(1957) 12 GAU CK 0004

Gauhati High Court

Case No: Second Appeal No. 74 of 1955

Sri Narsing Bigraha and Another		APPELLANT
	Vs	
Pramatha Chandra Das		RESPONDENT

Date of Decision: Dec. 12, 1957

Acts Referred:

- Assam Urban Areas Rent Control Act, 1972 - Section 6, 6(1), 6(4), 6(5), 9
- Civil Procedure Code, 1908 (CPC) - Section 92

Hon'ble Judges: Sarjoo Prosad, C.J; G. Mehrotra, J

Bench: Division Bench

Advocate: N.M. Dam, for the Appellant; K.P. Bhattacharjee, for the Respondent

Judgement

G. Mehrotra, J.

This is Plaintiff''s appeal against the judgment of the Additional District Judge, Silchar, who allowed the appeal of the Defendant and dismissed the suit. The suit was one for ejectment of the Defendant. According to the Plaintiff''s case as set out in the plaint, the Defendant took the house in dispute on rent from Plaintiffs from 1358 B.S. Jaistha on a monthly rent of Rs. 8/- and he promised to pay the rent at the end of each month.

The Defendant is according to the Plaintiffs a defaulter and is liable to be ejected. The Plaintiffs, further wanted to demolish the house to construct a new one. Notice was given by the Plaintiffs to the Defendant terminating the tenancy by the end of Baisakh 1358 B.S. The Defendant contested the suit and admitted that he took the house from 1353 B.S. Jaistha and denied that there was any contract to pay the rent at the end of each month and that there was no fixed time to pay the rents and the Defendant was not a defaulter as the rents duo up to the dale of the termination of the tenancy had been paid before that date.

It was also urged that the Defendant had repaired the house at his dost under the provisions of the Assam Urban Areas Rent Control Act and the said cost had been

ordered by the Court to be deducted from the arrears of rent duo and from future rents payable to the Plaintiffs. On the 22nd Aghon 1357, B.S. he paid the previous arrears of rent and on that date it was settled that the rent was to be paid in future in every two months, but when he went to pay the rents two months after that, the Plaintiffs refused to accept the rents and so they were de-posited in Court.

The trial Court found in favour of the Plaintiffs as regards the stipulation for payment of rent. He held that the Defendant was a defaulter in the eye of law, and as proper notice terminating the tenancy had been given the suit was decreed by the trial court. The trial Court held that in view of the provisions of the Assam Urban Areas Rent Control Act, if the landlord refused to accept the rent after the end of the month of tenancy the tenant had to deposit the rent in court within 15 days of the next month. According to the evidence on record the Defendant had paid the rents of Pous and Magh, 1357 B.S. in, Falgun on 27-2-1951, and deposited the tents of Falgun and Chailra in Baisakh on 24-4-51 before the tenancy was terminated by the end of 1358 B.S. Baisakh.

The notice was given by the Plaintiff to the Defendant on 5-4-1951 terminating the tenancy at the end of Baisakh 1358 B.S. corresponding to 15-5-1951. The suit was filed on the 16th of May, 1951. It is, therefore, not denied that the rents due prior to the suit had boon paid up by the Defendant. The trial Court, however, is of opinion that as the rents in the past had not been paid at the end of every month and had not been deposited within 15 days of the next month after the expiry of the month, the Defendant was a defaulter within the meaning of the Assam Urban Areas Rent Control Act.

He was of the view that the rents were paid every two months before the suit which was not permissible under the provisions of the aforesaid Act. The lower Appellate Court on appeal held that the Defendant was not a defaulter within the meaning of the Assam Urban Areas Rent Control Act. He also held that the Plaintiffs were not competent to sue. The Plaintiff is a religious institution and is managed by a committee appointed by the court u/s 92 of the Code of Civil Procedure.

The Plaintiffs are the Secretaries of the managing committee and as such according to the lower appellate court, the Plaintiffs were not competent to file the suit. The court below did not accept the Plaintiffs'' case that the rent was agreed to be paid at the end of every month. From the mode of payments made by the Defendant in the past and acceptance of the rent by the Plaintiffs, the lower appellate court came to the conclusion that irregular payments were made which were accepted by the Plaintiffs.

There was no fixed time for payment of the rents and the rents having been accepted by the Plaintiffs, it was not open to them to treat this irregular payment as not being in accordance with the provisions of the Assam Urban Areas Rent Control Act, and to get a decree for the ejectment of the Defendant.

The lower appellate court also found that the Defendant had repaired the house at his cost under orders of the court which directed that the cost so incurred by the Defendant shall be adjusted towards rent due in the past and future, and the cost incurred which is said to be Rs. 134/- is more than sufficient to cover not only the rent due up to the time of the suit but also to some time beyond that.

2. The Plaintiffs'' counsel has raised two contentions before us. Firstly it was argued by him that even though the rent may have been fully paid up, prior to the filing of the suit, but as the rent had not been paid in accordance with the provisions of Section 6, Sub-section 4 of the Assam Urban Areas Rent Control Act, the Defendant could not get the benefit of the Act and the Plaintiffs were entitled to get a decree for ejectment. Secondly it was urged that the liability of the tenant to pay rent - in accordance with the provisions of Section 6 Sub-section 4 of the Assam Urban Areas Rent Control Act, continued right up to the date of the decree and the Defendant was not entitled to claim benefit of the provisions of the Act, unless he paid the rents regularly even after the filing of the suit in accordance with the provisions of Section 6, Sub-section 4 of the Act. Section 6(1) of the Assam Urban Areas Rent Control Act, 1949, provides as follows:

No order or decree for the recovery of possession of any house shall be made or executed by any Court so long as the tenant pays rent to the full extent allowable under this Act, and performs the conditions of the tenancy.

3. Sub-section 4 of Section 6 reads as follows:

No tenant shall be entitled to any benefit under this section in respect of any house if he is a defaulter, that is, if he has not paid the rent due by him in respect of such house to the full extent allowable under this Act, within the time fixed in the contract with his landlord or in the absence of any such contract, by the fifteenth day of the month next following that for which the rent is payable and, where any rent has accrued due before the commencement of this Act, if he has not also paid within three months of the date of such commencement all arrears of rent due by him in respect of such house to the full extent allowable by this Act.

4. Sub-section 5 is as follows:

Where the landlord refuses to accept rent offered by his tenant, the tenant may, within a fortnight of its becoming due, deposit in court the amount of such rent together with process-fees for service of notice upon the landlord (or upon each of the landlords, where the landlords number more than one), and on receiving such deposit, the court shall cause a notice of the receipt of such deposit to be served on the landlord (or each of the landlords), and the amount of the deposit may thereafter be withdrawn by the landlord on application made by him to the court in that behalf. A tenant who has made such deposit shall not be treated as a defaulter under Sub-section (4) of this section.

5. Section 6, Sub-section 1 of the Act, places a bar on the Court''s power to make an order or decree for the recovery of possession of any house so long as the tenant pays rent to the full extent allowable under this Act. The main question, therefore, to be considered is whether there was any such bar operative in the present case when the court was called upon to pass a decree for recovery of the possession of the house. Prior to the suit the Defendant had paid the rent to the full extent allowable under the Act and on the date of the suit he had fulfilled the conditions u/s 6, Sub-section 1 of the Act. The argument of the Plaintiff-Appellant is that there was no compliance with the provisions of Section 6, Sub-section 1 inasmuch as the rent had not been paid even prior to the date of the suit in accordance with the provisions of Sub-section 4. Sub-section 4 enumerates circumstances in which a tenant would be considered a defaulter, and under the aforesaid sub-section mere payment of rent due by the tenant to the full extent is not enough unless the payment is made within a certain period of time or in accordance with the terms of the contract.

If the intention of the Legislature was to make the mode of payment a condition precedent before the prohibition on the powers of the Court u/s 6(1) could be operative, the Legislature would have used clearer words. Sub-section 4 has used the words

If he has not paid the rent due by him in respect of such house to the full extent allowable under this Act within the time fixed in the contract with his landlord or in the absence of any such contract, by the fifteenth day of the month next following....

In Sub-section (1), the only condition for the application of that sub-section is that the Defendant pays the rent in full. If the payment in Sub-section (1) is interpreted to mean only the payment made within the time and in the manner provided u/s 6(4), it would be adding certain words to Sub-section (1) of Section 6. The reasonable way to my mind of interpreting the two Sub-sections of Section 6 will be to hold that Sub-section (1) incorporates a prohibition on the powers of the Court and Sub-section (4) gives a right to the tenant to claim the benefit of the section.

If the tenant claims benefit as a matter of right, he has to establish that he is not a defaulter within the meaning of Sub-section (4) and has got to show that he has not only paid the rent to the full extent but also that he has paid it within the time fixed under the contract or in the absence of any such contract, by the fifteenth day of the month next following that for which the rent is payable. u/s 6, Sub-section (1), the Court has only to see if the tenant pays the rent to the full extent and in that case will make no order for ejectment.

It is an obligation imposed on the Court, and if in the present case the Court finds that the Defendant had paid the rent in full before the suit and the rent due after the filing of the suit, had been adjusted in accordance with the orders of the Court towards the cost incurred by the tenant for the repairs of the house, the court will not hold that the tenant had not paid the rent to the full extent and the decree for

ejectment should be passed.

The benefit conferred on the tenant u/s 6, Sub-section (1) is with the purpose of securing full payment of the rent to the landlord and no decree for ejectment from the house can be made so long as the tenant pays the rent in full. The emphasis in Sub-section 6(1) is on the fact of payment of rent and not on the payment within a certain period.

6. Reliance was placed on the case of Jetha Bhulchand v. F.C. Grace reported in Jetha Bhulchand and Another Vs. F.C. Grace, in which it was held under the provisions of Bengal Rent Control Act that

where the benefit of the Rent Act is claimed the Defendant must show that he has paid arrears within three months of the Rent Act coming into force and subsequently paid his rent regularly within the time fixed in the contract with his landlord or in the absence of any such contract by the 15th day of the following month or in the event of the landlord refusing to accept rent by depositing it with the Rent Controller within a fortnight of its becoming due. Where such of these conditions as are applicable are not fulfilled any other plea that may be raised should not be considered. Subsequent acceptance of rent does not create a waiver so as to make the statute applicable.

7. The judgment does not set out in details the facts. However, it will appear from the judgment that the Defendant was occupying certain premises under a lease dated 15-8-1918 and was a tenant for three years and on the expiry of the term of the lease the suit was filed for ejectment and arrears of rent and a decree was granted on the finding that the rent for September, 1920 was not paid until 18-1-1921, and on 1-3-1921 the rent for October, November and December was paid at one time, and the rent for January, 1921 was not paid until the 7th April of that year.

There is no discussion of the law in this judgment and it is not possible to consider the case as an authority for the contention raised by the Appellant in the absence of any such discussion in the judgment itself. The next case relied upon by the Plaintiff is Narendra K. Chakravarty v. Jugal Kishore Gupta reported in 48 CWN 711 (B). In that case reference was made to the following observation of Rankin, J. in the case of Bithaldas Chandak v. Lalbehari Dutta & Sons reported in 25 CWN 971 (C):

The Rent Act puts the tenant who complies with its conditions in much the same position as a tenant who is entitled to a term. At all events it gives him a fixity of tenure so long as the Rent Act is in force but that privilege is given to a tenant who pays his rent and performs its conditions and to no one else.

In the above case Ormond, J. held that the Rent Control Order gives this privilege to tenants, protecting them against ejectment; but applies only to tenants who have paid their rents. It does not appear from the facts of the judgment as to whether the

rent had been fully paid in that case prior to the suit or not. These observations only show that a tenant who has not paid rent cannot claim protection under the Rent Control Act. This case, therefore, in our mind, is not an authority for the proposition contended for by the Appellant.

8. The next case relied upon is Keshab Mitter v. Mrs. P. Ghose reported in 49 CWN 728 : AIR 1946 Cal 81 (D). The facts briefly of this case were that the Defendant had been let into occupation of certain premises on a monthly rent of Rs. 90/-. On 15th of April, 1943, a notice had been served on him asking him to quit the premises on the expiry of the month of April, 1943. On his refusal to do so on 18th of June, 1943, a suit was brought for ejectment.

The rent for the month of April had already been paid and on 15-6-1943, the Defendant had sent a cheque for the amount of rent to the Plaintiff towards the payment of the rent for the month of May, 1943 which was refused. During the pendency of the suit the Calcutta House Rent Control Order came into force and in the defence the protection of Clause 9 of the Order was pleaded. Clause (9) of the Calcutta House Rent Control Order was in the same terms as Section 6 of the Assam Urban Areas Rent Control Act. No effort was made in that case to deposit the the rent for the month of May within three months of the date on which the Ordinance had come into force. Even after the suit no attempt was made to pay the rent month alter month within the 15th day of the succeeding month, nor any deposit was made with the Rent Controller. On the 26th April, 1944, he however, deposited a lump sum of Rs. 1080/- in court, which covered the amount due up to April, 1944.

On these facts it was held that the Defendant was not entitled to the protection afforded to him under Clause 9(4) of the Ordinance. In this case it was no doubt held that the word "rent" used in sub-paragraphs (1) and (4) of paragraph 9 and in paragraph 10 had a special meaning and referred to the amount which would have been payable periodically by the month, quarter or year as if the tenancy still continued, and that the main enactment contained in sub-paragraph (1) must be read along with sub-paragraph (4).

In effect it was, therefore, held that the tenant has not only got to pay the rent but must pay the rent in the manner and within the time indicated in sub-paragraph (4). It was also held in this case that the payment is to be made in accordance with the provisions of paragraph 9(4) even after the filing of the suit. In our judgment, this case is distinguishable on the facts from the present case. As we have already discussed above, the case of the Plaintiff is that the Defendant was a defaulter on two grounds. Firstly, that even prior to the filing of the suit the rent was never paid in accordance with the provisions of Clause 4.

The case discussed above was not a case where any default was alleged on the ground that there was no payment of the rent prior to the suit in accordance with the provisions of Sub-section 4 of Section 6 of the Act. The second ground on which

it is alleged that the Defendant was a defaulter is that even after the filing of the suit the rent was not paid regularly in accordance with the provisions of Section 6(4) of the Assam Urban Areas Rent Control Act. In the case relied upon, deposit was made in court in a lump sum of the rent about a year after the filing of the suit.

In the present case the rent due alter the filing of the suit was set off against the expenses incurred by the Defendant in the repairs of the premises under the Orders of the court. It was not a voluntary deposit by the tenant in contravention of the provisions of Section 6 of Sub-section (4), but it was a set off allowed by the court. The facts of the case, therefore, are entirely different. Clause 1 of Section 6 uses the words in the present tense and lays down that so long as the tenant pays full rent allowable under the Act, he is not liable to be ordered to be ejected. There is some controversy about the meaning of the word ''pays'' in Section 6(1) and Section 6(4).

Dealing with a similar clause in a Bombay Act, it has been held by the Bombay High Court that the words ''pays'' and ''performs'' in Sub-clause 1, Section 9(1) of Bombay Rent (War Restrictions) Act (2 of 1918) corresponding to Section 11(1) of Bombay Rent Restriction Act (16 of 1939) - Ed. refers to the date of the suit and not the date of the passing of the decree or order, vide Ismail Dada Bhamani Vs. Bai Zuleikhabai, at p. 371 : AIR 1944 Bom 181 at p. 183 (E). The Calcutta view, however seems to be that the use of the word ''pays'' connotes that the payment should be made right up to the date of the passing of the decree. In either view of the matter, what Sub-clause 1 means is that if the tenant pays rent at the date of the suit or at the time of the passing of the order, he is entitled to the protection under Clause (1). Similar words are used in Sub-clause 4 of Section 6. The question of payment however, could only arise if there is any amount due.

If there is no rent payable on the date when the suit is filed, or thereafter, the question of paying such rent would not arise. What the Appellant wants us to read in Clauses 1 and 2 is that the rent should not only have been paid in the past, but should have been paid in accordance with the terms of Sub-clause 4. We find it difficult to interpret Sub-clause 1 or 4 of Section 9 in that manner. In all cases where there is no rent due the tenant will be deemed to have continued to discharge his obligation of paying the rent and he is entitled to the protection of Clauses 1 and 4 of Section 6.

In the Calcutta case, admittedly on the date of the suit, the rent for the month of May was in arrears and obviously the question to be decided was what should have been the mode of payment of that amount so as to attract the provisions of Clauses 9, 1 and 4 of the Ordinance, which was applicable in that case. As regards payment of rent subsequent to the filing of the suit, in the present case the same argument will mutatis mutandis apply. There has been a payment of rent every month after the order of the Court directing that the expenses incurred towards repairs will be adjusted towards the payment of the rent. It cannot be, therefore, said that on any point of time after the filing of the suit, there was any rent due.

9. In the result, therefore, there is no force in this appeal and it is dismissed with costs.

Sarjoo Prosad, C.J.

10. I agree. It may be added that the Rent Control Act was by way of an additional protection to the tenant and not intended to deprive him of the right, which he already possessed under the Transfer of Property Act of claiming relief against the forfeiture of his tenancy in case he paid up all the amount of rent due.

The interpretation, which we have adopted of Section 6(1) of the Act and the other relevant sections is in accord with the general spirit and object of the legislation and places an obligation on the Court not to make or execute any decree or order for recovery of possession, so long as the tenant pays rent to the full extent allowable under the Act and performs the conditions of the tenancy. The contention that even if the landlord has accepted payment of all the rent due up to the date of the suit, he would still be entitled to treat the tenant as a defaulter for purposes of ejectment, if the rent had not been paid in due course according to contract or deposited in Court as required by Section 6(4) of the Act is too extreme to merit acceptance and is not warranted by the true interpretation of Section 6(1) of the Act. The landlord''s right to have all the rent due is amply secured by the provision without impairing the tenants'' right to remain on the premises, if he pays the rent due and performs the conditions of his tenancy.