

Smt. Priya Bala Ghosh And Others vs Bajranglal Singhanian And Another on 3 October, 1991

Equivalent citations: AIR1992SC639, 1993SUPP(1)SCC24, 1992 HRR 290, AIR 1992 SUPREME COURT 639, 1992 AIR SCW 283, 1993 (2) ALL CJ 783, (1992) 2 ANDH LT 623, 1993 ALL CJ 2 783, 1993 (1) SCC(SUPP) 24, 1992 SCFBRC 134, (1992) 2 PAT LJR 9, (1992) 2 ANDHWR 49, (1992) 1 RENCER 313, (1992) 1 ALL RENTCAS 326

Bench: A.M. Ahmadi, K. Ramaswamy

JUDGMENT

1. The appellants are legal representatives of one Gour Mohan Ghosh, since deceased, who was the tenant in respect of the premises in question. The landlord had filed a suit for evicting the tenant on two grounds viz., that the premises were required by the landlord reasonably and bona fide for personal occupation and the tenant was in arrears of rent for the months of September and October, 1972. The Trial Court on an appreciation of the evidence on record dismissed the suit holding that the landlord had failed to prove the alleged requirement and that there was no default in the payment of rent to entitle the landlord to a decree. The landlord carried the matter in first appeal. The First Appellate Court confirmed the finding of the Trial Court on the question of bona fide requirement but decreed the suit on the other ground of the tenant being in arrears of rent. Against the said order the tenant filed a Second Appeal to the High Court. The High Court by the impugned judgment dated 15th March, 1984 dismissed the appeal. It is against the said order that the present appeal by special leave is preferred.

2. It is not necessary for us to consider the question of bona fide requirement. The short question which we must consider is whether the First Appellate Court and the High Court were right in coming to the conclusion that the tenant was in arrears of rent and was not entitled to the protection of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, (hereinafter called 'the Act'). Before we proceed to interpret the relevant provisions of the said Act, we must state the factual foundation which would govern our conclusion. Admittedly, the tenant had not paid the rent for the months of September and October, 1972. Although he claims to have personally offered the rent, that part of his evidence has not been accepted. We will, therefore, proceed on the premise that he had not personally tendered the rent to the landlord as alleged by him. But admittedly he sent the amount of rent for the month of October, 1972 by money order dated 28th November, 1972. He did not send the rent for the month of September, 1972. The question then is, is he liable to be evicted? To answer this question reference must be made to the relevant provisions of the Act.

3. Section 11(1)(d) of the Act, insofar as it is relevant for our purpose, provides that where the amount of two months rent lawfully payable by the tenant due from him is in arrears by not having been paid by the last day of the month next following that for which the rent is payable or by not

having been validly remitted or deposited in accordance with Section 13(1), the tenant shall be liable to eviction. In the present case as stated earlier the tenant sent the rent for the months of October and November, 1972 by money order dated 28th November, 1972. He did not send the rent for September, 1972. It remained outstanding. To put it differently the tenant sent the rent for October, 1972 before the end of November, 1972 which was clearly permissible by virtue of the plain language of Section 11(1)(d) of the Act. Then comes Section 13(1) which we may reproduce :

When a landlord refuses to accept any rent lawfully payable to him by tenant in respect of any building, the tenant may remit such rent and continue to remit any subsequent rent which becomes due in respect of such building, by postal money order to the landlord.

This section, therefore, permits the tenant to remit the rent due by postal money order to the landlord, if the latter refuses to accept the same. In the backdrop of facts and the aforesaid provisions of the Act, the High Court answered the contention of the tenant thus :

Once the final court of facts comes to a conclusion that there has been no valid tender by the tenant to the landlord and there has been no refusal on the part of the landlord to accept any rent lawfully payable to him by the tenant, the question of validity of remittance by money order does not arise. That is the end of the matter.

The above observations would show that according to the High Court it was essential that before the rent was remitted by money order, there must be tender of the rent personally to the landlord and he" should have refused to accept the-same. Unless there is evidence led to show that there was such tender and refusal, the remittance of rent by money order within the time stipulated by Section 11(1)(d) read with Section 13(1) can be of no avail to the tenant. We are afraid this interpretation of the relevant provisions of the law is too narrow to commend to us. Take a case of a landlord residing outside the station where the property in question is situated. Can the tenant be expected to travel the long distance every month to tender the rent personally to the landlord? If he sends rent by money order, will such remittance not be legal tender in the eye of law? The Full Bench of the Patna High Court in *Raj Kumar v. Uchit Narayan*, held as under (at pp. 249-50) :

If the law, as in the cases under Rent Act, gives the liberty to the tenant under Section 11(1)(d) to make the payment in the absence of a contract by the last day of the month next following then can it be said that if on such last day the landlord refuses to accept the rent and subsequently a date later than the last day of the month next following the tenant remits such rent by postal money order he can yet be called a defaulter? When Section 13(1) speaks of the remittance of rent by postal money order to the landlord on refusal on the part of the landlord to accept such rent, the law clearly envisages two possibilities. If the tenant apprehends that for some ulterior motive the landlord could refuse to accept such rent for the purpose of making the

tenant a defaulter within the meaning of Rent Act, he may remit such rent by postal money order by the last day of the month next following. That would make the remittance a valid payment, within the meaning of Section 11(1)(d). The other option given to the tenant is to pay hand to hand or tender the rent lawfully payable by the last day of the succeeding month and in case of refusal on the part of landlord to make a remittance by postal money order on a date subsequently thereto i.e. the last day of succeeding month.

It is not difficult to conceive of several situations which may arise and necessitate the remittance of the rent by money order. We have referred to one and the High Court had referred to another. But there could be many more such situations and it must be realised that the law intended to ensure on the one hand regular payment to the landlord and on the other protection to the tenant from a not-too-co-operative landlord. If the tenant is sure on account of a consistent course of conduct of the landlord that the latter will not accept the rent if paid hand to hand, it would be futile for him to make the trip every time; in such a situation he would be justified in remitting the rent by money order. What is it that the landlord requires? He must be assured of his rent. If the tenant pays the rent, whether by hand to hand or by money order at his cost, that should not make any difference to the landlord. Why should a tenant who resorts to the latter mode of payment be evicted even though he has shown readiness and willingness to pay the rent due and payable by him to the landlord? The law has to be broadly construed because it is not intended to trap the tenant into a situation so that the landlord can evict him. We are afraid that the High Court construed the relevant provisions of the law in a rather hyper - technical manner without keeping in mind the fact that Rent Restriction Legislations were enacted to protect the tenants from eviction by not-too-co-operative landlords.

4. It was submitted by Mr. Ganguli, the learned Counsel for the landlord, that the tenant had failed to pay the rent in respect of the month of September, 1972. That is the finding of fact by which we must go. But since he had paid the rent for the months of October and November, 1972 by money order dated 28th November, 1972, he was not in arrears for two months and, therefore, he was not liable to be evicted. Mr. Ganguli, then said that the money order had reached the landlord sometime in the month of December, 1972 and, therefore, there was no valid tender before the end of November, 1972, which was the outer limit by which the rent had to be paid. Once the tenant had remitted the amount by money order before the last date ran out, that was sufficient because there could be any number of reasons why the money order may be delayed for which the tenant cannot be held responsible. Such a contention must also be rejected for the reason that the law envisages that the remittance of money order must be made before the last day runs out and it was that reason which weighed with the Full Bench of the Patna High Court when it gave the illustration in the passage extracted above. It would have been a different matter if the remittance by money order itself had been after November, 1972 but that is not the case. We are, therefore, of the opinion that the view taken by the High Court is unsustainable.

5. In the result this appeal succeeds. We set aside the order of the First Appellate Court which came to be confirmed by the High Court where under the decree for eviction came to be passed. The suit of the landlord will stand dismissed. There will be no costs throughout.