

VIJAY AMBA DAS DIWARE AND ORS.

A

v.

BALKRISHNA WAMAN DANDE AND ANR.

MARCH 31, 2000

[SYED SHAH MOHAMMED QUADRI AND S.N. PHUKAN, JJ.]

B

Rent Control and Eviction :

The Central Provinces and Berar Letting of Houses and Rent Control Order, 1949—Clause 13 Sub-clause (3) Items (i) & (ii)—Application under—On the ground that tenant was habitual defaulter and in arrears of rent—Plea that the tenant cannot be treated defaulter since rent was paid in Court as per Civil Court's order—Rent paid in the court was neither regularly paid nor full amount paid—Held, tenant was habitual defaulter and in arrears of rent.

C

Words & Phrases—'Habit' & 'habitually'—Meaning of.

D

The appellant/tenant was directed by civil court in a suit filed by G, to deposit rent directly to the court regularly at the end of the month till the amount to be recovered by G was fully satisfied. The appellant paid to the court Rs. 4000 in four instalments. The landlord filed an application before Rent Controller, seeking permission to issue notice of eviction on the tenant, alleging therein that the tenant, was in arrears of rent for 93 months, amounting to Rs. 5766 and that he was a habitual defaulter in payment of rent. The tenant in his written statement pleaded that the rent was to be paid as per the convenience of the tenant and he was neither a habitual defaulter nor did he default in payment of rent; but he did not deny that he was in arrears of rent. Rent Controller granted permission to issue notice of eviction. The appeal against the order and thereafter the writ petition filed by the appellant/tenant were dismissed.

E

F

In appeal to this court, the appellant contended that he was neither a habitual defaulter, nor was in arrears of rent, and that the non-payment of rent to the landlord cannot be treated as default as the right to collect rent by the landlord was suspended by the order of the Civil Court.

G

Dismissing the appeal, this Court

H

A **HELD : 1. The manner of depositing rent in installments clearly shows that the tenant repeatedly and continuously defaulted in payment of rent and he was therefore, habitual defaulter. He was also in arrears of rent as he did not pay the full amount of rent. [837-E]**

B **2. The civil court did not restrain the tenant from his legal liability to pay rent regularly at the end of the month and he was only directed to deposit the rent in the court instead of paying to the landlord. Therefore, the contention that the tenant had no legal liability to deposit rent regularly in the court till the amount was fully satisfied, cannot be accepted. [837-C]**

J. Jermons v. Allamal & Ors., [1997] 7 SCC 382, distinguished.

C **3. Expression 'habitual' would mean repeatedly or persistently and implies a thread of continuity stringing together repeated acts. An isolated default of rent would not mean that tenant was a habitual defaulter.**

[836-G]

D *Vijay Narain Singh v. State of Bihar & Ors., AIR (1984) SC 1334, referred to.*

Law Lexicon (Second Edition) by P. Ramanatha Aiyar, referred to.

E **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3519 of 1997.**

From the Judgment and Order dated 21.1.88 of the Bombay High Court in C.W.P. No. 891 of 1988.

F **V.N. Ganpule, S. Bishwajeet, S.V. Sonawani and R.C. Kohli for the Appellants.**

Yashank Adhyaru and Mrs. Nandini Gore for the Respondents.

The Judgment of the Court was delivered by

G **PHUKAN, J.** The landlord filed an application under Items (i) and (ii) of sub-clause (3) of Clause 13 of The Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 (for short the Order) before the Controller which was allowed and the controller granted permission to the landlord to serve the notice of eviction on the tenant. The appeal was dismissed by the Resident Deputy Collector, Amravati and the writ petition
H **filed by the tenant was also dismissed *in limine*.**

The landlord pleaded before the controller that the tenant was a monthly tenant since 1961 and rent was to be paid on the first day of every month according to English calendar. It was also pleaded that the tenant was a habitual defaulter in payment of rent. The appellant-tenant pleaded before the Controller that rent was to be paid as per his convenience and he was neither a habitual defaulter nor defaulted in payment of rent. Both the authorities below on facts held that it was a monthly tenancy and also came to the finding that the tenant was a habitual defaulter and defaulted in payment of rent. The present appeal is by the legal representatives of the original tenant.

It has been urged before us that the tenant was neither a habitual defaulter nor was in arrears of rent.

We quote below items (i) & (ii) of sub-clause(3) of Clause 13 of the Order:-

"13. (1) - No landlord shall, except with the previous written permission of the Controller;-

(a) - give notice to a tenant determining the lease or determine the lease if the lease is expressed to be determinable at his option; or

(3) If, after hearing the parties the Controller is satisfied:-

"(i) - that on the date of filing the application the tenant was in arrears of rent for any aggregate period of three months and that he failed to deposit with the Controller the amount of arrears ordered to be deposited by the Controller within such time as may be fixed by him; or

(ii) - that the tenant is habitually in arrears with the rent: or

(iii)

.....

.....

(ix).....

A he shall grant the landlord permission to give notice to determine the lease as required by sub-clause (1)."

B Clause 13 of the Order prohibits a landlord from serving a notice for eviction on the tenant except with the previous written permission of the Controller and such permission can be given if the landlord can make out any one ground mentioned in the said Clause. In this appeal grounds alleged are item Nos. (i) and (ii) of sub-clause (3) of Clause 13 quoted above.

The word 'habitual' occurring in item (ii) have not been defined in the Order.

C The meaning to the words "habit" and "habitually" as given in The Law Lexicon (Second Edition) by P Ramanatha Aiyar's is :

D "Habit - Settled tendency or practice, mental constitution. The word habit implies a tendency or capacity resulting from the frequent repetition of the same acts. The words by 'habit' and 'habitually' imply frequent practice or use."

"Habitual - constant; customary; addicted to a specified habit."

E This Court in *Vijav Narain Singh v. State of Bihar & Ors.*, AIR. (1984) SC 1334, considered the question of habitual criminal and in paragraph 31 the expression "habitually" was explained as follows:-

F "The expression 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit....."

G Therefore, the expression 'habitual' would mean repeatedly or persistently and implies a thread of continuity stringing together similar repeated acts. An isolated default of rent would not mean that tenant was a habitual defaulter.

H As directed by this Court the application and written statement filed by the parties before, the Controller have been furnished. We find from the pleadings that there was a civil suit filed by one Smt. Ganga Bai in which the tenant was a party and the tenant was directed to pay the rent directly

to the court. Subsequently, tenant was informed by Smt. Ganga Bai that tenant could pay the rent directly to the landlord as the amount to be recovered by her was fully satisfied.

It has been urged on behalf of the tenant-appellant that the right to collect rent by the landlord was suspended by the above order of the civil court and therefore, non-payment of rent by the tenant to the landlord cannot be treated as default.

The civil court did not restrain the tenant from his legal liability to pay rent regularly at the end of the month and he was only directed to deposit the rent in the court instead of paying to the landlord. We are, therefore, unable to accept the contention that the tenant had no legal liability to deposit, rent regularly in the court till the amount was fully satisfied.

In the application before the Controller it was alleged by the landlord that the tenant was in arrears of rent from 1.4.76 to 31.12.83 for about 93 months amounting to Rs. 5,766/- and that the tenant deposited Rs. 4,000/- in civil court in view of the above order by four installments leaving balance of Rs. 1,766. In the written statement the above averments have not been denied but plea taken was that rent was to be paid as per the convenience of the tenant which was rejected by both the authorities below.

The above manner of depositing rent in installments clearly shows that the tenant repeatedly and continuously defaulted in payment of rent and he was, therefore, habitual defaulter. He was also in arrears of rent as he did not pay the full amount of rent.

Our attention has been drawn to the decision of this Court in *J. Jermons v. Allammal and Others*, [1999] 7 SCC 382. In that case the landlord was served with a prohibitory order by the Tax Recovery Officer for receiving rent and the tenant was also prohibited and restrained from making payment of a certain debt and from that date the tenant stopped payment of rent. This Court held that as the tenant was prohibited and restrained from paying rent he did not commit willful default in payment of rent but that is not so in the present appeal as the tenant was not prohibited for making payment of rent.

For what has been stated above we hold that authorities below rightly

- A held that the appellant-tenant not only defaulted in payment of rent but he was a habitual defaulter.

In the result, the appeal has no merits and accordingly it is dismissed. Parties bear their own costs.

- B K.K.T.

Appeal dismissed.