

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

:::::

JUDGMENT

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KAMLA DEVI & ORS VS. NANDLAL

S.B. CIVIL REGULAR SECOND APPEAL NO.350/2004
AGAINST THE JUDGMENT AND DECREE DATED 24.8.2004,
PASSED BY SH. RAM CHANDRA, RHJS, DISTRICT JUDGE,
BALOTRA IN CIVIL APPEAL (DECREE) NO.29/96.

DATE OF ORDER : 30.8.2005

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

REPORTABLE

Mr. MC Bhoot, for the appellants.
Mr. SC Maloo, for the respondent.

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Heard learned counsel for the parties.

Brief facts of the case are that the plaintiff-landlord earlier filed a suit for eviction against their tenant-deceased Madanlal, which was registered as Civil Original Suit No.26/89. In that suit ground for eviction was default in payment of rent by the tenant. In the above suit no.26/89, the trial court determined the arrears of rent under Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 and directed defendant-tenant to pay or deposit the arrears of rent and

monthly rent month by month during trial of the suit. The defendant complied with the court's order and paid the rent of the suit premises in the suit no.26/89. Ultimately, the suit no.26/89 of the plaintiff was decided by the judgment and decree dated 16.2.1991 and the court declared the tenant-defendant defaulter in payment of rent, but no decree for eviction was passed against the tenant on the ground of default in payment of rent by the tenant as, as per law in the case of first default in payment of rent, if tenant deposits arrears of rent and pays rent during trial within period provided for that then tenant is entitled for benefit once of avoiding eviction decree against him.

The landlord thereafter, filed another suit for eviction of the legal representatives of tenant as tenant Madanlal died. In the present suit, apart from other grounds one of the ground was that the defendants have committed default in payment of rent second time and now no opportunity is available to the tenants under the provisions of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 for taking further benefit by deposit of arrears of rent to avoid the decree on the ground of default, therefore, the plaintiff is entitled for the decree for eviction of the tenant on this sole ground of default. The suit of the plaintiffs was decreed vide judgment and decree dated 23rd Sept., 1996 by the trial court on the ground of second default in payment of rent by the tenant. The defendants, legal representatives of original tenant

preferred appeal, which too was dismissed by the appellate court vide judgment and decree dated 24th August, 2004, hence, this second appeal.

According to learned counsel for the appellant in earlier suit rent was determined and the deceased tenant Madalal paid the rent and took the benefit of first default under the provisions of the Act, 1950. Thereafter, after the decision of earlier suit no.26/89, he sent rent by money order to the landlord on 30.4.1991, but the landlord refused to accept the rent and, therefore, the said money order was returned to Madanlal. Madanlal, thereafter, died on 2nd August, 1991. After the death of Madanlal, Madan Lal's wife appellant Smt. Kamladevi served a notice upon the landlord through her advocate on 4th Sept., 1991 demanding bank account particular of the plaintiff so she can deposit the rent in plaintiff's bank account. That notice was received by the landlords, but the landlords did not disclose the particulars of their bank account and, therefore, the appellants-tenants could not deposit the rent in the bank account of the landlord. Ultimately, on 28th Sept., 1991 the tenants submitted application in court under Section 19A of the Act of 1950 seeking permission of court to pay the rent to the landlord through court. In the proceedings under Section 19A of the Act of 1950, the court ordered on 16th May, 1992 permitting the appellant to deposit the rent in the court, upon which the tenants deposited the rent in the

court. According to learned counsel for the appellant, the landlords in proceedings under Section 19A of the Act of 1950 even refused to recognize the appellant as tenant.

Before court's order permitting appellants-tenants to deposit the rent in court dated 16th May, 1992 the present plaintiffs filed present suit for eviction on 15th May, 1992 seeking eviction of the tenants on the ground of second default. According to learned counsel for the appellant the facts mentioned above clearly show that defendants were ready and willing to pay the rent and they made all efforts to pay the rent. It is also submitted that the deceased-tenant himself sent the rent by money order in the month of April, 1991, but the landlord refused to accept the same and when the appellant wife of the deceased tenant Madanlal served notice upon the plaintiff, the plaintiff did not disclose the bank account and, thereafter, the plaintiffs contested the petition under Section 19A of the Act of 1950 filed by the appellant tenants by taking a plea that the appellants are not tenant of the present plaintiff. Therefore, it is clear case of landlords' not accepting the rent and creating a situation whereby he wants to take benefit of his own wrong. It is also submitted that the landlord denied the relationship of landlord and tenant then he cannot take a plea of committing default by the same very persons to whom he refused to recognize as their tenants. It is also submitted that it is nothing but a

case of accumulation of arrears of rent and not a case of default in payment of rent and in view of the efforts made by the tenants-appellants for paying the rent to the landlords, at the most in such situation, money decree could have been passed.

Learned counsel for the appellant vehemently submitted that in this case, the trial court failed to determine the rent under Section 13 (3) of the Act of 1950, though the suit was filed on the ground of default in payment of the rent. According to learned counsel for the appellant if the court below would have determined the rent under Section 13(3) of the Act of 1950, then there would not have arisen any question of non-payment of rent by the tenant during the pendency of the present suit.

Learned counsel for the respondent-landlord vehemently submitted that the tenant Madanlal himself was defaulter and that finding is not under challenge. He took the benefit of first default under the provisions of the Act of 1950. Such benefit is available to him only once in currency of his tenancy. For second default, according to learned counsel for the respondent the money order alleged to have been sent by the tenant on 30th April, 1991 and, therefore, the notice for disclosing the bank account by the landlords could have been served within the period of 15 days after receipt of the

money order back by the tenants, but he did not serve any notice till he died on 2nd August, 1991. The notice alleged to has been sent by the appellant no.1 through her advocate on 4th Sept., 1991, but no application under Section 19A was submitted in court in time and ultimately, the rent was deposited in court only on 25th May, 1992. By that time, the tenant became defaulter in payment of rent as period of six months already passed. Not only this, but on 25th May, 1992, the tenants deposited rent only for the period from 1st April, 1991 to 3rd Sept., 1991. The rent for the period from Sept., 1991 was not paid for the reasons best known to the defendants-appellants. Therefore, this is not a case of even readiness and willingness of the tenants about the payment of the rent, rather it is clear case of willful default. Learned counsel for the respondent relied upon the judgments of Hon'ble Supreme court and of this Court in support of his contention that it is primary duty of the tenant to deposit the rent and for that purpose complete procedure has been given in Section 19A of the Act of 1950 and tenant can avoid decree for his eviction only by paying the rent to the landlord even rent is not accepted by the landlord. Hon'ble Supreme Court in the case of Kuldeep Singh Vs. Ganpat Lal & Anr. reported in 1996(1) RLW 17(SC) held that the benefit to the tenant under Section 19A is available only when the conditions laid down in the provisions of Section 19A are satisfied by the tenant. In the present case, the tenant even did not deposit the rent under Section 19A of the

Act in time nor he gave notice to landlord before that in time, therefore, the amount deposited by the tenant cannot be treated as valid payment of rent.

Learned counsel for the respondent also relied upon the judgment of the Hon'ble Supreme Court delivered in the case of Jamnalal & Ors Vs. Radheyshyam reported in 2000 WLC 427 (SC) given in a case under the M.P. Accommodation Control Act, 1961 wherein Hon'ble Supreme Court held that non-determination of provisional rent in such circumstances becomes inconsequential and there being non-compliance of Section 13(1) of the Act, the tenant is not entitled to benefit of Section 13(5) and court is competent to pass decree for eviction against the tenant. In the recent judgment of this Court, delivered in the case of Satya Prakash Vs. Madan Lal reported in 2004(3) WLC 93, the Single Bench of this Court held that non-determination of rent in due time cannot save the tenant from liability to pay rent and in order to seek protection under the Act tenant must make payment regularly.

I considered the submissions of learned counsel for the parties and perused the reasons given by the two courts below. It is clear that so far as first default is concerned, there is no dispute. So far as second default is concerned, it is not in dispute that rent fell due from the month of April, 1991 and the money order was sent to the landlord by

the original tenant Madanlal and he did not serve the notice as required under the provisions of Section 19A of the Act of 1950 for about almost three months whereas he should have deposited rent within stipulated time given in sub-section (3) of Section 19A, but that has not been done. Be that as it may, the appellant no.1 sent a notice to the landlord, but after getting no information about the bank account from the landlord, the tenants did not deposit the rent in court in time and pretext is that court passed the order on 16th May, 1992 permitting the tenants to deposit the rent. By that time, the tenant already became defaulter in payment of rent. Even if these lapses on the part of the tenant are ignored even then there is no explanation of the tenant for the delay in payment of rent from 31st Sept., 1991 onwards. Why the appellants-tenants did not deposit the complete rent upto 25th May, 1992 in the proceedings under Section 19A or did not seek permission from the court in this case for depositing the arrears of rent. All these facts are considered only to find out whether the tenant was ready and willing to pay the rent to the landlord as it is the case of the tenant that he was ready and willing to pay the rent to the landlord, but could not pay the rent because of fault of the landlord. When the statutory provisions are there under which the tenant, in case, landlord refuses to accept the rent, may deposit the rent in court and failed in following procedure as provided under Section 19A of the Act of 1950, then plea of ready and willingness in the matter of payment of rent by the tenant to the

landlord is not available to the tenant otherwise whole purpose of enacting Section 19A will frustrated.

The court seized with the proceedings under Section 19A of the Act of 1950 had no jurisdiction to determine the legality and validity of the payment of rent and in those proceedings, the court had limited jurisdiction of allowing the deposit of rent by the tenant. The question of legality and validity of rent could have been decided only in regular suit. Therefore, the two courts below after considering the facts of the case within their jurisdiction held that the tenant has committed default in payment of rent. There is no dispute about the dates on which the steps were taken and orders were passed. The question herein raised by the appellants is that since the landlord refused to accept the appellants as tenants, therefore, the landlords cannot take a plea that the tenants have committed default in payment of rent. Facts clearly demonstrate that the two courts below rightly held that the steps for paying or depositing the rent by the tenant were not taken in time. The Section 19A has been enacted to meet with all those eventualities where there are allegations of refusal to accept the rent from the tenant by the landlord on whatever ground including denial on the ground of denial of relationship by the landlord. Therefore, the plea of the appellants cannot be accepted that the appellants-tenants were ready and willing to pay the rent for the suit premises. The plea of the tenant

that the landlord refused to accept the appellants as tenant, therefore, the landlord cannot say the tenants defaulter is only a after thought because that denial of landlord is much after from tenant's becoming defaulter in payment of rent. As per Section 19A, the tenant is required to pay the rent to landlord and on landlord's refusal, the tenant is required to deposit the rent in court without any exception.

In view of the judgment relied upon the learned counsel for the respondent, there was no reason for the tenants to keep the rent with them and continue with the possession. In view of the above, the questions raised by the appellants does not arise in the present appeal at all. Hence, there is no merit in this appeal and the same is hereby dismissed.

At this stage, learned counsel for the appellants sought some time for vacating the suit premises, which is seriously opposed by learned counsel for the respondent on the ground that the defendants no.2 to 6 are minors and defendant no.1 is a lady and admittedly they all are not doing any business in the shop in dispute whereas according to learned counsel for the respondent sub-lettee respondent no.7 Ashok Kumar is doing business. Learned counsel for the appellant submits that respondent no.7 Ashok Kumar is the employee of the tenants and not the sub-lettee.

Be that as it may, looking to the facts of the case, it will be just and proper to allow the appellant to occupy the premises for some more time so that they may make proper arrangements. Therefore, the decree under challenge shall not be executed till 28.2.2006 on condition that appellant no.1 and 7 shall furnish written undertaking for herself and on behalf of the appellants no.2 to 6 that they shall vacate the suit premises on or before 1st March, 2006 and shall hand over vacant possession of the suit property to the landlord and shall not part with possession or sub-let the suit premises. The undertaking be filed within a period of one month from today before the trial court. The appellants shall also pay or deposit all arrears of rent and decretal amount, if due, within a period one month from today and shall pay further rent month by month by 15th day of each succeeding month of his tenancy till they vacate the premises. In case of non-compliance and default, the decree shall become executable forthwith.

(PRAKASH TATIA), J.

c.p.goyal/-