

(2000) 01 PAT CK 0045

In the Patna High Court

Case No : Appeal from Original Decree 34 of 1978 and 391 of 1979

Ramdutta Ram Swaroop Nirmal and Another

APPELLANT

Vs

Harnath Rai Banarsi Lal and Others

RESPONDENT

Date of Decision : 13-01-2000

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 — Section 11A, 13, 2

Citation : (2000) 2 PLJR 596

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Parmeshwar Prasad and Manoj Kumar Sinha, for the Appellant;
None, for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—The Defendants are Appellants in both these appeals. The Plaintiff-landlord brought about title suit No. 143/67 for eviction of the Defendants from the suit premises on the ground of default in payment of rent since June, 1967 and also on the ground of personal necessity. He also instituted Money Suit No. 91 of 1970 for arrears of rent for the suit premises for the period from June 1967 to May, 1970 at the rate of Rs. 300/- per month with interest at the rate of 12 percent per annum and interest pendente lite. By a common judgment and decree dated 30th September, 1977, the trial Court decreed both the suits.

2. On the basis of the valuation in the Money Suit First Appeal No. 34 of 1978 was filed in this Court whereas Title Appeal No. 1 of 1978 was filed before the District Judge, Bhagalpur against the judgment and decree in the Eviction Suit which was transferred to this Court as per order dated 30.8.1978 passed in M.J.C. No. 86/78 and was numbered as First Appeal No. 391/1979. Since both the first appeals relate to a common judgment and are with regard to same premises and between the same parties they were directed to be heard together and are being disposed of by this common judgment.

3. Learned Counsel for the Appellants pointed out to a petition dated 6.6.1995 filed in First Appeal No. 391/79 on behalf of the Respondents for striking out their names on the ground that they have already transferred the suit properties to third parties as per details in paragraph 1 of the said petition. The transferees have not come forward to be impleaded in these appeals and by order dated 22.10.97 this Court declined to strike out the name of the Respondents. That, probably, is the reason why there is no contest to these appeals on behalf of the Respondents. On the basis of admitted fact that the Respondents landlord have transferred the suit premises to third parties, learned Counsel for the Appellant submitted that the ground of personal necessity for eviction of the Defendants is now no longer available to the Respondents. For this proposition reliance was placed upon a judgment of the Supreme Court in the case of M.M. Quasim v. (sic) The proposition is well settled that in the interest of justice the appellate Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was passed by the trial Court. Relying upon the aforesaid judgment it has to be held that the Respondents are no more entitled to claim for a decree of eviction on the ground of personal necessity because admittedly their interest in the property has extinguished in favour of third parties.

4. Learned Counsel for the Appellants next challenged the finding of the trial Court on the issue of default in payment of rent. Before considering this issue it is relevant to notice in brief the cases of the parties relevant for this Issue. According to the Plaintiffs it was Defendant No. 1 M/s Baidyanath Ayurved Bhawan Limited who was the tenant in the premises in question since 1953. Defendant No. 1. allegedly took the premises on rent from the Plaintiffs for running its sales office at Bhagalpur and the entire management of the sales office in the suit premises is in the hands of Defendant No. 1. So far as Defendant No. 1 is concerned as per Plaintiffs he has been acting as an agent of Defendant No. 1 and running the business of sale of products belonging to Defendant No. 1 and has been paying rent to the Plaintiffs not on his behalf but on behalf of Defendant No. 1. On the other hand Defendant No. 1 has denied that it is a tenant in the suit premises and according to Defendant No. 1 as well as Defendant No. 2 the tenant of the suit premises is Defendant No. 2 who has been admittedly paying rent to the landlords. The case of the Defendant No. 2 is that he is the sole agent of Defendant No. 1 at Bhagalpur and within the terms and conditions imposed by Defendant No. 1 he is the sole proprietor of the business of sale run in the suit premises. Defendant No. 2 has further claimed that since 1985 dispute arose due to demand of higher rent by the landlord which forced Defendant No. 2 to file fair rent case No. 79/1967 on 17.5.67. Due to annoyance the land-lords on 25.6.67 gave a notice for eviction on the ground of personal necessity and when Defendant No. 2 went to tender rent they refused to accept rent for the month of June, 1967 and thereupon Defendant No. 2 began remitting the rent of the premises to the landlords by money orders but the same returned back on account of refusal. Thus, according to Defendant No.

2 he is the tenant who had been paying rent and on refusal of the landlords he has tendered rent through money order as required by Section 13 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (hereinafter referred to as the Act). It may be noticed here that the Act was subsequently replaced by another Act of 1982 but at the relevant time in 1967 and also during trial the Act of 1947 was applicable.

5. The trial Court while discussing issue No. 5 relating to the question whether the Plaintiffs were entitled to evict the Defendants from the suit premises, first held on the basis of an agreement of agency between Defendants 1 and 2- Ext. L, that Defendant No. 1 was actually the tenant. However, in course of the said discussion and on the basis of case of the parties and materials on record, it was rightly noticed by the trial Court that undisputedly the rent for the premises was being paid to the landlords by Defendant No. 2.

6. On the basis of the finding that Defendant No. 1 is the tenant of the suit premises the trial Court proceeded to hold that Defendant No. 1 was a defaulter in payment of rent because:

(i) There was no proof of fact of refusal by the landlords which could entitle the tenant to remit the rent by money orders and (ii) admittedly Defendant No. 1, who as per finding of the trial Court was the actual tenant, had not tendered any rent by money orders.

7. Learned Counsel for the Appellants assailed the view of the trial Court as noticed above firstly on the ground that in law there was no requirement of actual refusal by the landlord to entitle the tenant to remit rent by money order. According to him if the tenant apprehends that for some ulterior motive the landlord would refuse to accept the rent in order to make the tenant defaulter then the tenant may remit such rent by money order. The aforesaid proposition appears to be correct and well settled in view of a Division Bench judgment of this Court in the case of Ram Tahal Modi v. Ratan Lal (1988 PLJR 950) which is in fact based upon a Full Bench judgment of this Court in the case of Raj Kumar Prasad Vs. Uchit Narain Singh, referred to and relied upon in paragraph-19 of the aforesaid division bench judgment. The aforesaid view of this Court is fully supported by a judgment of the Apex Court in the case of Smt. Priyawala Ghosh v. Bajrang Lal Singhania (1992 (2) PLJR (S.C.) 9). Thus, the view of the trial Court with regard to necessity of refusal by the landlord to accept rent to entitle the tenant to remit rent by postal money order is clearly erroneous in law.

8. The only other ground for holding the Defendants defaulter in payment of rent is that there was no tender of rent by Defendant No. 1 who according to the trial Court, is the real tenant. On this issue, learned Counsel for the Appellants first assailed the finding of the trial Court on the ground that the trial Court has erred in relying upon Ext.-1 and has misconstrued the said document of agreement to hold Defendant No. 1 as the real tenant. Secondly, learned Counsel for the Appellants relied upon definition of the term tenant as contained in Section 2(f)

of the Act to submit that since Defendant No. 2 was admittedly the person by whom rent is payable hence he would also be covered by the statutory meaning of the term tenant as defined in the Act. It goes without saying that if this contention of the Appellant is accepted then there would be no necessity to decide the issue as to who is the actual tenant on the basis of Ext. L and other materials In this regard available on the record.

9. Section 2(f) of the Act reads as follows:

tenant" means any person by whom, or on whose account, rent is payable for a building and includes-

(i) a person continuing in possession after the termination of the tenancy in his favour; and

(ii) a person who occupies building as an employee of the landlord of such building either on payment of rent or otherwise.

10. Upon a perusal of the aforesaid statutory definition of the term tenant it is clear that the Legislature has included within the meaning of this term not only a person on whose account rent is payable for a building but also any person by whom such rent is payable. The word "or" occurring in the first part of the definition makes the intention of the Legislature clear that any person who has been paying rent for a building and is therefore a person by whom rent is payable is included among the category of person defined in law to be tenant. The word "or," in the context of the Act does not require to be given any other meaning such as the word "and" because such a construction would be unwarranted and may create un-necessary difficulties even for the landlord because in case of such interpretation the landlord will not only have to find out and show that the tenant in question is the person by whom rent is payable but also that he is the person on whose account rent is payable. In many cases such enquiry or knowledge may not be possible to be had by the landlord, hence, in my view, the contention of learned Counsel for the Appellants is well founded and a tenant, as per aforesaid definition in the Act may mean a person by whom rent is payable for a building.

11. So far as the factual position is concerned it is admitted in this case that Defendant No. 2 is the person by whom the rent is payable but according to the Plaintiffs not on his account but on account of Defendant No. 1. In such a factual situation, in my view, Defendant No. 2 would also be covered by the term tenant and therefore, the Court below was in error in not accepting the tender or rent by Defendant No. 2 through postal money orders to be a valid tender on behalf of tenant. The trial Court did not disbelieve that Defendant No. 2 had remitted the rent for the building in question by postal money order. Learned Counsel for the Appellants has submitted that Exhibit-H series contained money order coupons and Ext. A series contained money order receipts to show that for all the relevant months rent had been tendered by Defendant No. 2 through postal money orders and therefore, the Court below committed a gross mistake and

error of law in ignoring this factual position in holding the Defendants to be defaulters only because according to the trial Court the tender of rent by money-orders was done by Defendant No. 2 and not by Defendant No. 1. Since I have already held that Defendant No. 2 is also a tenant within the meaning of the term under the Act, it has to be held that tender of rent by Defendant No. 2 through postal money orders was a valid tender of rent for the premises in question and hence the Defendants cannot be held to be defaulters.

12. So far as First Appeal No. 34 of 1978 arising out of Money Suit No. 91/70 is concerned, the learned Counsel for the Appellants submitted that he has no objection to a decree for the amount of rent claimed by the Plaintiffs but since the tenants were not defaulters and valid tender of rent had been made by postal money orders till the eviction suit was filed and thereafter rent has been deposited as per order of the Court u/s 11-A of the Act hence the Plaintiffs cannot be held entitled to claim any interest much less at the rate of 12 per cent per annum as claimed by them. Thus, with regard to the money decree the Appellants challenged only the award of interest at the rate of 12 per cent per annum.

13. In view of my earlier finding in First Appeal No. 391 of 1979 that the Defendants tenants are not defaulters under the Act, the aforesaid stand and contention on behalf of the Appellants appears to have substance. In the facts of the case it does not appear proper to award interest to the Plaintiffs Respondents at the rate of 12 per cent per annum over the amount claimed by them for the period till the date of decree. Accordingly, the judgment and decree in money suit No. 91/70 is modified and the Plaintiffs are held entitled only for the amount of rental claimed by them but without any interest till the date of decree by the trial Court and thereafter they shall be entitled for interest at the rate of 6 per cent per annum as awarded by the trial Court.

14. In the result, First Appeal No. 34/78 is allowed in part as indicated above and First Appeal No. 391/79 is allowed in full and the judgment and decree in Title Suit No. 143/67 is set aside and the suit is dismissed. Since the Respondents have not contested these appeals. There shall be no order as to costs in these appeals. Further in the facts and circumstances of the case the parties are directed to bear their own costs through-out.