

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3149 OF 2017
(Arising out of SLP(C) No. 16738/2012)

ASHOK KUMAR MISHRA & ANR. APPELLANT(S)

VERSUS

GOVERDHAN BHAI(D)THR.LRS.& ANR RESPONDENT(S)

O R D E R

1. Leave granted.
2. This appeal is directed against the judgment and order of the High Court of Chhattisgarh, Bilaspur in Second Appeal No. 167 of 1995, dated 14.12.2011 upholding the dismissal of the appellants' suit for eviction of the respondents.
3. The appellants are the landlords of a shop where Goverdhan Bhai, the predecessor of the respondents was doing business. This tenancy was created in the year 1968 and was continued. The appellants filed a suit for

eviction of the tenant on the ground of default in payment of rent according to the agreement for the period prior to the suit. At this stage, we are not concerned with the other grounds on which the suit was filed.

4. During the pendency of the suit the payment of rent is governed by Section 13(1) of the M.P. Accommodation Control Act, 1961 (for short, "the Act") which was in force in the town of Raipur. This Act was subsequently replaced by the Chhattisgarh Accommodation Control Act, 1961, in the year 2000. The two acts are in *pari materia*.

5. Before the Trial Court and the First Appellate Court, it was mainly argued by the appellants that the rent due to be paid by the tenant was Rs. 250/- per month . This not having been paid at that rate, he was liable for eviction. We see no merit in this ground

in view of the fact that the Trial Court had by an order dated 12.10.1985 fixed provisional rent at the rate of Rupees 150/- per month. It is not in dispute that the tenant continued to pay the rent at this rate. Merely because he admitted in his evidence that the agreed amount was Rupees 250/- per month is not a ground for evicting him, particularly in view of Section 13 (2) of the Act which reads as follows :

"If in any suit or proceedings referred to in sub-section (1) there is any dispute as to the amount of rent payable by the tenant, the Court shall, on a plea made either by landlord or tenant in that behalf which shall be taken at the earliest opportunity during such suit or proceedings, fix a reasonable provisional rent, in relation to the accommodation, to be deposited or paid in accordance with the provisions of sub-section (1) and no court shall, save for reasons to be recorded in writing, entertain any plea on this account at any subsequent stage."

The purpose of fixing provisional rent during a dispute is to ascertain the amount that must be paid by a tenant during the proceedings. It is normally not the agreed rent. Neither is it the rent, claimed to be the rent by the parties, which is often disputed. The parties cannot, relying on the statements in evidence, claim such rent. But parties pay the amount provisionally fixed by the Court until altered. They cannot claim a default on the basis of the rent stated by them in the evidence.

6. Thus, a plain reading of the Section 13(2) requires the tenant to pay a provisional rent as fixed by the Court. The tenant in this case has made payment accordingly.

7. The other contention raised by learned counsel for the appellants is that during the pendency of the appeals, the tenant has not

paid the provisional rent of Rupees 150/-.. This period commenced on 26.02.1993, when the trial Court decided the suit and fixed the rent at Rs. 250/- per month upto the decision of the Second Appeal on 14.11.2011.

8. According to the appellants, the tenant did pay rent intermittently. However, what is of consequence is whether the tenant paid rent as required by sub-sections 13(1) and 13(2) of the Act which read as follows :

"13(1) When tenant can get benefit of protection against eviction-(1) On a suit or any other proceedings being instituted by a landlord in any of the grounds referred to in section 12 or in any appeal or any of other proceedings by a tenant against any decree or order for his eviction, the tenant shall, within one month of the service of writ of summons or notice of appeal or of any other proceeding, or within one month of institution of appeal or any other proceeding by the tenant as the case may be, or within such further time as the court may on an application made to it

allow in this behalf, deposit in the court or pay to the landlord, an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made, and shall thereafter continue to deposit or pay, month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate till the decision of the suit, appeal or proceeding as the case may be."

13(2).. As quoted above."

9. It is obvious from the aforesaid provisions that the tenant must during the pendency of the suit/appeal make payment of rent within one month of the service of writ of summons or notice of appeal or within such further time such Court may allow in this behalf. Further, he must thereafter, continue to deposit or pay rent by 15th of each succeeding month till the decision of the suit, appeal or proceedings as the case may

be.

10. Sub-section 13(2) of the Act requires the tenant to pay such reasonable provisional rent as may be fixed by the Court in case of a dispute or doubt about the amount that must be paid by the tenant. As stated above, the amount in this case is Rupees 150/- per month. It is pointed out on behalf of the appellants that for the period from January 2001 to May 2011, when the second appeal was pending, the tenant did not deposit the monthly rent as required by sub-sections 13(1) and 13(2) of the Act, i.e. the rent at monthly intervals. We have perused the chart of payment of rent and we find that for the period from 09.08.2000 to 12.05.2011, the tenant paid rent on only three occasions, i.e. Rs. 2000/- on 09.08.2000, Rs. 2000/- on 09.12.2000 and Rs. 500/- on 12.02.2001. Thereafter, on 12.05.2011 the tenant deposited a sum of Rs. 31,250/-,

i.e. the amount of default rent of 125 months from January 2011 to May 2011. This in our view, amounts to an implicit admission of the fact that no rent was paid on the days it was due during this period.

11. The learned counsel for the respondents-tenants vehemently argued that the respondents who are the legal representatives of the original tenant were not aware of the default. It is not possible to accept this contention since they were clearly aware of the fact that they were living in tenanted premises and were bound to pay rent. In any case we find that even if the impleadment of legal representatives on 06.07.2009 there are defaults for a period of two years thereafter.

12. In the circumstances, we find no merit in the contention that the respondents had paid rent regularly. Learned counsel for the

respondents also contended that the respondents are willing to pay arrears of rent now before this Court and this Court may condone such delay. The learned counsel for the respondents relied on Section 13 (5) of the Act which reads as follows :

"13(5) If a tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no decree or order shall be made by the court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the court may allow such cost as it may deem fit to the landlord"

13. We are of the view that on a plain reading, this provision protects a tenant from eviction if a tenant makes deposit/payment as required by sub-section 13(1) or 13(2) of the Act. In other words, if the tenant has complied with the provisions of sub-section 13(1) and 13(2) in the matter of making payment, he is protected from eviction. It

must be remembered that provisions of Section 13 of the Act shield a tenant from eviction if the tenant regularly pay rent after the suit is filed.

Accordingly, it provides a *locus poenitentiae* to the tenant. Sub-section 13 (5) of the Act reiterates the protection by stating that if the tenant makes payment payment post-suit in accordance with the provisions of sub-section 13(1) and 13(2) of the Act, he shall not be liable for eviction. This Section does not confer the power on the court to condone the defaults in payment of rent after the suit is filed. It is, therefore, not possible for us to accept this contention. In the circumstances, the impugned judgment of the High Court is set aside.

14. The respondents are directed to be

evicted from the scheduled premises. They shall vacate and hand over vacant possession of the premises to the landlord within one month.

15. The appeal is allowed accordingly.

.....J.
[S.A. BOBDE]

.....J.
[L. NAGESWARA RAO]

NEW DELHI,
FEBUARY 21, 2017

ITEM NO.7

COURT NO.9

SECTION IVA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 16738/2012

(Arising out of impugned final judgment and order dated
14/12/2011 in SA No. 167/1995 passed by the High Court Of
Chhatisgarh At Bilaspur)

ASHOK KUMAR MISHRA & ANR

Petitioner(s)

VERSUS

GOVERDHAN BHAI (D) TR.LRS.& ANR.

Respondent(s)

(with appln. (s) for exemption from filing O.T. and permission
to file additional documents)

Date : 21/02/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE

HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Petitioner(s) Mr. Gaurav Agrawal, Adv.
Mr. Abhikalp Pratap Singh, Adv.

For Respondent(s) Mr. Manoj Sharma, Adv.
Mr. Kapil Kaushik, Adv.
Mrs. Kanchan Kaur Dhodi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed
order.

Pending applications stand disposed of.

[Charanjeet Kaur]
A.R.-cum-P.S.

[Indu Pokhriyal]
Court Master

[Signed order is placed on the file]