

Karnataka High Court

Akbar Basha vs B. Maruthi on 25 September, 1999

Equivalent citations: ILR 1999 KAR 4374, 1999 (6) KarLJ 572

Bench: K P Rao

ORDER

1. This is the landlord's revision petition filed against the order of dismissal of the Eviction Petition HRC No. 10573 of 1989 on the file of the Additional Small Causes Judge, Civil Station, Bangalore, by an order dated 6-8-1992 under Section 21(1)(a) and (h) of the Karnataka Rent Control Act (for short, the 'Act').

2, Revision petitioner filed the eviction petition in the Trial Court seeking for eviction of the respondent-tenant from the shop premises bearing No. 45, 4th Cross, 1st Main, Gangenahalli Extension, Bangalore-32, on the grounds under Section 21(1)(a) and (h) of the Act, alleging that the respondent who is in occupation of the said shop premises on a monthly rent of Rs. 125/- fell in arrears of rent and in spite of a notice dated 16-11-1988 issued to him calling upon him to pay the arrears of rent of Rs. 1,500/- due from 8-4-1987 he has not paid the said arrears within two months from the date of tender of notice to him, which was sent by registered post and also under certificate of posting. It is further alleged that petitioner requires the petition schedule shop by way of additional accommodation for running a cycle shop since the accommodation available in the adjacent shop in his occupation is found to be insufficient as his business was expanded. He, also alleged that he will be put to greater hardship if an order of eviction were to be refused against the respondent and that the respondent will not be put to any greater hardship if an order of eviction were to be passed against him.

3. Respondent resisted the eviction proceedings by filing his counter contending that the rate of rent is Rs. 75/- p.m. and denying that he is in arrears of rent claimed in the notice. He also denied that he is due rents from 8-4-1987 and also denied that petitioner requires the petition schedule shop by way of additional accommodation for running a cycle shop and contending that he will be put to greater hardship if an order of eviction were to be passed against him since he is the only earning member in his family and the income from the business in the petition schedule shop is the only source of livelihood for his family. According to him petitioner demanded enhanced rent of Rs. 400/- and additional advance of Rs. 10,000/- and since he refused to accept the said demand, eviction petition is filed against him.

4. The Trial Court on appreciation of the evidence adduced by the parties, came to the conclusion that respondent was in arrears of rent of Rs. 2,375/- by the date on which the legal notice was issued. However, the Trial Court held that the respondent is not liable for eviction on the ground under Section 21(1)(a) of the Act, since he is liable to adjust the excess advance amount of Rs. 2,375/- received by him towards the said arrears of rent. The Trial Court also came to the conclusion that there is no real need for the petitioner to claim the petition schedule shop by way of additional accommodation and held that the ground under Section 21(1)(h) of the Act is not made out.

5. I have heard the arguments advanced by the learned Counsel appearing on both sides.

6. Learned Counsel for the revision petitioner-landlord submitted that the Trial Court erred in holding that the respondent-tenant is entitled for automatic adjustment of the excess advance amount received by the petitioner towards the arrears of rent due by him, though the respondent has not exercised his option seeking for adjustment of the said excess amount of advance. In support of his contention, he relied upon the decisions of the Supreme Court in *Bhoja alias Bhoja Ram Gupta v Rameshwar Agarwala and Others*, *Nand Lal Agarwal v Ganesh Prasad Sah and Others* and *Bhaiya Punjalal Bhagwanddin v Dave Bhagwat-prasad Prabhuprasad and Others*. He therefore, contended that the Trial Court ought to have passed an order of eviction under Section 21(1)(a) of the Act, having recorded a finding that the respondent was in arrears of rent demanded in the legal notice issued to him which was sent by registered post. He further contended that the Trial Court was also not correct in holding that there is no real need for the petitioner to claim the petition schedule shop by way of additional accommodation for running his cycle shop.

7. In reply to these contentions, learned Counsel for the respondent-tenant submitted that the above cited decisions of the Supreme Court are not applicable to the facts of the present case since the landlord is bound to refund or return the excess advance amount received by him under the provisions of Section 18(2)(b) of the Act and therefore, the Trial Court was justified in holding that the tenant is entitled to automatic adjustment of the excess advance paid towards the arrears of rent due by him. It is further pointed out by him that the legal notice issued to the tenant by registered post has not been served on the respondent and the claim of the petitioner that he sent a copy of the said notice under certificate of posting to the respondent is not found to be true since the certificate of- posting has not been produced and marked in evidence. It is further contended by him that the tenant has paid all the arrears of rent found due by him after the Trial Court has determined the said arrears on I.A. II filed under Section 29 of the Act by the petitioner. He therefore contended that the finding recorded by the Trial Court that the ground under Section 21(1)(a) of the Act is not available to the petitioner for the eviction of the respondent, does not call for any interference by this Court. He also contended that the Trial Court has rightly held that there is real need for the petitioner to claim the petition schedule shop by way of additional accommodation on proper appreciation of the evidence adduced by both parties.

8. It is an undisputed fact that the respondent has not paid the arrears of rent claimed in the notice sent by registered post within two months from the date of tender of the said notice to him. The Trial Court after holding an enquiry on I.A. II found that the respondent became due in a sum of Rs. 2,375/- by way of arrears of rent up to 8-11-1988 and that the rate of rent is Rs. 125/- p.m. as claimed by the petitioner. The correctness of the order passed by the Trial Court on I.A. II determining the arrears of rent due by the respondent has not been challenged by the respondent. On the other hand, he has paid the arrears determined by the Trial Court and complied with the orders passed on I.A. II. Thus, it is proved that, by the date of issue of the legal notice, the respondent was in arrears of rent amounting to Rs. 2,375/- and that he has not paid the said arrears of rent within two months from the date of tender of the said notice. Petitioner produced the postal cover sent by registered post containing the said notice in the Trial Court, which is marked as Ex. P. 2. There is a postal endorsement on the back of the said postal cover that the "party has not claimed" the said notice and so, it was returned to the sender and the date is mentioned as 25-11-1988 below the said endorsement. It is therefore clear that the said notice was tendered to the respondent on

25-11-1988 and the respondent has not claimed the said notice. According to the provisions of Section 21(1)(a) of the Act, if the tenant has neither paid nor tendered the whole of arrears of the rent legally recoverable from him within two months of the date on which a notice of payment for the arrears of rent has been served on him by the landlord by tender or delivery either personally to the tenant or to a member or servant of his family at his residence (or if such tender or delivery is not practicable) by affixture to a conspicuous part of the premises, it is a ground for eviction of the tenant from the leased premises. Now it is proved that there is a tender of the said notice sent by registered post to the petitioner by the postman. The eviction petition was filed on 31-8-1989 after waiting for more than two months from the date of tender of the said legal notice. Thus, there is compliance with the said mandatory requirement of the issue of notice under Section 21(1)(a) of the Act. According to the amended provisions of sub-section (2) of Section 21 of the Act, a tenant who has not paid the arrears of rent due by him within two months from the date of tender or service of the legal notice on him, is liable for eviction unless "(i) he complies with the provisions of Section 29, (ii) satisfies the Court that he had sufficient cause for the default to pay or tender the rent within the period referred to in the said clause (a) and (iii) pays to the landlord or deposits in the Court such further amount, as may be determined by the Court to be due, along with a sum not exceeding ten per cent of the rent thereof as may be fixed by the Court, within one month from the date of the order of the Court".

9. In the present case, it is found that the tenant has complied with the provisions of Section 29 of the Act by paying the arrears of rent determined by the Trial Court. It is submitted that, as on today, the tenant is not in arrears of rent. So, the only question to be considered is whether the tenant has satisfied the Court that he has sufficient cause for the default to pay or tender the rent within the period of two months from the date of tender of legal notice to him. The Trial Court felt that, since the landlord has received advance of Rs. 2,500/-, though he is not entitled to receive more than one month agreed rent under the provisions of Section 18(2) of the Act and he has not refunded the excess advance amount received by him though it is a mandatory requirement that he shall refund or return the said excess amount, that circumstance itself constitutes a sufficient cause for the default to pay the arrears of Rs. 2,375/- claimed in the said notice.

10. Learned Counsel for the revision petitioner submitted that unless the tenant exercises his option for adjustment of the said excess advance amount paid towards the arrears due by him, he is not entitled to contend that he is not liable to pay the rents claimed in that notice within the period of two months from the date of tender of notice sent by registered post. In support of his contention, he relied upon a decision of the Supreme Court in Bhoja alias Bhoja Ram Gupta's case, *supra*, wherein it was held as under.-

"Bihar (Lease, Rent and Eviction) Control Act (3 of 1947) does not contain any provision for automatic adjustment of excess rent. A tenant cannot save himself from the consequence of eviction under the Act on the ground of default in the payment of rent by claiming automatic adjustment of any excess rent paid consequent upon mutual enhancement of rent, even if illegal unless there is an agreement between the parties for such an adjustment. The tenant may also in a given case seek adjustment of the excess rent in the hands of the landlord against the arrears by specifically ask-

ing the landlord for such an adjustment before filing of the suit or in response to the notice to quit and even in the written statement by way of set off within the period of limitation and by following the procedure for claiming such a set off, while resisting the claim for eviction on the ground of default in payment of arrears of rent but he cannot claim 'automatic adjustment' ".

He also relied upon another decision in Nand Lal Agarwal's case, supra, wherein it was held as under.-

"Without the tenant calling upon the landlord to adjust the excess payments towards the arrears of rent, he cannot seek such a right in the suit filed by the landlord by way of defence in the suit for eviction.

Though Section 8(2) deals with payment of excess rent for buildings for which the fair rent has been determined or re-determined by the Controller, the same principle, in the absence of a different prescription under the Act, has to govern the buildings for which the rent is payable in accordance with the terms of the contract between the parties. It, therefore, follows that even if the rent for the building leased out to the tenant had not been determined by the Controller but had been fixed by the parties themselves, the right to seek adjustment of the excess payments made by the tenant has to be in accordance with the principle set out in Section 8(2)".

He also relied upon another decision of the Supreme Court in Bhaiya Punjalal Bhagwanddin's case, supra, wherein it was held as under.-

"Where a landlord institutes suit for eviction of tenant on ground of arrears of rent under Section 12(2) the tenant's paying the arrears of rent after the institution of the suit does not affect his liability to eviction and the Court's power to pass a decree for eviction. It is true that the expression used in clause (a) of sub-section (3) is the Court may pass a decree for eviction in any such suit for recovery of possession, but this does not mean that the Court has discretion to pass or not to pass a decree for eviction in case the other conditions mentioned in that clause are satisfied. The landlord became entitled to recover possession when the tenant failed to pay rent and this right in him is not taken away by any other provision in the Act. The Court is therefore bound in law to pass the decree when the requirements of sub-section (2) of Section 12 are satisfied. This is also clear from a comparison of the language used in clause (a) with the language used in clause (b) of sub-section (3)".

11. Placing reliance on the above decisions it is contended by him that the Trial Court was not justified in holding that the tenant is not liable for eviction on the ground under Section 21(1)(a) of the Act, notwithstanding the fact that he was found to be in arrears of rent demanded in the legal notice issued to him and has not paid the said arrears within two months from the date of tender of the said notice to him. Since it is found that the above decisions are given with reference to the provisions of the Rent Control Acts of other States of Bihar and Bombay, it must be seen whether the principles laid down in the above decisions are applicable even in respect of the cases arising under the provisions of the Karnataka Act. In the present case, admittedly the respondent-tenant has paid the arrears of rent determined by the Trial Court and complied with the provisions of

Section 29 of the Act and also with the orders passed on I.A. II under Section 29 of the Act and admittedly he is not in arrears of rent as on today. Thus, he has complied with the requirements of Section 21(2), clauses (i) and (iii) of the Act. So, it must be seen whether he has also complied with the requirement under Section 21(2)(ii) of the Act. He has to satisfy the Court that he has sufficient cause for the default to pay or tender the rent demanded in the legal notice within the period of two months from the date of tender of the said notice. The Trial Court found that the landlord has received excess advance of Rs. 2,375/- out of Rs. 2,500/- received from the tenant by way of advance. Under the provisions of Section 18(2)(b) of the Act, the landlord shall refund or return the excess advance amount received by him to the tenant or at the option of the tenant, he shall adjust the said excess advance amount paid towards the rents. Since the landlord was admittedly holding Rs. 2,375/- by way of excess advance, the Trial Court felt that the said circumstance itself constitutes a sufficient cause for the tenant for not paying the amount of Rs. 2,375/- due by him by way of arrears of rent. Though the respondent has not exercised his option for adjustment of the said excess advance amount towards the rents due by him demanded in the notice, the Trial Court is entitled to consider the question whether holding of excess advance amount by the landlord constitutes a sufficient cause for the tenant for not paying the rents due by him which are equivalent to the excess advance amount received and held by the landlord. In this case, the tenant is not seeking any adjustment of advance towards the said arrears of rents, since he has paid all the said arrears of rent due by him. So, the fact that the respondent was not exercised the option seeking for adjustment of the said excess advance amount towards arrears amount is not relevant for the purpose of deciding the question whether he had sufficient cause for the default to pay or tender the rent within the period of two months from the date of tender of the demand notice to him. Since the landlord is under an obligation to refund the excess advance amount under the mandatory provisions of Section 18(2)(b) of the Act, in my view, the Trial Court was justified in holding that the non-return or non-refund of the said excess amount by the landlord constitutes a sufficient cause for the tenant for not paying the arrears within two months from the date of tender of the demand notice. In the circumstances, I find that the above decisions are not applicable to the facts of the present case, since the facts of the present case are to be examined with reference to the specified provisions of amended sub-section (2) of Section 21 of the Act, 1961. I, therefore, find that the finding recorded by the Trial Court that the respondent is not liable for eviction on the ground under Section 21(1)(a) of the Act is correct.

12. The Trial Court found that the landlord has not placed any material on record to show that his business has expanded and that the accommodation available to him in the adjacent shop to the petition schedule shop which is in his occupation is insufficient to park all the cycles of the cycle-shop belonging to him and that he really needs the petition schedule shop by way of additional accommodation. When the landlord seeks tenanted premises by way of additional accommodation, he must satisfy the Court that the accommodation in the premises occupied by him is really insufficient for the needs of his business and in the absence of any authenticated evidence in support of the said claim, the Trial Court in my view, was justified in holding that the real need for the petitioner to claim the petition schedule shop by way of additional accommodation is not established and that the requirement of the petitioner in respect of the petition schedule shop premises for his personal use and occupation is not a reasonable or bona fide requirement. I therefore, agree with the said finding recorded by the Trial Court.

13. In the result, I find no justifiable grounds to interfere with the order of dismissal of the eviction petition passed by the Trial Court.

14. This revision petition is therefore, dismissed.

15. In the circumstances, I direct the parties to bear their respective costs.