Supreme Court of India
Dakaya & Dakaian vs Anjani on 12 October, 1995
Equivalent citations: 1996 AIR 383, 1995 SCC (6) 500
Author: G Ray
Bench: Ray, G.N. (J)

PETITIONER:
DAKAYA & DAKAIAN

Vs.

RESPONDENT:
ANJANI

DATE OF JUDGMENT12/10/1995

BENCH:
RAY, G.N. (J)
BENCH:
RAY, G.N. (J)
MAJMUDAR S.B. (J)

CITATION:
1996 AIR 383 1995 SCC (6) 500
1995 SCALE (6)73

ACT:

HEADNOTE:

JUDGMENT:

ORDER Leave granted.

Heard learned counsel for the parties. This appeal is directed against the decision of the High Court of Andhra Pradesh dated February 13, 1995 passed in Civil Revision Petition No.2824 of 1994. By the said impugned judgment, the Andhra Pradesh High Court has dismissed the revision application made against the order dated July 4, 1994 of the Additional Chief Judge, City Small Causes Court, Hyderabad in R.A.No.23 of 1992 affirming the order dated April 29, 1992 passed by the Prl. Rent Controller, Secunderabad it R C.No.316 of 1988.

The respondent-landlady made an application under Section 10 of the A.P. Buildings (Lease, Rent and Eviction) control Act, 1960 (hereinafter referred to as the A.P. Rent Act) for eviction of the tenant appellant on the ground of wilful default of payment of rent for the period September, 1988 to November, 1988 amounting to Rs.1125/-. There is no dispute in this case that the tenant failed to

make the payment within the stipulated period for the said months. It, however, appears to us that the landlady gave a notice to the tenant on December 6, 1988 claiming payment of rent for the said months of September, 1988 to November, 1988> The landlady, however, demanded surrender of the tenancy of the tenant within one week from the date of receipt of the notice dated December 6, 1988. The tenant initially sent a money-order for a sum of Rs.375/- being the monthly rent on December 7, 1988 and such amount has been received by the landlady and accepted by her. Within five days thereafter, on December 12, 1988, the tenant sent a Bank Draft for Rs.1125/- and it is an admitted position that such draft was received by the landlady before finding the suit for eviction. The said draft, however, has not been encashed by the landlady and the same has been deposited before the Rent Controller in the eviction proceedings. The Eviction Petition was filed before the Rent Controller on December 19, 1988.

It has been held by the Rent Controller that the tenant having committed wilful default, the landlady is untitled to get the order of conviction. Accordingly, order of eviction was made. The said view was upheld appeal and as aforesaid the revision application was dismissed by the High Court.

Mr.Dhruv Mehta, learned counsel appearing for the appellant, has drawn our attention to the decision of this Court in the case of S. Sundaram Pillai etc. Vs. V.R. Pattabiraman (1985 (2) SCR 643 = AIR 1985 SC 582). In the said decision, the provisions of Section 10 of the Tamil Nadu Buildings (lease and Rent Control) Act, 196 was taken into consideration. It may be indicated here that Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is part material similar to Section 10 of the A.P. Rent Act excepting that in Tamil Nadu Act an explanation has been added to the proviso to Sub-Section (2) of Section 1 of the Tamil Nadu Act. The said explanation provides that for the purpose of sub-section (2) of Section 10 of the Tamil Nadu Act, default to pay or tender rent shall be construed as wilful, if the default by the tenant in the payment or tender of rent continues after the issue of two months notice by the landlord claiming the rent. This Court in the aforesaid case of S.Sundaram Pillai has indicated that default per se cannot be construed as wilful and keeping in mind the beneficial purpose of the Rent Act to protect the eviction of the tenant, if the payment has been made before the institution of the suit, the cause of action for instituting of the suit, will vanish. In the instant case, immediately on receipt of demand of payment of rent, the tenant initially sent a sum of Rs.375/- by money order and thereafter a bank draft for Rs.1125/- covering the entire period of default from September, 1988 to November, 1988 was sent to the landlady. It, therefore, appears to us that there was no occasion to proceed on the footing that there was a wilful default for which an order for eviction of the tenant was to be passed. At the tenant had already sent the Bank draft coving the entire default, there was also no occasion for the Rent Controller to direct deposit of appears within the stipulated period. In our view, the Rent Controller, the first appellate court, and the High Court have failed to appreciate the incidence of tendering the entire amount under default before the institution of the suit. As a result, the courts below have erroneously proceeded on the footing that there had been a wilful default for which the landlady was entitled to a decree for eviction.

We may indicate here that the learned counsel for the appellant has submitted that the tenant will suffer serious prejudice if an order of eviction is maintained because he is carrying on his business in the tenanted premises. The learned counsel has also submitted that if it commends to this Court

that interference under discretionary jurisdiction under Article 136 of the Constitution is not warranted unless the tenant is prepared to pay a reasonable and fair market rent, the tenant-appellant is willing to pay such monthly rent as may appear just and proper to this Court, so that the order of eviction is set aside and the appellant is permitted to continue his possession.

It appears to us that the tenant-appellant is carrying on business in the disputed premises and the order of eviction cannot but affect his interest seriously. It also appears to us that whether wilful or not, the fact remains that the tenant defaulted in payment of rent for several months for which the landlady, stated to be poor and helpless widow, has suffered considerable prejudice. It, therefore, appears to us that it will be consonant to equity and justice if the interference with the impugned order of eviction is made in this appeal with a direction to the tenant to pay fair and reasonable rent to which the tenant- appellant is ready and willing. Considering the facts and circumstances of the case, we set aside the order of eviction by directing that the tenant-appellant would pay to the respondent-landlady the rent for the premises in question with affect from October 1, 1995 @ Rs.550/- (Rupees five hundred fifty only) per month. The appellant-tenant will also pay any other amount, if remains unpaid towards the payment of rent at the old rate of Rs.375/- per month till September 30, 1995 within a period of six weeks from today. In default, the appeal will stand dismissed. We, however, make it clear that this order will not preclude the landlady to seek eviction of the tenant in future on such grounds as may be available in law. The appeal is accordingly allowed without any order as to costs.