
(1993) 09 SC CK 0107

In the Supreme Court Of India

Case No : Civil Appeal Nos. 2093-94 Of 1980

Teegala Satyanarayana

APPELLANT

Vs

G.S. Bhagwan

RESPONDENT

Date of Decision : 29-09-1993

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(2)
(i)

Citation : (1995) 4 SCC 602 Supp

Hon'ble Judges : N. P. Singh, J;K. Ramaswamy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The appellant is a tenant. Action was laid for his ejectment under Section 0(2)(i) of the A. P. Buildings (Lease, Rent and Eviction) Control Act, 15 of 1960, for short "the Act", for his committing wilful default in the payment of the rent from August 1973/01/1974. A notice was issued on 22/02/1974. Thereafter, the appellant tendered the rent, but the respondent refused to receive the same and procedure under Section 8 of the Act was resorted to. Thereafter the landlord received the rent under protest. All the courts including the High court had concurrently found that the appellant committed wilful default in the payment of the rent and thus a decree for ejectment was passed. Thus these appeals by special leave,

2. SHRI Ram Kumar, learned counsel for the appellant has contended that in view of the law laid down by this court in S.P. Deshmukh v. Shah Nihal Chand Waghajibhai Gujarati and in Rashik Lal v. Shah Gokuldas and Mangalbhai v. Dr Radheyshyam and in Swami Ratanbabu v. Wamanrao Shankarrao Deshmukh there arose a contract to the contrary that the landlord was willing to receive the rent at irregular intervals and that the appellant has shown by his conduct sending the rent immediately on receipt of the notice, by money order, but the landlord has refused to receive the rent. It is also further contended that the

rESPONDENT has been sending his agent for collection of the rent. As and when his agent was demanding rent, the appellant has been paying the same and thereby he had not committed wilful default. He availed of the remedy under Section 8 and the landlord received the rent. He also contends that under Section 10(2) of the Act, the discretion has been given to the court to direct the appellant to deposit the rent and in those circumstances, it cannot be construed to be wilful default. We find no force in the contention. Section 10(2(i) reads thus

"(I) that the tenant has not paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement of tenancy with his 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, or"

The second proviso of Section 10 of the Act provides thus :

"PROVIDED that in any case falling under clause (i) if the Controller, is satisfied that the tenant's default to pay or tender rent was not wilful, he may notwithstanding anything in Section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected."

3. A reading thereof clearly shows the legislative intention that it is the positive duty cast on the tenant to pay the rent or tender the same due by him in respect of the building within 15 days after the expiry of the time fixed in the agreement of the tenancy or by the last date of the month next following that for which the rent is payable. In case the landlord refuses to receive the rent, Section 8 of the Act provides the procedure for payment thereof, namely, the tenant is under an obligation to issue a notice calling upon the landlord either to receive the rent or name of the bank in which the rent is to be deposited. On receipt of the notice, in case the landlord does not respond to or refuses to receive the rent, a right is given to make an application under Section 8 in the court of Rent Controller (District Munsif) seeking permission of the Controller to deposit the rent. After following the procedure, a direction would be given for deposit of the rent to the credit of the case. It would thus indicate that there is a positive duty cast on the tenant to deposit the rent or to pay or to tender the rent as in terms of Section 10(2(i) of the Act. Under the proviso, in case the Rent Controller finds that the default to pay or tender the rent was not wilful, he may notwithstanding anything in Section 11, give the tenant a reasonable time, not exceeding 15 days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected. Therefore there should be a positive finding to be recorded by the Rent Controller that the default committed by the tenant is not wilful. In that event, the power to give time for payment of the rent would arise. In case the Rent Controller finds that the default is wilful, then the proviso becomes inapplicable. The concurrent finding recorded by the courts below that the appellant had committed wilful default in payment of rent for six months is according to law. The receipt of the

rent deposited under Section 8 was under protest and the landlord did not waive the default. The ratio in the cases cited have no application in the light of the language of the statute. Accordingly the ratio therein does not apply to the law governing Section 10(2(i) of the Act.

4. The appeals are accordingly dismissed but in the circumstances without Costs. Three months" time from today is granted to the appellant to vacate the pretrises with usual undertaking. Undertaking shall be filed within a period of one month from today.