

## **Atma Ram vs Shakuntala Rani on 30 August, 2005**

**Equivalent citations: AIR 2005 SUPREME COURT 3753, 2005 (7) SCC 211, 2005 AIR SCW 4352, 2005 AIR - KANT. H. C. R. 2741, (2005) 8 JT 104 (SC), 2005 (7) SCALE 35, 2005 SCFBRC 495, 2005 (6) SLT 576, 2005 (8) SRJ 442, (2005) 35 ALLINDCAS 568 (SC), (2005) 2 RENCJ 10, (2005) 2 RENTLR 574, (2005) 2 RENC R 286, (2005) 123 DLT 127, (2005) 85 DRJ 244, (2005) 6 SCJ 698, (2005) 6 SUPREME 334, (2005) 4 RECCIVR 12, (2005) 7 SCALE 35, (2005) 2 WLC(SC)CVL 519, (2005) 61 ALL LR 450**

**Author: B.P. Singh**

**Bench: B.P. Singh, Arun Kumar**

CASE NO.:

Appeal (civil) 6742 of 2003

PETITIONER:

Atma Ram

RESPONDENT:

Shakuntala Rani

DATE OF JUDGMENT: 30/08/2005

BENCH:

B.P. SINGH & ARUN KUMAR

JUDGMENT:

**J U D G M E N T** B.P. SINGH, J.

This appeal by Special Leave impugns the judgment and order of the High Court of Delhi at New Delhi dated October 31, 2002 in CMM No.800 of 2000. The High Court by its impugned judgment and order allowed the petition filed by the respondent/landlady and setting aside the judgment and orders of the Additional Rent Controller dated November 15, 1999 and the Rent Control Tribunal dated August 28, 2000 passed an order of eviction against the appellant herein. The High Court recorded a finding that the appellant/tenant had defaulted in payment of rent for the period February 1, 1992 to January 31, 1995. It may be noticed at the threshold that this is a case of second default, and the appellant having availed of the benefit under sub-section (1) of Section 14 of the Delhi Rent Control Act, 1951 (hereinafter referred to as 'the Act') is not entitled to such benefit in case of second default.

The facts are not in dispute. The appellant is a tenant of the respondent and the rent presently

payable for the premises is Rs.56/- per month. There is no dispute with regard to payment of rent till January, 1991. According to the appellant he sent a money order remitting the rent payable for the month of February, 1992 on February 7, 1992 but the respondent refused to accept the same. Thereafter, he sent a money order on March 29, 1993 tendering the rent for the period January 1, 1992 to April 30, 1993. The same was refused. The respondent claimed enhancement of rent by 10% i.e. from Rs.50.75 per month to Rs.56/- per month. The money order sent on August 10, 1994 tendering the rent for the period February 1, 1992 to August 30, 1993 was again refused by the respondent. The case of the appellant is that in these circumstances in the month of January, 1995 he deposited the rent for the period February 1, 1992 to January 31, 1995 under the provisions of the Punjab Relief of Indebtedness Act, 1934, (hereinafter referred to as the 'Punjab Act'). The respondent refused to receive the deposit made under the provisions of the said Act. Consequently, by order dated February 12, 1995 the petition under the Punjab Act was disposed of and the appellant was allowed to withdraw the amount deposited by him.

The respondent called upon the appellant to pay the arrears of rent by issuance of notice dated May 16, 1996. The appellant expressed his willingness to pay the arrears of rent but sent with his reply a cheque for a sum of Rs.952/- only purporting to pay rent due for the period February, 1995 to June, 1996. Thereafter the appellant deposited rent for the period February, 1995 to July, 1996 under Section 27 of the Act. This was deposited on July 20, 1996 by cheque for the sum of Rs.1008/-. It is not in dispute that the arrears of rent so tendered excluded the rent for the period February 1, 1992 to January 31, 1995, which the appellant had deposited under the Punjab Act to which we have referred earlier.

On January 1, 1998, the respondent filed an application for eviction of the appellant from the premises in question under Section 14(1)(a) of the Act before the Additional Rent Controller, Delhi.

The Additional Rent Controller by his judgment and order of November 15, 1999 dismissed the Eviction Petition which was confirmed by the Rent Control Tribunal by its judgment and order of August 28, 2000. The respondent preferred a petition under Article 227 of the Constitution of India which has been allowed by the impugned judgment and order dated October 31, 2002. The crucial fact which deserves to be noticed is that for the period February 1, 1992 to January 31, 1995 the rent due was deposited under the provisions of the Punjab Act, which proceeding was disposed of by order dated February 12, 1995 permitting the appellant to withdraw the amount deposited by him in Court under the aforesaid Act.

From the facts noticed above it is apparent that the rent for the period February 1, 1992 to January 31, 1995 was never remitted by the appellant to the respondent nor was it ever deposited in the Court of the Rent Controller, though the appellant had deposited the rent for the later period - February 1, 1995 to July 31, 1996 under Section 27 of the Act. Despite service of notice he did not deposit the rent for the period February 1, 1992 to January 31, 1995 in the Court of the Rent Controller as provided under the Act. This was despite the fact that the proceeding under the Punjab Act stood concluded by order of the Court dated February 12, 1995 permitting the appellant to withdraw the amount deposited under the Punjab Act on the respondent's refusal to accept the same.

The core question, therefore, which arises for consideration is whether the appellant defaulted in payment of rent inasmuch as he had not paid or tendered or deposited the rent for the aforesaid period in the manner required by law. The question also arises whether the deposit of rent under the Punjab Act can be construed to be a valid deposit under the Act.

Learned counsel for the appellant submitted that since the deposit was made in accordance with the provisions of the Punjab Act treating the arrears of rent as debt due to the landlord, there was no default on the part of the appellant. On the other hand learned counsel for the respondent contended before us that to avail the benefit of the provisions of the Delhi Rent Control Act, the arrears of rent should have been deposited or tendered in the manner and in accordance with the specific provisions of the Act. Deposit made, which is not in accordance with the procedure expressly prescribed by the Act is not a valid deposit or tender of rent within the meaning of the Act.

Counsel for the parties have relied upon several decisions of this Court in support of their respective contentions. We may notice the same hereafter.

Learned counsel for the appellant placed considerable reliance on a judgment of this Court in *Mangat Rai and another vs, Kidar Nath and others* : (1980) 4 SCC 276. That case arose under the East Punjab Urban Rent Restriction Act, 1949. The tenant had deposited the entire rent due in the Court of the Senior Sub Judge, Ludhiana under Section 31 of the Punjab Act. In view of the deposit made the tenant claimed protection under the proviso to Section 13(2)(i) of the Punjab Urban Rent Act. The landlord in that case placed reliance on the decision of this Court in *Shri Vidya Prachar Trust vs. Pandit Basant Ram* : (1969) 1 SCC 835 and contended that this Court having examined the provisions of both the Acts came to the conclusion that the Indebtedness Act was not intended to operate between the landlord and the tenant, nor was the Court of Senior Sub Judge a clearing house for rent so as to convert it into a Court of Rent Controller. However, this Court in *Mangat Rai* (supra) did not agree with that view and held that Section 31 of the Indebtedness Act applied even to a tenant who owed money to his landlord by way of rent due. Their Lordships construed the provisions of Section 13(2)(i) of the Punjab Urban Rent Act and held that under the proviso to the aforesaid Section the tenant was required to deposit interest also in order to get protection of the proviso, hence the tenant was a debtor with a sort of a statutory agreement to pay interest and therefore squarely fell within the definition of Section 31 of the Punjab Act. Thus any deposit made by a tenant under Section 31 would have to be treated as a deposit under the Rent Act to the credit of the landlord and which will be available to him for payment whenever he likes.

The judgment of this Court in *Mangat Rai* (supra) must be understood in the factual background of that case and the provisions contained in the Indebtedness Act and the Rent Act applicable to the parties. It was noticed by this Court that the Senior Sub Judge was also functioning as a Rent Controller in Ludhiana. Hence any deposit made in his Court by a tenant to the credit of the landlord to get protection of the Rent Act would have to be treated as a deposit before the Rent Controller. The amount would have to be deposited by a challan in the same treasury which was to be operated by the Senior Sub Judge who was the Rent Controller. This Court also noticed the fact that there was no provision whatsoever in the Rent Act under which a deposit could be made by a tenant before the Controller to the credit of the landlord.

We are of the considered view that the judgment in Mangat Rai (supra) is clearly distinguishable. In that case the Court dealing with applications under Section 31 of the Indebtedness Act was also the Court of the Rent Controller and, therefore, in the absence of any provision under the Act for a deposit to be made by a tenant before the Controller to the credit of the landlord, it really did not matter if the amount due by way of rent was deposited in the Court of the Senior Sub Judge empowered to deal with the applications under the Section 31 of the Indebtedness Act. The consequence would have been different if the Rent Act itself expressly provided for deposit of arrears of rent in a manner specified and those provisions were not followed. This becomes abundantly clear when we notice several subsequent decisions of this Court.

In Kuldeep Singh vs. Ganpat Lal and another : (1996) 1 SCC 243 this Court was concerned with a provision of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. Section 19-A thereof provided that a tenant may, apart from personal payment of rent to the landlord, remit or deposit rent by any of the modes, namely : (a) he may remit the whole amount by postal order ; (b) he may, by notice in writing, require the landlord to specify bank and account number into which an amount may be deposited and (c) where the amount remitted by money order is received back by him under a postal endorsement of refusal or unfound and when the landlord does not specify the bank and account number, or that there was a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may deposit such rent with the Court within the period specified under the said Act. Sub-section (4) of Section 19-A of the Act further provided that for the purpose of clause (a) of sub- section (1) of Section 13, dealing with default in payment of rent, a tenant shall be deemed to have paid or tendered the amount of rent, if any, due from him, if he had paid, remitted or deposited the amount of rent by any of the methods specified in sub-section (3).

The Court found that before making the deposit in Court, the tenant had not remitted the amount by postal order nor had the tenant called upon the landlord to specify the name of the bank and the account number in which the deposit could be made. In such a situation this Court held that the tenant could not avail of the benefit of the legal fiction under Section 13(1)(a) of the Act. This Court held :-

"It is settled law that a legal fiction is to be limited to the purpose for which it is created and should not be extended beyond that legitimate field. [See : Bengal Immunity Co. Ltd. vs State of Bihar (SCR at p. 646). The appellant can avail of the benefit of Section 19-A(4) if the deposit of Rs.3600/- made by him in the Court of Munsif (South), Udaipur, on 29-10-1982, by way of rent for the months of May 1982 to October 1982, can be treated as a payment under Section 19-A(3)(c) so as to enable the appellant to say that he was not in default in payment of rent. Under Section 19-A(3)(c) the tenant can deposit the rent in the court only if the conditions laid down in the said provision are satisfied. It is the admitted case of the appellant that these conditions are not satisfied in the present case. The deposit which was made by the respondent in court on 29-10-1982 cannot, therefore be regarded as a deposit made in accordance with clause (c) of sub-section (3) of Section 19-A and the appellant cannot avail of the protection of sub-section (4) of Section 19-A and he must be held to have committed default in payment of rent for the months of May

1982 to October 1982. This means that the decree for eviction has been rightly passed against the appellant on account of default of payment of rent for the period of six months."

In Jagat Prasad vs. Distt. Judge, Kanpur and others : 1995 Supp (1) SCC 318 a decree for eviction was passed and one of the grounds was that the deposit had not been made in Court in accordance with law. This Court, while holding that the defence of the tenant had not been properly struck off, upheld the decree of eviction on account of default in payment of rent. This Court observed :-

"Nevertheless, the defence of the appellant that he had deposited bona fide the rent in the civil proceeding that would enure to the benefit of the rent control proceedings is unacceptable to us. Law prescribes the procedure as to the deposit under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction ) Act, 1972. Such a procedure if complied with alone will be a valid defence to a petition for eviction on the ground of arrears of rent. Therefore, even accepting the defence the ultimate order of eviction passed against the tenant will have to be upheld. This means the order of eviction is sustained."

In M. Bhaskar vs. J. Venkatarama Naidu : (1996) 6 SCC 228 a similar provision under the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 came up for consideration before this Court as was considered in Jagat Prasad vs. Distt. Judge, Kanpur and others (supra). This Court while upholding the decree for eviction observed that there is an obligation on the tenant to pay the rent regularly and went on to observe :-

"If he does not do so, he commits willful default. If he finds that the landlord is evading the payment of rent, procedure has been prescribed under Section 8 of the Act to issue notice to the landlord to name the bank and if he does not name the bank, the tenant has to file an application before the Rent Controller for permission to deposit the rent. The appellant did not avail of that remedy. The omission to avail of the procedure under Section 11 do not disentitle the landlord to seek eviction for willful default."

In Ram Bagas Taparia vs. Ram Chandra Pal : (1989) 1 SCC 257 this Court considered the provisions of the West Bengal Premises Tenancy Act, 1956. The Act provided that payment or deposit of rent shall be made by the 15th of the succeeding month. In that case the tenant claimed benefit of Section 17(4) of the Act. The High Court held that the tenant could not claim such benefit in view of the fact that in order to claim the benefit of Section 17(4) of the Act, the tenant was required to comply with the term of Section 17(1) and follow the procedure laid down therein. Since he had not deposited the entire arrears of rent under Section 17(1) within one month of the service of writ of summons on him or from the date of his appearance in the suit in the court or with the Controller, the appellant was not entitled to claim any benefit under Section 17(4) of the Act. It was further observed that if indeed the tenant wanted to claim benefit under Section 17(4), he should have withdrawn the invalid deposits made in the office of the Rent Controller and deposited the amount afresh in terms of Section 17(1) of the Act. Upholding the view of the High Court this Court observed :-

"From what has been stated above it may be seen that the appellant's contention that he had personally tendered the rent for January 1966 in the first week of February 1966 to the respondent has not been accepted by the courts below or by the High Court. This finding being one of fact rendered on appreciation of evidence, its correctness cannot be re-agitated by the appellant in this appeal by special leave under Article 136 of the Constitution of India. By reason of this position, it follows that the remittance of the rent for January 1966 through money order on February 26, 1966 and the deposit made later on March 19, 1966 would not constitute valid payments of rent under the Act so as to absolve the appellant of the charge of having committed default in payment of rent. It has further been found that if the appellant had wanted to avail the benefit of Section 17(4) of the Act, he should have made a fresh deposit of the rent in accordance with the terms of Section 17(1) of the Act. Admittedly, the appellant had not made any such deposit. It, therefore, follows that the appellant would not be entitled to claim benefit under Section 17(4) of the Act."

In *E. Palanisamy vs. Palanisamy (Dead) by Lrs. And others* :

(2003) 1 SCC 123 the provisions of T.N. Buildings (Lease and Rent Control) Act, 1960 came up for consideration. The requirement of the Act was somewhat similar to the Rajasthan Rent Act and the A.P. Rent Act considered by this Court in *Kuldeep Singh vs. Ganpat Lal* and another (supra) and *M. Bhaskar vs. J.*

*Venkatarama Naidu* (supra). Reiterating the view in *Kuldeep Singh vs. Ganpat Lal* and another (supra) and *M. Bhaskar vs. J. Venkatarama Naidu* (supra) this Court observed :-

"The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters. The statute contains expression provisions. It prescribes various steps which a tenant is required to take. In Section 8 of the Act, the procedure to be followed by the tenant is given step by step. An earlier step is a precondition for the next step. The tenant has to observe the procedure as prescribed in the statute. A strict compliance with the procedure is necessary. The tenant cannot straight away jump to the last step i.e. to deposit rent in court. The last step can come only after the earlier steps have been taken by the tenant. We are fortified in this view by the decisions of this Court in *Kuldeep Singh vs. Ganpat Lal* and *M. Bhaskar vs. J. Venkatarama Naidu*. Admittedly the tenant did not follow the procedure prescribed under Section 8. The only submission that was advanced on behalf of the appellant was that since the deposit of rent had been made, a lenient view ought to be taken. We are unable to agree with this. The appellant failed to satisfy the conditions contained in Section 8. Mere refusal of the landlord to receive rent cannot justify the action of the tenant in straight away invoking Section 8(5) of the Act without following the procedure contained in the earlier sub-sections i.e. sub- sections (2), (3) and (4) of Section 8.

Therefore, we are of the considered view that the eviction order passed against the appellant with respect to the suit premises on the ground of default in payment of arrears of rent needs no interference."

It will thus appear that this Court has consistently taken the views that in Rent Control Legislations if the tenant wishes to take advantage of the beneficial provisions of the Act, he must strictly comply with the requirements of the Act. If any condition precedent is to be fulfilled before the benefit can be claimed, he must strictly comply with that condition. If he fails to do so he cannot take advantage of the benefit conferred by such a provision.

Section 26 of the Delhi Rent Control Act, 1958 provides that every tenant shall pay rent within the time fixed by contract, and in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable. Every tenant who makes a payment of rent to his landlord shall be entitled to obtain forthwith from the landlord or his authorized agent a written receipt for the amount paid to him, signed by the landlord or his authorized agent. It is also open to the tenant to remit the rent to his landlord by postal money order. The relevant part of Section 27 of the Act reads as under :-

"27. Deposit of rent by the tenant. (1) Where the landlord does not accept any rent tendered by the tenant within the time referred to in section 26 or refuses or neglects to deliver a receipt referred to therein or where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner :

Provided that in cases where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may remit such rent to the Controller by postal money order.

(2) The deposit shall be accompanied by an application by the tenant containing the following particulars, namely :-

(a) the premises for which the rent is deposited with a description sufficient for identifying the premises ;

(b) the period for which the rent is deposited ;

(c) the name and address of the landlord or the person or persons claiming to be entitled to such rent ;

(d) the reasons and circumstances for which the application for depositing the rent is made ;

(e) such other particulars as may be prescribed.

(3) On such deposit of the rent being made, the Controller shall send in the prescribed manner a copy or copies of the application to the landlord or persons claiming to be entitled to the rent with an endorsement of the date of the deposit.

(4) If an application is made for the withdrawal of any deposit of rent, the Controller shall, if satisfied that the applicant is the person entitled to receive the rent deposited, order the amount of the rent to be paid to him in the manner prescribed."

The Act, therefore, prescribes what must be done by a tenant if the landlord does not accept rent tendered by him within the specified period. He is required to deposit the rent in the Court of the Rent Controller giving the necessary particulars as required by sub-section (2) of Section 27. There is, therefore, a specific provision which provides the procedure to be followed in such a contingency. In view of the specific provisions of the Act it would not be open to a tenant to resort to any other procedure. If the rent is not deposited in the Court of the Rent Controller as required by Section 27 of the Act, and is deposited somewhere else, it shall not be treated as a valid payment/tender of the arrears of rent within the meaning of the Act and consequently the tenant must be held to be in default.

We are, therefore, satisfied that the High Court was right in holding that the appellant had failed to pay/tender arrears of rent for the period February 1, 1992 to January 31, 1995. The deposit made under the provisions of the Punjab Act was of no avail in view of the express provision of Section 27 of the Act.

It was then faintly submitted before us that the High Court ought not to have exercised its revisional jurisdiction under Article 227 of the Constitution of India in view of the fact that the two courts below had concurrently found in favour of the appellant. The submission is misconceived. This is not a case where the High Court interfered with concurrent findings of fact. The High Court interfered because there was a serious error of law committed by the courts below and as a consequence thereof they failed to exercise jurisdiction vested in them by law. The exercise of revisional jurisdiction in a case of this nature cannot be faulted.

We, therefore, find no merit in this appeal and the same is accordingly dismissed.