

Janardhan Prasad Bhagat

... Appellant

Versus

Haji Md. Manzar Hussain & Anr.

... Respondents

O R D E R

The tenant of shop No.2043, Ward No.13, Mohalla Bhabdepur, Sitamarhi, Bihar (for short, the premises) is the appellant. He is challenging, by special leave, the order of the High Court of Judicature at Patna dismissing his appeal, AFAD No.87/1990, on September 8, 1997.

The appellant is the tenant of the premises of which the first respondent is the landlord. The first respondent filed eviction suit (T.S. No.70/83) in the court of Sub-Judge I, Sitamarhi, seeking eviction of the appellant on two grounds under the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 (for short, the Act) -- (1) under clause (d) of sub-section (1) of Section 11 of the Act - default in payment of rent for more than two months, namely, July, August, September and October, 1983 and (2) under clause (c) of sub-section (1) of Section 11 of the Act - reasonable personal requirement of the first respondent's son in good faith for carrying on the business. The appellant contested the suit on both the grounds.

The trial court having considered the evidence placed before it found that there was no default in payment of rent and that the requirement of the first respondent was not reasonable and in good faith. On appeal by the first respondent the learned Appellate Judge set aside the order of the trial court on both the grounds holding that there was default in payment of rent and that the first respondent required the premises reasonably and in good faith for the use of his son. Dissatisfied with the judgment of the appellate authority the appellant filed the above mentioned second appeal, AFAD No.87/1990, in the High Court which was dismissed on September 8, 1997 which is under challenge in this appeal.

Mr.Ranjan Dwivedi, the learned counsel for the appellant, vehemently contends that when the landlord (first respondent) himself was in India the rent was tendered to him in good faith but he refused to receive the same that is why the rent was sent continuously in his name at his address and that would satisfy the requirement of a valid tender as such there was no default in payment of rent for two months.

Mr.Vikas Singh, the learned counsel for the respondents, has argued that the appellant who has been paying rent to the agent of the first respondent all through since 1967 had no reason to send the rent to the first respondent without any intimation from him requesting to pay the rent to him; the appellant should have paid the rent to the second respondent, the agent. He further contends that the rent for the months of July, August & September, 1983 was sent by money order at the address of the first respondent, knowing fully well that he was not in India, consequently the postal authorities returned the money orders to the sender with the endorsement that the payee was in Arabia; there was as such no valid tender and the appellant committed default in payment of rent for more than two months.

The short question that arises for consideration is : whether there was default in payment of rent for a period of two months.

A perusal of the judgment of the High Court as well as of the appellate court shows that there was no valid tender of rent for the period in question by the appellant. As the first respondent lives outside India he has authorised respondent no.2 -- his brother (agent) - - to receive the rent of the premises from the appellant. Accordingly, the rent was being tendered to respondent no.2 and was properly received by him from the appellant till June, 1983. However, the rent for the month of July, 1983 was sent by the appellant through money order to the first respondent, while he was in India, but he refused to receive the same. No request was made by the first respondent to the appellant before June, 1983 or at any time thereafter to tender the rent to the first respondent. In the absence of any specific notice to the appellant there was no valid reason for the appellant not to tender the

rent to the second respondent who was duly constituted agent of the first respondent and who had received the rent from 1967 to June, 1983. Money orders counter foils Exbt. Nos.B and B/1 (at page 27) indicate that the rent for the period subsequent to July 1983 was sent in the name of the first respondent at his Indian address, which were returned with the postal endorsements (Exbt. Nos.C/1 and C) (at page 27) that the payee was in Arabia. What is more, the appellant continued to send the rent for the months July, August, September and October, 1983 at the Indian Address of the first respondent, knowing well that he was outside India. There is no valid explanation as to why the appellant continuously sent the rent at the Indian address of the first respondent when he knew that he was abroad. On these facts the High Court has rightly held that there was no valid tender. Thus, there was non-payment of rent for more than two months by the appellant so the first respondent has made out a case for eviction of the appellant under Section 11(1)(d) of the Act. We do not find any illegality in the order of the High Court to warrant our interference. However, having regard to the circumstances of the case and the fact that the appellant has been in possession of the premises since 1967 and is running a shop in it, we consider it just and appropriate to give a reasonable time to him, till 30th of April, 2002, to search an alternative accommodation and vacate the premises on his filing an usual undertaking, within four weeks from today. Subject to granting time for vacating premises, as indicated above, the appeal is dismissed. No costs.

.....J.
(Syed Shah Mohammed Quadri)

.....J.
(S.N. Phukan)

New Delhi,
October 11, 2001