(1999) 03 GAU CK 0029

Gauhati High Court (Kohima Bench)

Case No: Civil Revision No. 7 (SH) of 1998

Ram Gopal Agarwalla	APPELLANT
Vs	
Rajendra Kumar Sharma	RESPONDENT

Date of Decision: March 19, 1999

Acts Referred:

- Meghalaya Urban Areas Rent Control Act, 1972 - Section 5(4), 5(4)

Citation: (1999) 3 GLJ 603

Hon'ble Judges: N.Surjamani Singh, J

Bench: Single Bench

Advocate: N.D.Chullai, S.R.Ahmed, S.P.Mahanta, R.Choudhary, N.K.Deb, M.Z.Ahmed, P.D.B.Barua, Advocates appearing for Parties

Judgement

1. The common order dated 17th March, 1998 passed by the learned District Judge at Shillong in Misc Case Nos 17 (H) 1997,18 (H) 1997 and 19 (H) 1997 allowing the respondent Nos 1,2 and 3 to deposit the rents in the Court below for the month of November, 1997 and also allowing them to deposit the rent for the month of December, 1997, January, 1998 and February, 1998 is the subject mattef under challenge in this revision petition.

2. The facts of the case in the short compass are as follows.

3. The respondent Nos 1,2 and 3 filed an application under Misc Case No. 17 (H) 97, Misc Case No. 18 (H) 97 and Misc Case No, 19 (H) 97 before the learned Court below for allowing them to deposit the rent in the Court for the month of November, 1997 in respect of their alleged tenancy of the portion of the premises under the present petitioners at the monthly rent of Rs. 1,500 Rs. 1,200 and Rs. 500 per month respectively as the present petitioners had refused to accept the rent since August, 1997. This is the case of the present respondent Nos 1, 2 and 3. It is also contended by the respondent Nos 1, 2 and 3 that they had deposited the related rents for the month of August, September and October, 1997 in the Court of Assistant District

Judge having jurisdiction in the matter but since no Presiding Officer was there at the relevant time and the District Judge . also on leave, the Office Assistant accepted the rent of August, September and October, 1997 and however for the deposit of the rent of November, 1997, the Office Assistant of the Assistant District Judge did not accept such deposit and accordingly, those respondents filed these applications. Thfe case of the present petitioners is that the respondent Nos 1, 2 and 3 are not tenants under them but those respondents are only footpath hawkers who are allowed to occupy vacant spaces in the building of the petitioners as daily vendors of readymade garments. According to the present petitioners, the present respondent Nos 1, 2 and 3 did not offer rent as tenants and as such no question of refusing the rent since August, 1997 thus arose and the acceptance of the rent by the Assistant or Peshkar of the Court of Assistant District is not a deposit of rents under the law. On the other hand the said respondents stated that they filed photo copy of the Sales Tax Certificate and the Income Tax returns for the assessment year 1996 and the other documents established the fact that those respondents are tenants under the present petitioners.

4. Mrs PDB Baruah, learned counsel for the petitioners argued that the learned District Judge had misajjpreciated the pro visions of law laid down under section 5 (4) of the Meghalay a Urban Areas Rent ContrcdAct* 1972 while passing the impugned common order of 17th March, 1988 inasmuch as the learned Court below had treated the respondent Nos 1, 2 and 3 as tenants of the present petitioners thus observing that the cases are governed and covered by the Meghalaya Urban Areas Rent Control Act, 1972, hereinafter referred to as the Act of 1972 which according to Mrs B aruah, learned counsel the decision making process adopted by the learned Courtbelow while passing the impugned order suffers from illegality and infirmity.

5. At the hearing Mr. NK Deb, learned counsel''assisted by Mr. R. Choudhury, learned counsel for the respondent Nos 1,2 and 3 argued that there were oral agreement of tenancy and the plea taken by the present petitioners before the Court below that the present respondents are footpath hawkers and daily vendors are totally wrong andapart from it, it is evident that the present respondents were very much within the premises of the present petitioners as tenants. It is also argued by Mr. NK Deb, learned counsel forthe respondents that it is not necessary for the present respondents to obtain permission of the Court to make the deposit and the section 5 (4) of the Act of 1972 has not given any power to the Court to refuse or to accept such deposit of the rent and that, deposit of rent together with the application is a condition precedent.

6. Upon hearing the learned counsel for the parties, I am of the view that he learned District judge at Shillong had completely misappreciated the provisions of law laid down under section 5(4) of the Act of 1972 while passing the impugned common order of 17th March, 1998 and that the impugned order suffers frpm infirmity, illegality and impropriety with the following reasons:

(1) For better appreciation and also for just determination of the real points in controversy between the parties the provision of law laid down under section 5 (4) of the Act of 1972 is important and material and accordingly it is quoted below :

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

(4) Where the landlord refuses to accept the lawful rent offered by the tenant, the tenant may, within 30 days of its becoming due, deposit in Court the amount of such rent together with processfees for service of notice upon the landlord, and on receiving such deposit, the Court shall cause a notice of the receipt of such deposit to be served on the landlord and the amount of the deposit may thereafter by 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 clause (e) of the proviso to subsection (1) of this section."

7. A bare reading the perusal of tis provisions of law it is seen and established that regarding the deposit of rent in the Court under section 5 (4) of the Act of 1972, there must be evidence that there was refusal by the landlord for which reasonable opportunity of beingheJard should be afforded to the parties concerned in support of their respective cases by allowing them to adduce evidence both oral and documentary evidence but here in thd instant case only on the basis of the petitions filed by the present respondent Nos 1, 2 and 3 arid on the basis of the show cause statement of the present petitioners and upon hearing learned counsel for the parties, the learned Court below passed the impugned order. In my considered view no reasonable opportunity of being heard to the parties was afforded by the learned Court below to the parties concerned while deciding the matter and passing the impugned common order. At this stage I hereby recall the enshrined principle of law namely justice; must not merely be done but it must also be seen to be done."

8. In a series of cases this Court has held that section 5(4) of the Act is a mandatory provision and the tenant seeking protection uncjer the provision must tender or offer due rent within, a fortnight of its falling due. The tender must be a made which is the precondition to the deposit of rent in Court and the question of depositing of rent in Court comes only when the landlord refuses to accept the rent. This question now has been clinched by a recent decision of the Apex Court in 1995 (Supp) 3 SCC 44 (Rameshwarlal Chaudhury vs. Ram Niranjan Mour) wherein the Apex Court has pointed out as follows :

"In this case in which the appellanttenant did not tender the rent to the landlord, without resorting to such tender he has deposited the rent into the Court. That is not in compliance with section 5 (4) of th" Assam Urban Areas Rent Control Act, 1972.

The High Court is correct in its conclusion. Civil Appeal is dismissed. No costs."

9. From this established principle of law it can be easily opined that there must be evidence pertaining to the tender of rent by the tenant to the landlord and the status of tenancy should be established by the respondents before the learned Court below but in the instant case there is no lease agreement pertaining to the tenancy of the present respondent Nos 1, 2 and 3under the petitioners in respect of the said premises.

10. Deposit of rent or money with the Nazir or Assistant of the Court of Assistant District Judge by the respondents without compliance with the requirements of law as provided under section 5 (4) of the Act of 1972 is not a deposit in the eye of law in view of the decision of this Court rendered in Abdul Matin Choudhury & another vs. Nityananda Dutta Banik reported in (1997) 2 GLR 468 (1998 (1) GLJ 379).

11. It is also may be noted that the Court is to examine as to whether the respondents are the trespassers or licensee or permissive possessor or tenant by sufferance or tenant at will or a statutory tenant as required under section 105 of the Transfer of Property Act while deciding issue pertaining to the deposit of rents by the respondent Nos 1,2 and 3; but the learned Court below lost the sight of this important issues while passing the impugned common order of 17th March, 1998. It may be noted that, a person who is lawfully in occupation of the premises does not become a trespasser, but if he does not become a tenant holding over he would be a tenant by sufferance (see Bardilal vs. Indore Municipality reported in (1973) SCC 508) and apart from it, if a tenant after the termination of the lease is in possession/occupation without the consent of the landlord he is the tenant by sufferance and could be evicted without notice. It is only where a tenant will continue in possession with the consent of the landlord that he can be called a tenant holding over a tenant at will (see Maneksha Ardesha Irani vs. Manekji Edulgi Mistry reported in (1974) 2 SCC 621). It is also well settled that if a tenant, whose lease is expired, is permitted to continue in possession pending a treat for a further lease, his possession is that of a tenant at will, until some other interest is created; but if he continues in possession under the protection of Rent Restriction or Rent Control Act, he becomes a Statutory tenant'' and not a tenant at will. This important legal aspect is to be examined by the competent Court while deciding an issue pertaining to the deposit of rent under the related provisions of section 5 (4) of the Act of 1972 but, in the instant case it has not been done by the learned Court below. On this ground alone the impugned common order of 17th March, 1998 can be set aside and accordingly it is set aside.

For the reasons, observations and discussions made above, this impugned order suffers from infirmity, illegality and impropriety and accordingly, it is set aside thus, allowing the revision petition without" costs. The connected, cases are further remanded to the learned Court below for deciding the matter afresh thus, affording reasonable opportunity of being heard to the parties concerned thereby, allowing them to adduce oral evidence and other documentary evidence in support of their

respective cases and to give a reasoned judgment and to dispose of the case in accordance with law and also in the light of the observations made above by this Court as early as possible. It is also made clear that the pendency of these cases, viz., Misc. Case No. 17 (H) 97, Misc. Case No. 18 (H) 97 and Misc. Case No. 19 (H) 97 etc shall not stand on the way of the present petitioners to institute suit for eviction of the respondents from the premises in accordance with law if so advised.