

(2017) 04 RAJ CK 0145
In the Rajasthan High Court
Case No : 11606 of 2010

Smt. Krishna Bhaseen & anr.

APPELLANT

Vs

Smt. Shail Bhargava & ors.

RESPONDENT

Date of Decision : 19-04-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 482\(2\)\(a\)](#), [Order 2 Rule 2](#) -
Rajasthan Premises (Control of Rent and Eviction) Act, 1950, Section 13(1), Section 19A -
Rent C

Citation : (2017) 04 RAJ CK 0145

Hon'ble Judges : Alok Sharma

Bench : SINGLE BENCH

Advocate : Neeraj K. Tiwari, Preeti Malik

Judgement

1. The Rent Tribunal Ajmer (hereinafter the Tribunal") vide judgment dated 26-7-2005 issued a certificate of possession in favour of the respondent-landlord (hereafter "the landlord") and an order of eviction against the petitioner-tenants (hereinafter "the tenants") on the ground of the tenants having defaulted in payment

of rent for the period from 1-7-1999 to 31-12-2003. The tenant's appeal thereagainst before the Appellate Rent Tribunal, Ajmer (hereinafter "the Appellate Tribunal") was dismissed on 12-4-2010. Hence this petition.

2. It is not in dispute that a landlord tenant relationship obtains in the instant case, the late father of the tenant having been inducted as such by the late father of the landlord on or about 1-3-1981. It is also not in dispute that despite a registered AD notice in terms of the provisos to Section 9(a) of the Rent Control Act, 2001 (hereinafter the Act of 2001") sent on 19-9-2003 by the landlord requiring the tenants to pay arrears of rent for the period from 1-2-1996 to 31- 8-2003 received by the tenant on 23-9-2003 the arrears of rent were not

deposited in the designated bank account of the landlord. Instead the plea taken by the tenants as the LR of the erstwhile tenant Badrinath was that they had deposited on 1-7-2003 the rent upto 31-12-2003 with the court of Munsif East Ajmer in case No.22/1996 in proceedings initiated on 15-5-1996 by the late Badrinath, under Section 19A of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (hereinafter "the Act of 1950"), and hence were not in default on rent and no arrears were payable.

3. The Rent Tribunal on the tenants' defence before it considered their documents Ex.A1 to Ex.A10 which they asserted evidenced

deposit of due rent upto 31-12-2003 with the Munisf (East) Ajmer (Case No.22/1996) in proceedings under Section 19A of the Act of 1950. It however came to a conclusion that there was no evidence laid by the tenants that following the death of erstwhile tenant Badrinath on 24-6-1999 his LR had been substituted, or vakalatnama filed on their behalf to continue proceedings under Section 19A of the Act of 1950. The Tribunal further held that the purported deposit of rent with the court of Munsif (East) Ajmer under Section 19A of the Act of 1950, was not from the evidence before it preceded by the essential preconditions of tender of rent by a money order (which was refused) or an unsuccessful attempt by the tenants through registered notice to elicit the landlord's bank account where the deposit of rent could be made. It was held that in this view of the matter the purported deposit of rent under Section 19A of the Act of 1950 with the court of Munsif (East) Ajmer upto 31-8-2003 was neither valid nor legal. The Tribunal thereafter noted that despite the registered AD notice of 19-9-2003 (Ex.5) admittedly receipted and acknowledged by the tenants on 23-9-2003 (Ex.6/7) the arrears of rent in issue detailed therein were not deposited in the landlord's designated bank account within thirty days or at all and hence the tenants were in default. And consequently a certificate of possession was liable to be issued in favour of the landlord and an order of eviction against the tenants.

4. On the aggrieved tenants' appeal, the Appellate Tribunal, aside of reasons recorded by the Tribunal, held that with the repeal of the Act of 1950, effective 1-4-2003 when the Act of 2001 came into force, no deposit of arrears of rent subsequent to the landlord's notice under provisos to Section 9(a) of the Act of 2001 sent on 19-9-2003 could be made under Section 19A of the Act of 1950 as it stood effaced. It was held that in the circumstances non-payment of due arrears of rent at least for the months of April, 2003 to August, 2003, was clearly made out, as with the coming into force the Act of 2001 effective 1-4-2003, rent could only be paid in the manner as provided under Section 5(3) of the Act of 2001. And the tenants admittedly not having so deposited the arrears of rent in the landlord's bank account could not be absolved of the consequences of eviction on ground of default. So holding the Appellate Tribunal vide its judgment dated 12-4-2010 dismissed the tenants' appeal and affirmed the judgment dated 26-7-2005 passed by the Tribunal.

5. Counsel for the tenants Mr. Neeraj K. Tiwari has emphatically submitted that proceedings under Section 19A of the Act of 1950 having been initiated by the erstwhile tenant Badrinath in the jurisdictional court on 15-5-1996, prior to coming into force of the

Act of 2001, the tenant Badrinath and following his death on 24-6- 1999 his LRs now the tenants had a statutorily conferred vested right under Section 32 of the Act of 2001 to proceed with the application under Section 19A of the Act of 1950 and continue depositing monthly rent in the court of the Munsif (East) Ajmer in discharge of their liabilities for rent to the landlord. He submitted that consequently the tenants having made a valid deposit of due rent upto 31-12-2003 the landlord's registered AD notice dated 19- 9-2003 was of no effect and consequence. In the circumstances no default in payment of rent to the landlord was made out, and no judgment directing eviction of the tenant and issuing certificate of possession of the tenanted premises in favour of the landlord on that count have been passed. Expounding of his argument, Mr. Neeraj K. Tiwari submitted that Section 32 (the repeal and saving clause) of the Act of 2001 provides that the Act of 1950 despite of its repeal effective 1-4-2003 would not affect any application, suit or other proceedings under the Act of 1950 pending on the date of commencement of the Act of 2001 and such proceedings were liable to be continued and disposed of in accordance with the provisions of the repealed Act of 1950, as if repealed Act of 1950 continued to be in force and new Act of 2001 had not been enacted. He submitted that in this view of the matter the Tribunal committed a patent illegality in holding that subsequent to the repeal of the Act of 1950

and enactment of the Act of 2001, effective 1-4-2003 the rent payable by the tenants to the landlord could not be deposited in the prior pending proceedings under Section 19A of the Act of 1950, commenced on 15-5-1996. He submitted that in the circumstance the Tribunal's judgment 26-7-2005 as affirmed by the Appellate Tribunal on 12-4-2010 be quashed and set aside.

6. Ms. Preeti Malik, the respondent No.3 appearing in person supported the judgment of the Appellate Tribunal passed on 12-4- 2010 by which the Rent Tribunal's judgment dated 26-7-2005 issuing a certificate of possession in favour of the landlord and simultaneously directing eviction of the tenants has been affirmed. Ms. Preeti Malik further submitted that even otherwise the petition is also liable to be dismissed on the ground of suppression of facts and false averments by the tenants. She submitted that the tenants have falsely asserted that the landlord had filed a similar prior application for eviction which was later on withdrawn. She submitted that no copy of the purported similar eviction petition earlier filed by the landlord and court's order evidencing its withdrawal has been annexed to the petition, which clearly indicates that a false averment has been made to generate a non existing ground under Order 2 Rule 2 CPC in favour of the tenants. She further pointed out that the petition alleges that the landlord sent the

tenants merely a registered notice under the provisos to Section 9(a) of the Act of 2001, when in fact, as mandated by the aforesaid provisos, the notice sent by the landlord was one registered AD. She submitted that the intent of the aforesaid false averments was to somehow generate legal grounds in favour of the tenants to upset the judgment of the Tribunal passed on 26-7-2005 as affirmed by the the Appellate Tribunal on 12-4-2010. She prayed that the petition be dismissed for reason of the petitioners being guilty of suppressio veri and suggestio falsie. Heard. Considered.

7. The moot question in this petition is whether deposit of rent in court under Section 19A of the Act of 1950 invoked prior to its repeal, even subsequent to its repeal by the Act of 2001 can be construed as a valid payment of rent to defend an eviction petition on ground of default filed under the Act of 2001.

8. Legal provisions to be considered for determination of the moot question which arises in the petition are Section 19A of the Act of 1950, Section 9(a), Section 5(3), and Section 32 of the Act of 2001. Section 19A of the Act of 1950 reads thus: "19A. Payment, remittance and deposit of Rent by tenant-

(1) Subject to the provisions of this section every tenant shall pay rent within the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable.

(2) Every tenant who makes a payment on account of rent shall be entitled to obtain a receipt for the amount paid duly signed by the landlord or his authorised agent.

(3) A tenant may, apart from personal payment of rent to the landlord remit or deposit rent by any of the following methods:

(a) he may remit the amount of any rent due from him by postal money order at the ordinary address of the landlord; or

(b) he may, by notice in writing, require the landlord to specify, within ten days from the date of receipt of the notice by the latter, a bank and account number into which the rent may be deposited by the tenant to the credit of the landlord. If the landlord specifies a bank and account number, the tenant shall deposit the rent in such bank and account number and shall continue to deposit in it any rent which may be subsequently become due in respect of the premises:

provided that such bank shall be one situated in the city or town in which the premises is situated;

Provided further that it shall be open to the landlord to specify from time to time by a written notice to the tenant and subject to the proviso aforesaid a bank different from the one already specified by him under this clause.

(c) Where he has remitted the rent by postal money order clause (a) and the money order is received back by him under a postal endorsement of refusal or unfound and where the landlord does not specify a bank and account number

under clause (b) or where there is bonafide doubt as to the person or persons to whom rent is payable, the tenant may deposit such rent with the court within fifteen days of the expiry of the period of ten days referred to in clause (b) and in the case of such bonafide doubt as aforesaid, within fifteen days of the time referred to sub-sec.(1) and further continue to deposit with the court any rent which may subsequently become due in respect of the premises.

(4) for the purpose of clause (a) of sub-sec (1) of Sect 13; a tenant shall be deemed to have paid or tendered the amount of any rent due from him, if he has paid remitted or deposited the amount of rent by any of the methods specified in sub-section (3).

(5) The deposit with the court shall be accompanied by an application by the tenant containing the following particulars, namely-

(a) the accommodation for which the rent is deposited with a description sufficient for identifying the premises;

(b) the period for which the rent is deposited;

(c) the name and address of the landlord or the person or persons claiming to be entitled to such rent;

(d) the reasons and circumstances for which the application for depositing the rent is made.

(6) The application referred to in sub-sec. (5) shall bear a court fee stamp of Rs.2/- and shall be accompanied by requisite postal stamps for sending the notice and a copy of application under sub-sec.(7).

(7) On such deposit of the rent being made, the court shall send notice of the deposit by registered post acknowledgment due and also send a copy or copies of the application to the landlord or persons claiming to be entitled to the rent with an endorsement of the date of deposit; and a copy of such notice shall be affixed on the

notice board of the court.

(8) If an application is made for the withdrawal of any deposit of rent, court shall, if satisfied that the applicant is the person entitled to receive the rent deposited, order the amount of the rent to be paid to him and such payment of rent shall be a full discharge of the court from all liability to pay rent to the landlord:

provided that no order for payment of any deposit of rent shall be made by the court under this sub-section without giving all persons named by the tenant in his application under sub-sec (5) as claiming to be entitled to payment of such rent, an opportunity of being heard and such order shall be without prejudice to the rights of such persons to receive such rent being decided by a court of competent jurisdiction.

Explanation: For purpose of this section and sections 19B and 19C "the Court" with respect to any local area means any civil court which may be specially authorised by the State Government by notification in this behalf, or where no civil court is so authorised,

(i) the court of Munsiff, and

(ii) the court of the civil Judge, where there is no court of Munsiff having jurisdiction over the area."

9. Section 32 of the Act of 2001, reads thus: "Section 32. Repeal and savings.-

(1) The Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (Act No.17 of 1950) shall stand repealed with effect from the date notified under Sub-sec. (3) of Sec.1 of this Act.

(2) The repeal under Sub-section (1) shall not affect-

(a) anything duly done or suffered under the enactment so repealed; or

(b) any right, title privilege, obligation or liability acquired or incurred under the enactment so repealed; or

(c) any fine, penalty or punishment incurred or suffered under the provisions of the enactment so repealed.

(3) Notwithstanding the repeal under sub-section (1)-

(a) all applications, suits or other proceedings under the repealed Act pending on the date of commencement of this Act before any Court shall be continued and disposed of, in accordance with the provisions of the repealed Act, as if the repealed Act had continued in force and this Act had not been enacted. However, the plaintiff within a period of one hundred and eighty days of coming into force of this Act shall be entitled to withdraw any suit or appeal or any other proceeding pending under the repealed Act with liberty to file fresh petition in respect of the subject matter of such suit or appeal or any other proceeding under and in accordance with the provisions of this Act and for the purpose of limitation such petition shall, if it is filed within a period of two hundred and seventy days from the commencement of this Act, be deemed to have been filed on the date of filing of the suit which was so withdrawn and in case of withdrawal of appeal or other proceeding, on the date on which the suit, out of which such appeal or proceeding originated, was filed;

(b) the provision for appeal under the repealed Act shall continue in force in respect of applications, suits and proceedings disposed of thereunder;

(c) all prosecutions instituted under the provisions of the repealed Act shall be effective and disposed of in accordance with such repealed law;

(d) any rule or notification made or issued under the

repealed Act and in force on the date of commencement of this act shall continue

to govern the pending cases."

10. Section 5 of the Act of 2001 reads thus: "Section 5. Payment and remittance of rent by tenant- (1) Unless agreed otherwise every tenant shall pay the rent by the fifteenth day of the month next following the month for which the rent is payable.

(2) Every tenant who makes a payment on account of rent shall be entitled to obtain a receipt of the amount paid duly signed by the landlord or his duly authorised agent.

(3) A tenant may make payment to the landlord or his duly authorised agent, by any of the following methods:-

(a) by personal payment, by cash, by cheque or Bank Draft; or

(b) by payment in the bank account as may be specified by the landlord, or

(c) by remitting through postal money order.

(4) The landlord shall disclose to the tenant his bank account number and name of the bank in the same Municipal area, in the rent agreement or by a notice sent to him by registered post, acknowledgment due."

11. Section 9(a) of the Act of 2001 reads thus: "Section 9. Eviction of tenants- Notwithstanding anything contained in any other law or contract but subject to other provisions of this Act, the rent Tribunal shall not order eviction of tenant unless it is satisfies that:-

(a) the tenant has neither paid nor tendered the amount of rent due from him for four months:

Provided that the ground under this clause shall not be available to the landlord if he has not disclosed to the tenant his bank account number and name of the bank in the same Municipal area, in the rent agreement or by a notice sent to him by registered post, acknowledgment due;

Provided further that no petition on the ground under this clause shall be filed unless the landlord has given a notice to the tenant by registered post, acknowledgment due, demanding arrears of rent and the tenant has not made payment of arrears of rent within a period of thirty days from the date of service notice;"

12. Section 19A of the Act of 1950 only sets out the modes of payment of rent to the landlord either by way of a money order, deposit in the bank account disclosed by the landlord on notice by the tenant or finally as the last resort by way of deposit in the court, in the event of the two other modes not being effective for reason of the landlord's refusal to accept rent. The deposit so made was a peremptory step safeguarding the tenant from eviction on the ground of default under Section 13(1) of the Act of 1950. Clearly proceedings under section 19A of the Act of 1950 did not partake the character of an "application" as the

word has been used in Section 32 of the Act of 2001, albeit Section 19A(5) indicates that "an application" along with deposit of rent in the court by the tenant was to be filed. The Section 19A(5) application in accompaniment with the rent deposited in court was to be only in the nature of details of the tenanted premises and the landlord/s address to facilitate the court notifying him/ them of rent so deposited and facilitate its withdrawal subject to the court's satisfaction. The word "application" in Section 32(3) of the Act of 2001 in the collocation of the words used therein i.e. "suit" "and other proceedings" is synonymous and has the connotation of a proceeding taken by a party on pleading material facts requiring the court to grant final relief following adjudication on merits in due course. The Apex Court in the case of P. Philip Vs. Director Enforcement [(1976)2 SCC 174] though in the context of 482(2)(a) CrPC-as a repeal and saving provision as Section 32(3) of the Act of 2001 is-has delineated the characteristics of an "application". When contextually construed the word was held to refer to a proceeding initiated on material facts being pleaded for grant of relief in accordance with law while finally disposing of the application, determining for good as far as the court is / was concerned the rights of the parties before it.

13. I am of the considered view that in this state of law, the mere fact of the tenants filing an accompanying application under Section 19A(5) of the Act of 1950 before the court of Munsif (East) Ajmer while depositing rent payable to the landlord, did not confer on them an accrued, vested or even an inchoate right to continue so depositing the rent with the court subsequent to the repeal of the Act of 1950 effective 1-4-2003. It is beyond cavil that with the repeal of the Act of 1950 it stood completely effaced except to the extent of the saving clause i.e. Section 32 in the Act of 2001. Section 19A of the Act of 1950 was not saved, as deposits thereunder prior to 1-4- 2003 did not partake the character of "a suit, application or other proceedings" under the Act of 1950 referred to in Section 32 aforesaid. This cannot be disputed with any seriousness as the deposit of rent under Section 19A of the Act of 1950 on condition of pre requisite being satisfied was not based on pleading of material facts on which the tenants required the jurisdictional court of Munsif (East) Ajmer to finally adjudicate his rights factual or/ and legal vis-a-vis the landlord. In fact, contrarily the proviso to the extant section 19A(8) of the Act of 1950 stated that any order to pay the rent deposited by the tenants to the landlord claiming it would be without prejudice to the rights of such persons to receive such rent being decided by a court of competent jurisdiction. Similarly sub section 4 of Section 19A of the Act of 1950 only created a deeming fiction though rebuttable regarding payment of rent due in the event of an eviction petition based on default under Section 13(1)(a) of the Act of 1950 being filed by the landlord. The finality on the issue of default in such an eviction petition by the landlord was to be determined by the court seized of the eviction petition. It is thus evident that neither did the deposit of rent under Section 19A of the Act of 1950 with an application in accompaniment entailed any pleadings based on material facts to claim final determination of a legal right of the tenant nor could the jurisdictional Munsif finally dispose of the matter

following an adjudication. I am therefore of the considered view that an application under Section 19A(5) at the instance of the tenant while depositing rent to the landlord's credit did not partake the character of an application as the word is used in Section 32 of the Act of 2001. Section 19A of the Act of 1950 was thus not saved despite the repeal of the Act of 1950. The tenants after 1-4-2003 could not at all resort to the mode of payment under Section 19A but was statutorily mandated to adhere to Section 5(3) of the Act of 2001 for the purpose. Their last chance to eschew default lay in depositing the rent due within thirty days following receipt of the landlord's registered AD notice under the provisos to Section 9(a) of the Act of 2001. Failure to avail that opportunity made out a case of default in payment of rent and a ground for the tenants' eviction.

14. Besides it is also well settled as held by the Apex Court in the case of State of Punjab Vs. Mohan Singh [AIR 1955 SC 84] that when a repeal is simultaneously followed by Legislation afresh on the same subject (as in the instant case) one has to look as the provisions of the new Act to indicate an intention different from an absolute effacement of the repealed Act. And for this purpose the enquiry to be made is whether the new Act keeps alive a preexisting right and liability or whether it manifests an intention to destroy them. In the scheme of the Act of 2001 vis-a-vis that of Act of 1950, I am of the considered view that the mode of payment of rent under section 19A of the Act of 1950 by way of deposit in court stood completely effaced with the coming into force Section 5(3) of the Act of 2001. Instead the Act of 2001 specifically provided for mechanisms for payment of rent only by personal payment in cash against a receipt, by a cheque or bank draft, remittance through a postal money order and by payment in the bank account as was specified by the landlord. No other mode was prescribed and hence not permitted.

15. Reverting to the facts of the case, which are not disputed, it is admitted by the tenants that the landlord issued a registered AD notice on 19-9-2003 for payment of arrears of rent from 1-2-1996 to August, 2003. The tenants admit receipt of the said notice on 23- 9-2003, but did not deposit the arrears of rent in the bank account disclosed by the landlord in his notice dated 19-9-2003 within thirty days of receipt of the notice. Instead the specific defence of the tenant to the notice under the provisos to Section 9(a) of the Act of 2001 has been that the rent due upto 31-12-2003 had been deposited on 1-7-2003 under Section 19A of the Act of 1950- subsequent to the coming into force of the Act of 2001 on 1-4- 2003, with the court of Munsif (East) Ajmer.

16. In view of discussion aforesaid with regard to mode of payment of arrears of rent to the landlord subsequent to coming into force the Act of 2001 and the exclusion of the mode prescribed in Section 19A of the Act of 1950 by deposit of rent in court, I am of the considered view that the non-payment of arrears of rent at least for the period 1-4-2003 to 31-8-2003 in the landlord's bank account within thirty days subsequent to notice dated 19-9-2003 received on

23-9-2003 but by way of the deposit under Section 19A of the Act of 1950 tantamounted to a default in the payment of rent due to the landlord for over four months. Consequently a case for eviction on ground of default in payment of rent by the tenants within the meaning of Section 9(a) of the Act of 2001 was clearly made out. The Tribunal in the circumstance correctly inter alia directed eviction of the tenant on the ground of default in payment of rent under Section 9(a) of the Act of 2001. Its judgment has been lawfully affirmed by the Appellate Tribunal. No interference is hence warranted in this petition thereagainst. The tenants are liable to be evicted from the tenanted premises as directed by the Tribunal.

17. In the view taken as above, there is no necessity of addressing other arguments advanced by respondent No.3 Preeti Malik appearing in person such as that even otherwise from evidence before the Tribunal the pre conditions for the deposit of rent in court under Section 19A of the Act of 1950 were not made out rendering the exercise redundant and of no effect, that the LRs of Badrinath were not substituted following his death and deposits in the name of a dead tenant were no deposit in the eye of law, that no substitution under Order 22 Rule 3 CPC was permissible in Section 19A of the Act of 1950 proceedings as they were not a suit, and that Ex.A-1 to A-10 challans of rent purportedly deposited in court under Section 19A of the Act of 1950 filed by the tenants even by themselves left unaccounted rent payable for over a period of four months which by itself sufficed for the tenants' eviction on the ground of default under Section 9(a) of the Act of 2001.

18. In the circumstances, I find no force in the petition. The petition is dismissed. The interim order dated 24-12-2010 stands vacated. Consequences to follow.