

(2000) 04 KAR CK 0034

In the Karnataka High Court

Case No : House Rent Revision Petition No. 1091 of 1997

Sri. G. Doreswamy Naidu

APPELLANT

Vs

Sri. B.N. Patil and Others

RESPONDENT

Date of Decision : 13-04-2000

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 19, 29, 29 (4), 44, 50
Karnataka Rent Control Rules, 1961 — Rule 8, 9

Citation : (2000) 3 KCCR 1725

Hon'ble Judges : S.R. Venkatesha Murthy, J

Bench : Single Bench

Advocate : M.S. Subbarayappa, for the Appellant; D.B. Davagirikar, for Respondent 1 and P.G. Mogali, for Respondents 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

S.R. Venkatesha Murthy, J.—This is an application u/s 29(4) of the Karnataka Rent Control Act (hereinafter called the Act) to stop further proceedings in House Rent Revision Petition 1091 of 1997.

2. The Petitioner in House Rent Revision Petition 1091 of 1997 is the tenant who is questioning his eviction from the schedule premises in HRC 2008 of 1985 on the file of the Court of Small Causes, Bangalore.

3. The Respondent-landlord has made an application for stopping further proceedings u/s 29(4) of the Act on the ground that as on the day, the revision petition was filed, a sum of Rs. 2,275/- was due and the Petitioner has made an endorsement in the revision petition that as on the day of the revision, no amount was due. Even thereafter from 11.7.1997 upto 10.1.1999 for a period of 18 months a sum of Rs. 5,850/- has been in arrears and therefore the proceedings are liable to be stopped u/s 29(4) of the Act and the Petitioner directed to surrender vacant possession of the premises.

4. The Petitioner claims that he has paid between 8.10.1997 and 1.2.1999, a

sum of Rs. 6,175/- in addition the cost of replacement of an electrical meter of the value of Rs. 1,300/-. Thus the Respondent has deposited excess money and therefore, the Respondent is not entitled to any relief under the application.

5. Regarding payment of rent, there was considerable controversy between the parties. The landlord sought eviction of the Petitioner from the premises alleging that the Petitioner herein was due rent in a sum of Rs. 18,525/- being the arrears of rent from the date claimed by the landlord i.e., from 11.8.1981. The tenant namely the Petitioner herein contested the claim of the Respondent herein about his status as a tenant. The Court of Small Causes found that there was relationship of landlord and tenant between the parties and that the Petitioner herein, was liable to deposit rent at the rate of Rs. 325/- claimed by the landlord upto 11.5.1986 at Rs. 18,525/-. Thereafter the Respondent sought by way of I.A. IV for stoppage of further proceedings on the ground that the rent had not been deposited regularly. It was alleged that after the order of the Court for deposit of arrears of rent of Rs. 18,525/- upto 11.5.1986, the Petitioner has committed default in payment of rent from 11.8.1986 to 11.3.1987 in a sum of Rs. 2,725/-. The learned Civil Judge found that the cause shown by the Respondent was insufficient and he stopped further proceedings and directed the Petitioner to surrender vacant possession of the premises within three months by his order dated 1.6.1988.

6. The Petitioner challenged the order on I.A. IV by filing House Rent Revision Petition 4547 of 1988 which was disposed of on 7.6.1994 and that order was recalled by the Court on 8.7.1994. At that stage, the landlord filed a memo of calculations stating that the balance amount due towards arrears of rent was Rs. 12,025/- and the same was disputed by the Petitioner herein. The Petitioner, however, claimed that he had deposited a sum of Rs. 650/- on 25.10.1994 and there was no arrears. This Court did not go into the disputed questions of fact regarding arrears of rent, but said that the landlord is entitled to urge the same before the trial Court and further directed that the case be decided on merits expeditiously and disposed of the revision. Thereafter I.A. 12 was filed before the trial Court and on contest, the trial Court by its order dated 16.2.1996 rejected I.A. 12 on the ground that an excess sum of Rs. 100/- had been paid. The landlord-Respondents herein filed I.A. 13 seeking a review of the order and the trial Court, by its order dated 19.4.1996 partly allowed the application holding that there was an arrears of Rs. 1,900/- as on 11.1.1996, payable by the tenant and the same be deposited on or before 30.5.1996. The orders on I. As 12 and 13 made by the trial Court were challenged in House Rent Revision Petition 1223 of 1996 and House Rent Revision Petition 2330 of 1996 and the Court disposed of the matter on the grounds that Rs. 1,900/- had been deposited on 30.5.1996 and since there was a direction in Civil Revision Petition 4547 of 1988, the case may be disposed of on merits and with those observations, the revisions were not admitted.

7. The landlord claims that as on 10.7.1997, a sum of Rs. 5,200/- was due and

payable. However, the trial Court in para 20 of the Judgment referred to the memo filed by the Petitioner herein and recorded a submission that an R.O. had been taken and so nothing was due by way of arrears of rent as on that day and on that finding recorded that no case for eviction u/s 21(1)(a) had been made out, against which order the landlord has filed a revision in House Rent Revision Petition No. 1381 of 1997. It is contended by the Respondent that in the trial Court I.A 16 has been filed for stopping of further proceedings on the ground of non-payment of rent. But the same was not disposed of by the trial Court.

8. It is contended for the Respondent-landlord that the narrative above would show that after the order on I.A.I dated 7.6.1986, the Petitioner-tenant was obliged to keep on paying the rent as and when it became due and the Petitioner-tenant is not entitled to prosecute the revision without paying the arrears of rent as on the date, he filed the Revision Petition and subsequently, during the pendency of the revision.

9. The Respondent has filed a memo of calculations dated 28.8.1998 wherein he has stated that the rent for the period 11.1.1996 to 10.7.1997 would be Rs. 5,850/- for a period of 18 months (but it is wrongly mentioned in the memo as Rs. 5,050/-). The Respondent states that the Petitioner-tenant has deposited rents on 3.2.1996, 20.4.1996 and 10.6.1996 amounting to Rs. 2,925/-. The balance would be Rs. 2,925/-. The Respondent claims that as a sum of Rs. 950/- allegedly deposited under R.O. 1676 dated 31.7.1992 has not been taken to credit by the High Court. Thus, a sum of Rs. 3,900/- was due as on 10.7.1997. The Respondent-landlord also claims that a sum of Rs. 1,300/- which has been deposited under R.O. 307 dated 19.11.1990 i.e., Rs. 650/-, R.O. 423 dated 7.12.1990 for Rs. 325/- and R.O. No. 582 dated 25.2.1991 for Rs. 325/- have not been paid to the Petitioner, by reason of lapse to the Government and so he is entitled to a sum of Rs. 5,200/- towards arrears of rent as on 10.7.1997.

10. The Petitioner claims that the rent as on 30.5.1996 has been paid and is not open to challenge. Thereafter he has paid a sum of Rs. 975/- on 2.4.1996, Rs. 325/- on 12.9.1996, Rs. 650/- on 16.11.1996 and Rs. 975/- on 27.1.1997 and Rs. 975/- on 11.6.1997 and so the rents as on the date of the petition has been paid. The Petitioner has denied that as on 10.7.1997, there was arrears of Rs. 2,925/- as claimed. The Petitioner claims that Rs. 975/- allegedly not credited to the account in the High Court is not correct and the same has been paid. The Petitioner denies that a sum of Rs. 5,850/- was due cannot be true and has prayed that the petition be dismissed.

10.1. So far as the memo of calculations filed in the HRC 2008 of 1985 is concerned, the item-D relating to the lapse of Rs. 1,300/- cannot be regarded as a non-deposit inasmuch as the amount has lapsed by reason of the amount being not paid to the landlord within the period of three years and he could claim the said amount in accordance with rules.

10.2 Regarding the sum of Rs. 975/- deposited under R.O. 1676 dated 31.7.1992

pertaining to Rs. 975/-, the tenant claims that it has been accounted for and taken to the credit in the Civil Revision Petition 4547 of 1988 and the xerox copy of the R.O. is produced at page 39 of the documents annexed to the memo of calculation dated 24.5.1999. The Office of the High Court states that no such payment has been recorded since the R.O., has not been returned to the Accounts Branch. The Petitioner shall have to return the R.O. to the Accounts Branch so that the amount may be taken to credit. This is found mentioned in the memo of calculations-Item No. I filed on 24.5.1999 on behalf of the Petitioner.

11. So far as the arrears of Rs. 5,825/- for the period 11.1.1996 to 10.7.1997, the Petitioner's contention is that in addition to the 3 deposits admitted in the memo of calculations, the Petitioner has made payment of Rs. 975/- on 18.6.1996 under R.O. 40075 and Rs. 325/- on 12.9.1996 under R.O. 41551; Rs. 650/- under R.O. 42299 dated 19.11.1996; Rs. 975/- under R.O. 43108 on 27.1.1997 and Rs. 975/- under R.O. 44962 dated 11.6.1997. The Petitioner claims that he has deposited on 27.5.1996 under R.O. 39634, a sum of Rs. 1,900/- and thus, he claims to have paid a sum of Rs. 5,850/- for the period in question.

12. In so far as the rent upto 11.1.1996, deposited as per order on I.A. 13, on 27.5.1996 is concerned, there can be no controversy, subject to validity of such deposit.

13. The Petitioner claims that he has sent a sum of Rs. 975/- by cheque in the name of the Respondent on 9.10.1997 and in support of the claim, he has produced an accounts extract issued by the Canara Bank which shows encashment of Rs. 975/- by the Respondent B.N. Patil this could relate to the period from 11.7.1997 to 11.10.1997 and would cover the rent due upto and beyond the date of presentation of this revision petition. Threshold bar u/s 29(1) of the Act, from prosecuting the revision, is thus crossed by the Petitioner.

14. The contention of the landlord is that the Petitioner is not entitled to prosecute the revision as the rents have not been paid regularly as and when it became due and cannot therefore be regarded as compliance with the statutory liability u/s 29(1) of the Act and the revision should be dismissed directing the Petitioner to surrender vacant possession of the premises.

15. So far as the payment of rent up to the date of presentation of the petition is concerned, it is clear that the payment of rent of Rs. 975/- sent on 9.10.1997 would cover the period of one month beyond the date of presentation of the revision. The rent became payable from 11.10.1997. The Petitioner has deposited rent as per the memo dated 4.8.1998. It is clear that the payment from 12.1.1998 to 29.6.1998 would cover the period of 10 months from 11.10.1997 i.e., upto 11.8.1998. The memo filed on 24.5.1999 at page 69 would show payments of Rs. 975/- on 7.10.1998, Rs. 975/- on 1.2.1999 and Rs. 975/- on 16.4.1999 totalling to Rs. 2,925/- covering a period of 9 months i.e. upto 11.5.1999.

16. A perusal of the memo would show that the Petitioner has sought to claim a sum of Rs. 13,710/- as cost of repairs as per voucher dated 28.1.1995. It is needless to state that the Petitioner in order to claim credit against rents payable, he can effect repairs in accordance with an order made by the Court u/s 44 of the Rent Control Act. Rs. 13,710/- cost of repairs allegedly effected by the Petitioner being disputed and not permitted under any order made u/s 44 of the Act cannot be set off against the rents payable to the landlord. Likewise the claim of the Petitioner regarding replacement cost of a meter of Rs. 1,300/- cannot be entertained. Thus the claim of the Petitioner that he has made an excess payment of Rs. 15,335/- is not tenable; but after deducting Rs. 13,710/- and Rs. 1,300/-, there would be an excess payment of Rs. 325/- as on 30.4.1999 i.e., upto 11.5.1999. Other than this instance of advance payment of rent, there is no clear material to support a claim of payment of rent in advance.

17. The learned Counsel for Respondent submitted that the Petitioner has not given notice of deposit and it has caused a lot of hardship to the Respondent to trackdown the payments and retrieve them over a long period of time. This contention of the landlord is based on the requirement under Rule 9 of the Karnataka Rent Control Rules which reads as follows:

9. Deposit of rent u/s 29-(1) The time within which a deposit of rent under Sub-section (1) of Section 29, may be made shall be fifteen days of the last date fixed in the agreement of tenancy with the landlord for payment of the rent or in the absence of such agreement fifteen days from the last date of month next following that for which the rent is payable.

(2) The procedure for the deposit of rent u/s 29, the fee for the service of notice of deposit and the manner of paying the fee shall be, as far as practicable, the same as those prescribed in Rule 8 for deposits of rent made u/s 19.

(3) Notice of the deposit shall be in Form IV and shall be served on the landlord in the same manner as that prescribed in Sub-rule (3) of Rule 8.

(4) The conditions subject to which the amount deposited may be withdrawn by the landlord shall be those as may be fixed by the Court.

18. The legal position is that the tenant in order to contest the landlord's claim either by resisting the petition or by prosecuting the revision u/s 50 of the Act, has to pay promptly and regularly the rent accruing due - a fundamental obligation of tenant. In *Sudhakar Vs. Lakshamma*, this Court examined the delay of 2-3 months in paying rent contrary to the observation of the Supreme Court in *Mohan Laxman Hede Vs. Noormohamed Adam Shaikh*, and *Mranalini B. Shah and Another Vs. Bapalal Mohanlal Shah*, , and held that the default by the tenant could not be excused and the tenant incurred liability u/s 29(4) of the Act to surrender possession of the demised premises to the landlord. It has been held that the tenant is obliged to pay rent regularly and cannot choose to pay at his choice. In *H.N. Srinivas Vs. G.R. Narasimhaiah*, the Court observed this in para 2 of the Judgment:

2. The practice is growing in this Court, of the Petitioners (tenants) asserting that they have been depositing the rent in the Court without furnishing any details to the landlord who is entitled to draw the amount. Even though Section 29(2) read with Sub-section (5) thereof and Rule 9 of the Karnataka Rent Control Rules require a notice to the landlord either of the deposit or of the steps that is being taken to make deposit, the same is not being followed in many cases. At the last moment in this Court an assertion is being made that the rent has been deposited. The resultant inconvenience and many a times the delay caused by such an assertion is not considered by any one concerned. I fail to understand as to how the Petitioner can make a deposit without intimating the Respondents or the learned Counsel for the Respondents. The procedural law is not a weapon just to cause inconvenience or to harass the opposite party. The procedural law is meant to have a true course of justice. Unless a strict view of this violation of Section 29(2) read with Sub-section (5) of Section 29 and Rule 9 is taken by this Court I think this kind of delay will be repeated perpetually.

and held that the revision was liable for dismissal for non-compliance with Section 29(2) read with Sub-section (5) of Section 29 of the Act and Rule 9 of the Karnataka Rent Control Rules. In this instant case, admittedly the Petitioner has not complied with Rule 9 of the Karnataka Rent Control Rules. The details of payment made by the Respondent as disclosed by the memo filed on 24.5.1999, would show that the rents have not been paid regularly, but in intervals of three months or like periods. It has to be noticed that on the day I.A. 12 was filed before the trial Court, a sum of Rs. 1,900/- was found due and payable as on 11.1.1996 and the same was deposited before 30.5.1996. When the Respondent pointed out that there was default in payment of rents, after the determination of relationship of landlord and tenant between the parties, I.A. 4 was allowed by the trial Court and further proceedings were stopped and the Petitioner herein was ordered to vacate and surrender possession of the premises. The order on I.A. 4, which was challenged in Civil Revision Petition No. 4547 of 1988 was disposed of by this Court thus:

2. I.A. II was filed in this case of recalling the said order and the same was allowed on 8.7.1994. The Counsel for the Respondent has filed a memo of calculation stating that the balance of amount due towards arrears of rent is Rs. 12,025/- and this statement is disputed by the learned Counsel for the Petitioner and according to him, there are no arrears of rent due as on date. He submits that the latest deposit was 25.10.1994 for an amount of Rs. 650/-.

3. This Court need not go into the question of non-payment of rents when once the proceedings before the trial Court are pending. It is open to the Respondents to take such proceedings as are open to them under law, if any rents are still due to them. With the above observation, I.A. II as well as memos are disposed off. The trial Court will proceed with the disposal of H.R.C. case on merits expeditiously, as already directed. Petition disposed off accordingly.

It is clear from this order that though the Court set aside the order of the trial

Court, it left the landlord to agitate his claim regarding arrears of rent due after the initial determination of the arrears of rent payable by the tenant which includes the right to seek stoppage of further proceedings u/s 29(4) of the Act. Atleast on three different occasions, after the order of the Court in 1986, application u/s 29(4) of the Act had been filed and the trial Court merely directed payment of the arrears of rent due on the date of the application. The memo of calculations filed on 24.5.1999 shows that it has not been so done by the tenant. Mere deposit of rent by the tenant is not what is contemplated by the law. The tenant is obliged to give notice of every deposit of rent under Rule 9 of the Rules, so that the landlord gets information of the deposit of rent to enable withdrawal of the rent deposited. It is not the case of the Petitioner-tenant that he has complied with Rule 9 of the Rules at any time during the long pendency of the case in the trial Court and in this Court. No explanation for failure to comply with Rule 9 of the Rules can be, and has been, given by the Petitioner-tenant over such a long period of time. Ignorance of law cannot be an excuse at all, especially by a person like the Petitioner who is a professional auditor and infraction of Rule 9 of the Rules can hardly be a ground of justification against stoppage of further proceedings. An inference that the conduct of the Petitioner in not giving notice under Rule 9 of the Rules is deliberate with a view to harassing the Respondent cannot be unreasonable.

19. It has to be observed that certain amounts have lapsed to the Government and one deposit dated 31.7.1992 of Rs. 975/- cannot be certified for payment as the receipt order, after deposit to the Reserve Bank of India, has not returned to the High Court, for taking the same to account and as a result, the same has not been and could not be paid to the landlord, though nearly 8 years have elapsed since the deposit. Non-compliance of the account Rules relating to deposit of rent in Court has thus rendered the deposit on 31.7.1992 illusory and cannot for purposes of Section 29(1) of the Act be regarded as payment at all. The circumstance emphasises how necessary it is for a tenant to comply with the Rules regarding notice of deposit of rent as and when deposits are made. The obligation imposed on a tenant u/s 29 of the Act is to see that the rents are paid to the landlord causing the least inconvenience. If the landlord gets no notice of deposit of rent at all, he can never know when and what rent has been deposited by a tenant. The landlord is under no obligation to search the records of the Court to find when and how much rent has been deposited by a tenant. Deposit of rent by a tenant is only part of the obligation enjoined by law and the other part of the obligation is to give notice of deposit so that the landlord gets information of it, so that he may move to receive the rent deposited. It is necessary to point out that Rule 9 of the Rules specifies when the rent which has become due, should be deposited besides stipulating the form of the notice and the manner of its service. It would be a matter of discretion of the Court, when sufficiency of the notice comes up for consideration, to find in individual cases on the adequacy of the notice of deposit. The deposit of rent u/s 29 of the Act would be complete and be valid only when the notice under Rule 9 of the Rules is given.

20. The Supreme Court in P.R. Deshpande v. Maruthi Balaram Haibatti ILR 1999 Kar 623 has in paras 15 and 16 observed thus:

15. The words in Sub-section (1) "or to prefer or prosecute a revision petition u/s 50" encompass two stages. First is at the threshold when the tenant files the petition for revision. Second is a stage when he prosecutes his revision. On the first stage, his revision petition is not maintainable unless it is accompanied by either payment or deposit of "all the arrears of rent due up to the date of payment of deposit". If the revision is validly preferred, then in the next stage of prosecution of revision, the tenant has to continue to pay or deposit "any rent which may subsequently become due" until termination of the proceedings.

16. Learned Counsel for the Appellant contended that the liability of the tenant u/s 29(1) of the Act would come into operation only after the Court determines the amount to be paid. This argument is based on Sub-section (3) but the contingency under that Sub-section would arise only where there is dispute as to the amount of rent to be paid or to be deposited. In this case, the Appellant filed revision petition on 20.4.1991. The High Court has noticed that "admittedly, the tenant did not deposit the rent on 20.4.1991 when the revision petition was filed before the learned District Judge.

In Narayan Hebbar v. Radhakrishna Shankar Shenai 1969 (2) MLJ 207 this Court has observed thus at pages 210 and 211:

The next submission of Sri Karanth was that he would be entitled to the indulgence, if it may be characterised as such, enacted in the first part of Section 29(1) and it was exactly that had been availed of by his client in depositing Rs. 240/- on 13.3.1969. This contention also deserves to fail. It has to be remembered that in I.A. No. II filed by the tenant, there was a specific request to permit him to deposit the "monthly rents" in the trial Court. In view of this statement, it is clear that the tenant was trying to comply with the second part of Section 29(1) of the Act. He could not have also taken advantage of the provisions of the first part of Section 29(1) relating to the payment of arrears up to the date of payment in view of the fact that on his own showing he had deposited Rs. 120/- by way of payment of arrears upto the date of 10.4.1968 and he had continued to pay the "monthly rents" thereafter in compliance with the second obligation enjoined by that section. It is clear, therefore, from his conduct that the tenant had already availed himself of the opportunity of depositing the rents upto the date of payment during the prosecution of the present revision petition by him. To accede to the argument of Sri Karanth that he should be entitled to a further indulgence of paying the arrears upto the date of payment in accordance with the provisions of Section 29(1), would amount to rendering the second part of the provision nugatory. It is tantamount to vesting of an option with the tenant enabling him to allow even "monthly rents" to fall in arrears and then pay such arrears upto the date of payment in accordance with the first obligation enjoined by Section 29(1) of the Act. A situation which might render a part of Section 29(1) otiose cannot be said to be within the

contemplation of the Legislature. This argument of the learned Counsel should also fail. It would also be relevant to refer to another facet of this question argued by Sri Karanth. It was his submission that he had not taken advantage of the indulgence implicit in the "first obligation" enjoined by Section 29(1) and, therefore, the payment made on 13.3.1969 was legal and valid. He further contended that the payment of Rs. 120/- on 10.4.1968 was really the payment of "monthly rents" which had been with-held by his Counsel by mistake as explained by him in an affidavit filed in I.A. No. III. I do not think that I can accede to this argument. Even assuming that it was so, it would not be open to him to default in payment of "monthly rents" and pay the arrears in a lumpsum. What Section 29(1) says, in my opinion, is that when the tenant pays rent for the first time during the pendency of proceeding for eviction u/s 21, including an Appeal or Revision, he was bound to pay all arrears upto date of such payment and if no arrears are due, even then he must continue to pay "monthly rents" as per the second obligation enjoined u/s 29(1). The provisions of that Section cannot be read as conferring a privilege on the tenant to fall into arrears at will. In this view, this argument deserves to fail.

21. The payments are not regular as can be found from the memo filed on 24.5.1999 during the pendency of the case in the trial Court and in this petition also. Even otherwise by reason of non-compliance with the requirement of Rule 9, the payment cannot be regarded as in conformity with Section 29 of the Act. No explanation as to why further proceedings should not be stopped has been offered by the Petitioner as laid down in Sudhakar's case referred to above. The Petitioner is obliged to show cause why further proceedings should not be stopped. It is well established authority that the tenant cannot keep on committing default in payment of rent several times during the pendency of the proceedings in the trial Court and in the High Court in Revision and still claim that the proceedings are not liable to be stopped u/s 29(4) of the Act. The earlier orders declining to stop further proceedings on the ground that in Civil Revision Petition No. 4547 of 1998, the Court has directed the case to be disposed of on merits cannot constitute any bar for stopping further proceedings in this case.

22. It has been noticed invariably in Civil Revision filed by the tenants, there is no mention made in the Revision Petition as to whether the tenant has paid all the arrears of rent as on the date of the revision with the particulars in support of the claim. Mostly by way of an after thought, an entry is made that all arrears of rent are paid leaving the opponent and the Registry guessing as to how the statement is true. In a number of cases, the statement of fact about there being no arrears of rent on the date the Revision is presented, is found to be untrue besides requiring an elaborate enquiry as to the truth of the claim made in the Revision Petition. It is ordered that the office while checking the revision petitions shall insist a specific statement being made in the revision petition, as to how the arrears of rent and at what rate of rent, has been paid upto the date of filing of the revision petition with the necessary particulars to enable proper verification of the threshold bar u/s 29(1) of the Act.

In these circumstances, the application for stopping further proceedings in this case deserves to be and is allowed. The Petitioner-tenant shall surrender vacant possession of the premises within 60 days from this day.