to the wilful and bad conduct of the petitioner."

Reading the counter and the stand taken in his written statement, it is obvious that the tenant had not disputed the fact that the landlord had not received the rent of the premises and that it was being deposited in a Bank account. All that he wanted to emphasise was that in the circumstances he could not be held to be a wilful defaulter liable for eviction.

Now, the question that arises for consideration as to whether in these facts and circumstances, the Controller could have directed the petitioner under the impugned order to remit the arrears of rent up to date.

The relevant provision authorising the Controller to pass an order in this regard contained in Section 7(3) of the Act reads as follows : - -

"When 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 failing which he shall not be entitled to contest the proceedings."

5. Section 7(3) of the Act has fallen for consideration times without number before this Court and I would refer to them. In almost all of them, the question decided was as to whether the Controller can enter into an enquiry about the correctness of the plea of the tenant when he denies to be in arrears of rent. If the tenant ultimately loses, he may have to reap the consequence but he cannot be directed to deposit the amount said to be due as arrears of rent nor he can be debarred from defending the proceeding. Those decisions are : Rama Chandra Sahu Vs. Sanyasi Behera and Others, ; B.K. Mohanty v. Saraswati Subudhi (1971) 37 C LT 593; Ganesh Chandra Banerjee v. Sridhar Chandra Kar (1972) 38 CLT 382; Tarini Sahu v. Chappati Seshamma 40 (1974) C LT 945; Sambalpur Automobiles v. Bidyabhusan Mohapatra 41 (1975) CLT 1137; and Renuka Padhi v. The C.J.M., Ganjam 63 (1987) CLT 602.

Obviously, in all those cases, it has been consistently held that it is not open for the Controller under Sub-section (3) to determine that the tenant was in fact in arrears. Sub-section (3) will not operate unless there is admitted arrears of rent. In a certain case, the tenant may be in arrears, yet he may deny the same. But

in such a case, the arrears of rent cannot be said to have been admitted.

In a later case in *Surendra Nath Mohapatra v. Jermish Singh* ILR (1974) Cut 757 while reiterating the view expressed in the above decisions, it was further observed : --

".....The House Rent Contorller had no jurisdiction to direct deposit of rents accruing due subsequent to the filing of the application for eviction unless the tenant agreed to so pay the amount. At any rate, even if the tenant had agreed to deposit the amount falling due subsequent to the filing of the application for eviction, it was not open to the House Rent Controller to pass an order debarring him to contest the proceeding on account of the default in payment of rent....."

It is the correctness of this observation which is now under consideration.

6. I have already quoted the relevant provision contained in Section 7(3) of the Act which refers to the eviction of a tenant on the ground specified in Sub-section (2)(i), namely "where he has not paid or tendered the rent due from him..... within thirty days after the expiry of the time fixed in the agreement of the tenancy with the landlord..... or in the absence of any such agreement by the last day of the month next following that for which the rent is payable". Sub-section (3) at one place refers "remit the arrear rent as admitted by him" which admission; in my view, is referable to the arrears alleged in the application for eviction. The provision immediately provides up to the date of such remittance", meaning thereby, the point of time of the remittance to be made under the scheme of Sub-section (3). And the only meaning that can be given to the later expression is that the remittance at this stage should be up to the date when the tenant is making the remittance. These expressions have resulted in long-drawn submissions by the counsel for the contesting parties as it was vehemently submitted on behalf of the landlord-opposite party that the relevant provision enjoins an obligation on the tenant to remit the arrears of rent "up to the date of such remittance", meaning thereby that he has to remit the entire unpaid rent remaining in arrears up to the date of making of the remittance under the statutory obligation cast on him under Sub-section (3), on behalf of the tenant it was submitted with equal vehemence that the expression "tenant shall remit the arrear rent as admitted by him" w as referable only to the arrear as alleged in the eviction application and as specified as a ground for eviction in the application for eviction under Sub-section (2)(i) of the Act which may happen to be admitted in his written statement.

7. Before I proceed to record my final conclusions, one thing must be clearly understood, namely, the intention of the legislature in drafting this provision. Obviously, this provision has been made in the interest of the landlords and provides some relief so that a tenant while continuing in occupation cannot be allowed to contest while still keeping with him the undisputed and admitted arrears which he has not paid to his landlord. The legislature, in my opinion,

intends that before he is allowed to contest the action for his eviction, he must be compelled to pay up the arrears if the same happen to be admitted. It may well be that an unscrupulous tenant with a view to obviate this circumstance may take a false plea of denial of the arrears and the Orissa Act does not contain any elaborate provision like that in the Bihar Act where, in such a situation the Controller has been empowered to make a preliminary enquiry and record a tentative finding as to the bona fide plea of the tenant. In the Bihar Act there is also a provision for a direction to the tenant to go on paying even the current and future rents during the pendency of the eviction proceeding. The Orissa Act, however, does not contain this salutary provisions and the landlord may suffer the pangs of non-payment of the rent for years together.

8. In this case, however, we have seen that the petitioner had admitted that the landlord had not accepted the rent from him right from Nov. 1983 till the date of the application. The question whether refusal by the landlord would label the tenant as a wilful defaulter within the meaning of the Act would be one for consideration in the final hearing of the matter by the Controller and not at the present stage.

S.N. Mohapatra's case ILR (1974) Cut 757 (supra) is perhaps the only case of this Court where some observations have been made touching the right of the Controller with respect to the deposit of rents accruing due subsequent to the filing of the application for eviction. The learned Chief Justice in the third paragraph of his judgment has made two observations, namely, (1) the House Rent Controller had no jurisdiction to direct deposit of rents accruing due subsequent to the filing of the application for eviction unless the tenant agrees to so pay the amount; and (2) at any rate, even if the tenant had agreed to deposit the amount falling due Subsequent to the filing of the application for eviction, it was not open to the House Rent Controller to pass an order debarring him to contest the proceeding on account of the default in payment of the rent.

In that case, during the pendency of the proceeding, a second application was filed by the landlord before the Controller to direct the tenant to deposit the arrears of rent accruing till then and the application was allowed by the Controller who had directed the tenant to deposit all those rents "failing which the tenant will be debarred from contesting the case."

With due deference to the learned Judges, I find myself unable to agree with the above conclusions in S.N. Mohapatra's case as in that event, the expressions in Sub-section (3) reading "the arrear rent as admitted by him up to the date of the remittance" would be rendered nugatory. In my judgment, the legislature has deliberately used the expression " up to the date of such remittance" in a sense of compulsion on the part of the tenant to remit all the arrears of rent when he happens to remit the arrears calculated up to the date of his remittance at the stage of Section 7(3) of the Act. The only embargo or disability in this regard is the case where the arrear is not admitted by a tenant, since in that event, as in the case of alleged arrears of rent, in the application for eviction itself filed u/s

7(2)(i), on the allegations with respect to the arrears falling due thereafter, i.e., subsequent to the date of filing of the application for eviction up to the date of making of the application u/s 7(3) by the landlord, the Controller cannot give a direction for remittance although the denial may be entirely untrue.

Once this view is taken, it must be held that on the failure of the tenant to carry out the direction to pay the arrears of rent up to the date of the remittance where the arrear is admitted, he can be put to the default clause of being debarred from contesting the proceeding. The observations made to the contrary in S.N. Mohapatra's case (supra), therefore, in my considered opinion, does not lay down the correct proposition of law, I will accordingly overrule that decision to the extent indicated above.

The Controller, therefore, has not committed any error of jurisdiction in this case in directing the tenant-petitioner to deposit the rent till 8-1-1987.

9. The writ application therefore must fail and is hereby dismissed. However, if the petitioner has not carried out the direction of the Controller under the impugned order (Annexure-6), he must do that within four weeks from today. In the peculiar circumstances of the case, I shall make no order as to costs.

10. I agree.

11. I agree.