

Kuldeep Singh vs Ganpat Lal & Anr on 5 December, 1995

Author: S.C. Agrawal

Bench: Kuldeep Singh, S. Saghir Ahmad, S.C. Agrawal

PETITIONER:

KULDEEP SINGH

Vs.

RESPONDENT:

GANPAT LAL & ANR.

DATE OF JUDGMENT 05/12/1995

BENCH:

KULDEEP SINGH, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.C. AGRAWAL, J :

Leave granted.

This appeal by the tenant arises out of a suit for eviction filed by the respondents under the provisions of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (hereinafter referred to as the 'Act'). It relates to a shop situated at Udaipur in Rajasthan. Under Section 13 (1)(a) of the Act, the tenant can be evicted from the premises if he has neither paid nor tendered the amount of rent due from him for six months. Sub-Section (6) of Section 13 affords protection to the tenant from eviction if the tenant deposits in court or pays to the landlord the amount determined by the court in terms of Sub-sections (3) and (4) of Section 13 of the Act. This protection is, however, not available if the tenant after having obtained such benefit in respect of the premises again makes a default in the payment of rent of the said premises for six months. The respondent landlords had filed a suit (Suit No.117 of 1981) against the appellant for his eviction on the ground of default in the payment of rent and

protection under Section 13(6) of the Act was given to the appellant in those proceedings. On December 20, 1982 the respondents filed a second suit (Suit No.169 of 1983) which has given rise to this appeal in the court of District Judge at Udaipur for the eviction of the appellant on the ground that he has defaulted for the second time in payment of rent, inasmuch as he had not paid the rent for six months from May 1, 1982.

The said suit was contested by the appellant, who denied that he had committed a second default in payment of rent for six months. The case of the appellant was that he had paid the rent for five months from May, 1982 to September, 1982 in cash to the respondents and 10 days later on October 21, 1982 when he went to them for collecting the receipt for the said payment, they refused to give the said receipt and returned the amount which was paid by the appellant to the respondents by way of rent. The appellant claims that thereupon on October 22, 1982, he submitted an application under Section 19-A of the Act in the court of Munsiff (South), Udaipur narrating the aforesaid facts and seeking permission of the court to deposit the rent for the months of May to October, 1982 in the court and that after obtaining the permission of the court, the appellant on October 29, 1982 deposited the sum of Rs. 3,600/- in the court by way of rent for the period from May, 1982 to October, 1982 by tender No. 1711 dated October 29, 1982 and that the notice of application submitted by the appellant under Section 19-A of the Act had been issued to the respondents. The said suit of the respondents was dismissed by the Additional District Judge No.1. Udaipur by his judgment dated July 2, 1987 on the view that the appellant could not be held to be a defaulter in the payment of rent since he had deposited the rent for the months of May, 1982 to October, 1982 in the court on 29th October, 1982 before the rent for six months fell due. The respondents filed an appeal against the said judgment of the Addl. District Judge in the High Court of Rajasthan. The said appeal was allowed by a learned Single Judge of the High Court by his judgment dated January 25, 1989. The learned Judge, after considering the evidence adduced by the appellant, has held that his plea about payment of rent personally to the respondents had no legs to stand. The learned Judge further held that the deposit by the appellant in the court under Section 19-A of the Act was not a valid valid deposit and the appellant could not claim any benefit on the basis of the said deposit under Section 19-A inasmuch as the appellant had not adopted the procedure as laid down in Sub-section (3) of Section 19- A before making the said deposit and that the appellant had committed a second default in payment of rent for six months. The learned Single Judge rejected the contention urged on behalf of the appellant that the cause of action had not arisen on November 1, 1982 because the rent for the month of October could have been paid by November 15 and that on November 1, 1982 the rent for five months only was due and not for six months. The learned single Judge has held that the rent for a particular month becomes due as soon as the month ends and under the provisions of the Act it was made payable by a particular date, i.e. the 15th of next following month, but it was only a facility provided to the tenant to pay the rent by that date and it does not mean that the rent for the month of October had not become due on November 1, 1982. The special appeal filed by the appellant against the said judgment of the learned Single Judge was dismissed by the Division Bench of the High Court by the impugned judgment dated March 8, 1989. Hence, this appeal.

Shri Rajinder Sachar, the learned Senior Counsel appearing for the appellant, has, in the first place, invited out attention to para 6 of the plaint, wherein the respondents have stated:

"6. That the cause of action for the suit arose on 1.11.1982 when the rent of six months became outstanding."

The submission of Shri Sachar is that in view of Clause (e) of Rule 1 of Order VII of the Code of Civil Procedure, it was incumbent upon the respondents to set out in the plaint the facts constituting the cause of action and when it arose and as per the said requirement the respondents, in para 6 of the plaint, have indicated that the cause of action arose on November 1, 1982. Shri Sachar has submitted that the said statement in para 6 of the plaint is not correct and has pointed out that under Sub-section (1) of Section 19-A of the Act, it is provided:-

"(1) Subject to the provisions of this section, every tenant shall pay rent within the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable."

According to Shri Sachar, since no time was fixed for payment of rent by contract, the rent was payable by the appellant by the 15th day of the month next following the month for which it was payable and the rent for the month of October, 1982 was therefore, payable by November 15, 1982 and that on November 1, 1982 the rent for October, 1982 was not due and therefore, it could not be said that on November 1, 1982, when the cause of action is claimed to have arisen, the appellant was in default of payment of rent for six month. It is no doubt true that in view of Sub-section (1) of Section 19-A of the Act, since there was no contract prescribing the date for payment of rent, the appellant could pay the rent for the month of October, 1982 till November 15, 1982 and the cause of action for filing a suit on the ground of default for the payment of rent for the months of May, 1982 to October, 1982 could arise only on November 16, 1982 and to that extent and the statement in the plaint that the cause of action arose on November 1, 1982 is not correct. But that does not mean that the respondents must be non-suited on this ground. The object underlying Order VII Rule (1) (e) which requires that the plaint shall contain the particulars about the facts constituting the cause of action and when it arose, is to enable the court to find out whether the plaint discloses the cause of action because the plaint is liable to be rejected under Order VII Rule 11 CPC if it does not disclose the cause of action. The purpose behind the requirement that the plaint should indicate when the cause of action arose is to help the court in ascertaining whether the suit is not barred by limitation. Any error on the part of the plaintiff in indicating the date on which the cause of action arose would be of little consequence if the cause of action had arisen on the date on which the suit was filed and the suit was within limitation from the said date. The error in mentioning the date on which the cause of action had arisen in the plaint in such a case would not disentitle the plaintiff from seeking relief from the court in the suit. In the instant case, the suit was filed on December 20, 1982 on which date admittedly the rent for six months i.e. from May, 1982 to October, 1982 had fallen due. Moreover, in para 7 of the plaint, while indicating the valuation of the suit for the purpose of court fee, the respondents have stated that there was outstanding rent of 7 months amounting to Rs.4,200/- and court fee was paid on the said amount of outstanding rent. Merely because in para 6 of the plaint, the respondents have stated that the cause of action arose on November 1, 1982 would

not, in our opinion, disentitle the respondents from seeking relief of eviction since as per the plaint, on the date of the filing of the suit the rent for seven months (May, 1982 to November, 1982) had fallen due. The first contention urged by Shri Sachar cannot, therefore be accepted.

The next contention urged by Shri Sachar relates to the deposit of the sum of Rs.3,600/- by the appellant in the court on 29th October, 1982 under Section 19-A of the Act. For that purpose, it is necessary to take note of the relevant provisions contained in Sub-sections (3) and (4) of Section 19-A, which provide as under:

"(3) A tenant may, apart from personal payment of rent to the landlord, remit or deposit rent by any of the following methods-

(a) he may remit the amount of any rent due from him by postal money order at the ordinary address of the landlord; or

(b) he may, by notice in writing, require the landlord to specify within ten days from the date of receipt of the notice by the latter, a bank and account number into which the rent may be deposited by the tenant to the credit of the landlord. If the landlord specifies a bank and account number, the tenant shall deposit the rent in such bank and account number and shall continue to deposit in it any rent which may subsequently become due in respect of the premises:

Provided that such bank shall be one situated in the city or town in which the premises is situated : Provided further that it shall be open to the landlord to specify from time to time by a written notice to the tenant and subject to the proviso aforesaid, a bank different from the one already specified by him under this clause;

(c) Where he has remitted the rent by postal money order under clause (a) and the money order is received back by him under a postal endorsement of refusal or unfound and where the landlord does not specify a bank and account number under clause (b) or where there is 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 fifteen days of the expiry of the period of ten days referred to in clause (b) and in the case of such bona fide doubt as aforesaid, within fifteen days of the time referred to in sub-section (1) and further continue to deposit with the court any rent which may subsequently become due in respect of the premises. (4) For the purpose of clause (a) of sub-section (1) of section 13, a tenant shall be deemed to have paid or tendered the amount of any rent due from him, if he has paid, remitted or deposited the amount of rent by any of the methods specified in sub-section (3)."

Under Sub-section (3), apart from personal payment of rent to the landlord, three other modes have been prescribed, namely, (i) remittance by postal money order at the ordinary address of the landlord, (ii) deposit in the bank account of the landlord and (iii) deposit in court in cases where the money order has been received back under the postal endorsement of refusal or unfound or where

the landlord does not specify the bank account number or where there is a bona fide doubt that the person or persons to whom the rent is payable. Under Sub-section (4), a legal fiction is created and the tenant is deemed to have paid or tendered the amount of rent due from him and is not to be treated in default of payment of rent if he has paid, remitted or deposited the amount of rent by any of the three methods specified in Sub-section (3).

The High Court has held that in view of the language of Clause (c) of Sub-section (3) of Section 19-A, a deposit in the court can be made only if the conditions laid down in clause (c) are fulfilled and if the said conditions are not fulfilled, the deposit would not be treated as a valid deposit under Clause (c) of Sub-section (3) of Section 19-A and would not entitle the tenant to avail the benefit of Sub-section (4) of Section 19-A. It has been held that in the instant case, it is not the case of the appellant that he had remitted the amount of rent due from him by postal money order and the same had been received back by him under the postal endorsement of refusal or unfound, nor is it the case of the appellant that he had asked the respondents to indicate the bank account number in which the rent may be deposited by the appellant to the credit of the respondents and the respondents had failed to specify the bank and account number and that it is also not the case of the appellant that there was a bona fide doubt as to the person or persons to whom the rent was payable.

Shri Sachar does not dispute that the conditions prescribed in clause (c) of Sub-Section (3) of Section 19-A for the purpose of making the deposit in court are not fulfilled in the present case. The submission of Shri Sachar, however, is that since the appellant had deposited in court the rent for the months of May, 1982 to October, 1982 on 29th October, 1982, before the said rent for six months fell due, he cannot be held to be a defaulter in payment of rent for six months and a decree for eviction under Section 13 (1) (a) could not be passed. Shri Sachar has, in this connection, placed reliance on the decisions of this Court in Duli Chand vs. Maman Chand 1980(1) S.C.C. 246 and Sheo Narain vs. Sher Singh 1980 (1) S.C.R.836.

We have carefully perused the said judgments. Both these judgments relate to the proviso to Section 13(2)(i) of the East Punjab Urban Rent Restriction Act, 1949 which affords protection against eviction of the tenant if on the first hearing on the application for ejectment after due service he pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the Controller. In both these cases, the tenant had deposited the amount of rent in the Court in which the ejectment proceedings were pending prior to the first hearing of the application and on the first hearing the landlord was made aware of the deposit. This Court has held that even though there was no provision in the Act for deposit of the rent in Court the said deposit could be treated as compliance of the requirements of the proviso to Section 13 (2)(i) of the East Punjab Urban Rent Restriction Act, 1949 and the tenant was entitled to avail the benefit of the said proviso.

In the present case, the appellant is seeking to avail the benefit of the legal fiction under Section 19-A(4) of the Act. 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 : The Bengal Immunity Company Limited v. The State of Bihar & Ors., 1955 (2) SCR 603 at p. 646]. The appellant can avail

the benefit of Section 19-A(4) if the deposit of Rs.3,600/- made by him in the Court of Munsiff (South), Udaipur, on October 29, 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 October 29, 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 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 in payment of rent for the period of six months.

For the reasons aforementioned, the appeal fails and it is accordingly dismissed. But in the circumstances. there is no order as to costs.