Ram Lal vs Hindustan Commercial Bank Ltd. on 19 December, 1951

Equivalent citations: AIR1952ALL498, AIR 1952 ALLAHABAD 498

JUDGMENT

Beg, J.

1. This revision application has arisen out of proceedings under Section 7-B, Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947.

2. An application under the said section was filed by the landlord opposite party against the tenant-applicant. This application specified a certain amount as the arrears due to the landlord from the tenant. A notice of this application was issued by the Court to the tenant The tenant appeared in response to the notice and filed objections. The main objection of the tenant was that the amount shown by the landlord as arrears of rent was incorrect and the application should be dismissed on that ground. He did not deposit in Court the amount mentioned in the notice as due from him. On the failure of the tenant to deposit the said amount, the Court dismissed the objections of the tenant as not maintainable and allowed the application of the landlord under Section 7-B with costs. This revision application has been filed on behalf of the tenant challenging the legality of the order passed by the trial Court.

3. The learned counsel appearing for the applicant has argued that in this particular case there was no agreed rent and in the absence of any agreed rent the Court was not justified in rejecting his objections on the ground that he had failed to make the initial deposit in Court. We have heard the learned counsel for the applicant and we find that there is no substance in this contention. The argument advanced on behalf of the applicant seems to be to clearly ignore the procedure laid down by the Legislature for the determination and disposal of a case under Section 7-B of the Act.

Under Sub-section (1) of Section 7-B of the said Act, it is open to a landlord to make an application for the ejectment of the tenant from accommodation, if the tenant is in arrears of rent for more than three months, Sub-section (2) gives the particulars which have to be mentioned in the application and, according to Clause (iii) of Sub-section (2) (a), the application should specify "the arrears claimed." On receipt of this application the Court is required under Sub-section (3) of the said section to issue a notice to the tenant asking him to pay the amount of arrears within 15 days of the service thereof, or to show cause within the said period why an order directing him to be evicted from the accommodation be not passed against him.

If within the time allowed in the notice under Sub-section (3), the tenant pays into Court the

amount mentioned therein, the Munsif shall dismiss the application under Sub-section (4) and direct the amount deposited to be paid to the landlord in satisfaction of the arrears If, however, the tenant fails to deposit the amount mentioned within the time allowed therein, the Court is required under Sub-section (5) to make an order directing that the tenant be evicted from the accommodation. If on the other hand the tenant appears in reply to the notice under Sub-section (3) and filed an objection other than an objection as to the costs of the proceedings, the tenant may on payment of court-fee under Sub-section (7) have the application treated as a plaint in a suit for the recovery of rent alone This is, however, subject to the following proviso :

> "Provided that the tenant shall not be permitted to file any objection, unless he has deposited in Court the amount mentioned in the notice."

4. Thus a perusal of Section 7-B shows that when notice is issued to a tenant there are two courses open to him. The first course open to him is not to file any objection at all. If he adopts this course he may either pay the amount claimed from him by the landlord in Court or he may not do so. If he pays the amount in Court the said amount shall be paid to the landlord in satisfaction of the arrears and the application of the landlord shall be dismissed. If, on the other hand he does not pay the amount claimed from him the Court is bound to pass an order evicting the tenant from the accommodation. The second course open to the tenant is to contest the application by filing objections. Ones he adopts this line of action, the application would be converted into a plaint on payment of court-fee, but before he is permitted to do it, he is required to deposit in Court the amount mentioned in the notice. If the contention of the learned counsel for the applicant is accepted then there is no doubt that the entire scheme laid down under Section 7-B of the Act would be defeated and the Court would be called upon to decide the objections without the tenant depositing the amount in Court.

5. The learned counsel for the tenant-applicant has argued that the landlord is required to mention the arrears of rent in his application and if the arrears mentioned by him are wrong then the application itself is not maintainable. This argument seems to ignore the fact that in Sub-section (2) (a) (iii) all that the landlord is required to mention is "the arrears claimed." This provision does not say that the arrears should be rightly claimed. The acceptance of the argument of the learned counsel would require the addition of the word 'rightly' before the word "claimed" and after the word 'arrears.' This is not warranted by the terms of Sub-section (2).

6. The next argument advanced by the learned counsel for the applicant is that before the application is maintainable, there should be 'arrears of rent' and as there were no arrears of rent in the present case, the application of the landlord should have been dismissed. According to this argument again, the Court would have to embark on an inquiry as to whether there are any arrears of rent and the amount claimed does constitute rent within the legal definition of the term. This is again a matter which would require the determination of an objection by the tenant and this cannot be done unless the amount claimed by the landlord is deposited in Court.

7. It is significant in this connection to note that that proviso lays down that the tenant should deposit in Court "the amount mentioned in the notice." Thus what has to be deposited in Court by

the tenant is the amount mentioned in the notice as due according to the landlord-applicant irrespective of the question whether the said amount is actually due or not: and the payment of the said amount in Court is a condition precedent to the determination of any objection by the tenant whether that objection relates to the maintainability of the application of the landlord or to the correctness of the amount claimed by him.

8. The last argument advanced by the learned counsel for the applicant is that such an interpretation would lead to a great deal of hardship, because in every case it would be open to the landlord to mention an exorbitant amount in the notice and the tenant would be bound to deposit it in Court before his objections are determined. On the other hand, it can be said in reply that if the interpretation contended for is accepted, then in every case, it would be open to the tenant to challenge the maintainability of the application and have his objections decided without making the necessary deposit. This would clearly be nullifying the very purpose of the proviso and allowing by the back door what the law clearly intended to prohibit. The purpose of the proviso obviously seems to be to provide a safeguard against frivolous objections and dilatory proceedings. In any case, the provisions of Section 7-B seem to be quite clear and unambiguous on the point and the fact that enforcement of such a law might cause hardship in certain cases is more properly a matter for the consideration of the Legislature than for the Court. In any case the consideration of hardship cannot induce the Court to depart from the meaning which is clear and apparent on the face of the section itself.

9. Before taking leave of this case we might refer to a decision of this Court in Dayal Das J., Gurajani v. Sm. Shushila Devi, (Section 115 Appln., NO. 232 of 1950) to which one of us was a party. The view taken in it is in consonance with the view taken by us in this case. After having heard the learned counsel for the applicant, we are of opinion that no grounds have been made out to persuade us to take a view different from the one taken in that case.

10. We are clearly of opinion that there is no substance in this revision application. It is accordingly dismissed. The interim stay order is hereby vacated. As no notice has been issued to the opposite party, the question of costs does not arise.