

Supreme Court of India

D.K. Pandey vs Abdul Azeez on 16 April, 1987

Equivalent citations: JT 1987 (2) SC 259, 1987 (1) SCALE 1046, (1987) 3 SCC 63, 1987 (1) UJ 531 SC

Author: S Mukharji

Bench: B Ray, S Mukharji

JUDGMENT Sabyasachi Mukharji, J.

1. This is an appeal from the order of the High Court of Karnataka dated 24th October, 1986. This order in question was passed in a revision petition filed by the appellant under Section 5C(1) of Karnataka Rent Control Act, 1961, hereinafter called the Act. The respondent had instituted a proceeding under Section 21(1)(h) of the Act in the Court of Small Causes Judge, Bangalore being H R.C. No. 3590 of 1983. This suit in question was instituted by Shri Abdul Azeez, the respondent herein for recovery of possession of the premises in question being No. 22, 5th Main, 6th Cross, Vasanthappa Block, Gangenahalli, Matadhalli Post, Bangalore. The dispute relates to the first floor of the premises in question. The plea of the appellant is that he became originally tenant of one Mohd. Omar Khan in respect of the first floor. Later on it is alleged by the appellant that the landlord Mohd. Omar Khan introduced one Shri Abdul Azeez, respondent herein as his brother, who would collect the rent on behalf of Mohd. Omar Khan. Later on the respondent started living in the ground floor of the premises in question which according to the appellant was done at the instance of Mohd. Omar Khan, whom he believed to be his brother. The appellant states that he had been paying all rent to Abdul Azeez upto September, 1985. After September, 1985 Omar Khan demanded the rent which the appellant stated had been paid to Abdul Azeez, the representative of Mohd, Omar Khan. Thereafter he had been paying rent from September, 1985 to April, 1986 to Mohd, Omar Khan. On his failure to pay rent to Abdul Azeez, Abdul Azeez filed petition under Section 29(1)(h) of the Act. Before the learned Judge, Small Causes Court, the appellant had made an application under Order 14 Rule 12 read with Section 131 for framing the issue as to who was the real landlord in respect of the premises in dispute. The learned Judge, Small Causes Court did not accept this prayer. The learned Judge, Small Causes Court was of the view that who was the landlord in respect of the premises in question would be decided in the main petition. On that order of the learned Judge of Small Causes Court, Bangalore, the appellant filed a revision application before the High Court. The High Court by the impugned order disposed of the application. The High Court's impugned order reads as follows :

Except deposit of rent for April, 1986 to August, 1986 no rent is paid to respondent nor deposited under protest assuming for the sake of argument that there is some substance in the plea that respondent is not his landlord. There was no justification to pay rent to Umar Khan after the initiation H.R.C. proceedings and it does not form good ground to withhold payment. For non-payment of arrears of rent proceedings is to be stopped Under Section 29(4) H.R.C. Act and petitioner is directed to put respondent in possession of the property within 3 months from today. Revision Petition is dismissed.

2. Section 29(4) of the Act upon which the High Court's order is based entails the liability on the tenant to deposit the rent, and if he fails, stop all proceedings and make an order directing the tenant to 4 put the landlord in possession of the premises or dismiss the appeal or revision petition.

The appellant's case is that he has regularly paid rent in question until Abdul Azeez was introduced he has been paying rent to the landlord Omar Khan. After Abdul Azeez was introduced, he has paid rent to Abdul Azeez as the representative of Mohd. Omar 5 Khan. From September, 1985 to April, 1986, Mohd. Omar Khan had demanded rent as landlord, so he paid rent to him and did not pay rent to Abdul Azeez, the respondent herein. On the proceeding being instituted from April, 1986 to August, 1986, the appellant deposited the rent in the Court. There is no dispute about that. The High Court records this. Therefore it appears that there was no failure on his part to deposit the rent. Section 19 of the said Act deals with right of the tenant to deposit rent in certain cases. Sub-section (1) of Section 19 of the Act provides that where the address of the landlord or his authorised agent is not known to the tenant or the landlord refuses to accept, the tenant may deposit the rent lawfully payable to the landlord in respect of the premises in certain manner indicated therein. Sub-section (3) of Section 19 of the Act deals with where any doubt or dispute arises as to the person who is entitled to receive the rent for the premises and states that the tenant may deposit such rent in Court in such manner as may be prescribed and may continue to deposit any rent which may subsequently become due in respect of the premises in Court in the same manner. Thereafter an enquiry indicated in Sub-section (3) of Section 19 of the Act is contemplated.

3. The appellant in this case had no occasion to invoke Section 19 of the Act. Firstly because there was no question or doubt for his payment of rent to the landlord through his representative, Abdul Azeez who was introduced by Mohd. Omar Khan who later on claimed to have become the landlord. In any event there is no finding that Abdul Azeez and not Omar Khan, is the actual landlord. The appropriate course of action would have been in such a situation for the court to make the finding as to who was the landlord before making order under Section 29(4) of the Act.

4. In that view of the matter we are of the opinion that the High Court was not right in passing the order in question in the manner and in the circumstances of this case as it did under Section 29(4) of the said Act. This is more so where before the impugned order, the appellant had asked for framing an issue as to who the landlord was in respect of the premises in question, which the learned judge of the Court of Small Causes declined to do as indicated before.

5. Having regard to all the facts and circumstances of the case the appropriate order would be to set aside the impugned order dated 24th October, 1986 mentioned hereinbefore and direct the appellant to go on depositing the rent in the Trial Court. Arrears, if any, will be paid within one month from today. We set aside the order of the learned judge of the Court of Small Causes, Bangalore dated 26th March, 1986. We direct that the application of the appellant filed under Order 14 Rule 12 read with Section 151 of the Civil Procedure Code, be disposed of again in the light of the observations made herein and the Trial Court will proceed thereafter in accordance with law. The appeal is disposed of accordingly. In the facts and circumstances of the case, there will be no order as to costs.

6. It appears from the record that though the respondent has filed appearance in this appeal, nobody on behalf of the respondent was present when the matter was called on and heard.