

(2014) 09 JH CK 0001

Jharkhand High Court

Case No: Second Appeal No. 4 of 1999 P

Krishna Kumar Sharma

APPELLANT

Vs

Versus Sajjan Poddar

RESPONDENT

Date of Decision: Sept. 16, 2014

Acts Referred:

- Jharkhand Buildings (Lease, Rent and Eviction) Control Act, 2000 - Section 11(1)(d), 19, 19(1)

Hon'ble Judges: Dhruv Narayan Upadhyay, J

Bench: Single Bench

Advocate: Ranjan Kumar Singh, Swami Nath Prasad Roy and S.N.P. Roy, Advocate for the Appellant; S.K. Dwivedi, Advocate for the Respondent

Judgement

Dhruv Narayan Upadhyay, J.

This appeal has been preferred against the judgment dated 17.11.1998 and decree dated 27.11.1998 passed and signed by the Additional District Judge, Sahebganj in Title (Eviction) Appeal No. 12 of 1991 whereby the judgment and decree passed and signed in connection with Title Suit No. 47 of 1987 has been set aside and the appeal has been allowed and the appellant defendant has been directed to give delivery of possession of the suit premises to the plaintiff within two months from the date of judgment.

It is made clear that due to some mistake in the certified copy of the judgment dated 17.11.1998 passed in Title (Eviction) Appeal, the year of appeal has wrongly been mentioned as Title (Eviction) Appeal No. 12 of 1998 instead of Title (Eviction) Appeal-No. 12 of 1991. This mistake committed by the lower appellate court is apparent and clear from perusal of the record of the Title (Eviction) Appeal No. 12 of 1991. In the circumstances, the order passed by this Court in the Second Appeal shall govern Title (Eviction) Appeal No. 12 of 1991 and Title Suit No. 47 of 1987.

2. The appellant was the defendant whereas respondent in the present appeal was the plaintiff in the original suit.

The suit was filed by the plaintiff for evicting the defendants from the suit premises on the ground that the defendants had willfully failed to pay rent for two consecutive months from July 1981 and hence they had fallen in arrear of rent and liable to be evicted from the suit premises under Section 11(1)(d) of the Jharkhand Buildings (Lease, Rent & Eviction) Control Act, 2000 (in short, "JBC Act").

During pendency of the suit, the plaintiff filed an application to delete the name of defendant No. 1 Nagarmal Sharma and it was accordingly allowed vide order dated 14.02.1991 and thereafter the appellant remained as sole defendant and contested the suit.

3. According to plaint, the defendant was inducted as tenant in shop No. 12, located in the ground floor of the Agarwala Maheshwari Khandelwal Panchayat Bhawan situated at Chowk Bazar, Sahebganj fully described in the schedule of the plaint. The monthly rent was Rs. 20/- payable in the first week of every succeeding month according to the english calender. It is contended that the defendant neglected to pay rent for the suit premises and become willful defaulter in making payment of rent from the month of July 1981 till the date of filing of the suit and therefore, the defendant become liable to be evicted from the suit premises under Section 11(1)(d) of the JBC Act. The cause of action for filing of the suit arose on 01.10.1981 when rent for two consecutive month was not legally tendered. The suit was valued at Rs. 960/- and Rs. 720/- for the purpose of realisation of arrears of rent and Rs. 240/- equivalent to one year rent at the rate of Rs. 20/- per month for the purpose of eviction of the defendant and accordingly court fee was paid and a prayer was made for a decree for eviction of the defendant from the suit premises, decree for arrears of rent and future rent and decree for mesne profit from the date of filing of suit till the date of possession and also cost of the suit as well.

4. The defendant filed written statement stating therein that no cause of action for filing the suit for eviction ever arose. He never become defaulter. He had regularly been paying rent to the plaintiff. When the plaintiff refused to receive the rent, it was tendered by the defendant by money order from the month of July 1981. The rent for suit premises was regularly tendered by money order which was regularly refused by the plaintiff. Thereafter, defendant filed H R Case No. 12 of 1983 before the House Controller and made a request that direction be given to the plaintiff to receive the rent. In that very case, direction was given to the plaintiff to receive the rent by order dated 06.02.1984, but it was also not complied with and thereafter, the defendant was directed to deposit the monthly rent by treasury challan and it was accordingly followed by the defendant and he had been depositing the rent in treasury by challan.

5. Both the parties adduced their evidence and produced documents in support of their pleading. The learned Sub-Judge, Sahebganj has pleased to dismiss the suit and hold that the defendant was not defaulter because he had regularly been tendering the rent. Since suit filed by the plaintiff stood dismissed by judgment dated 27.02.1991 and decree dated 15.03.1991 passed and signed in connection with Title Suit No. 47 of 1987, the plaintiff being aggrieved by and dissatisfied with the judgment and decree preferred an appeal before the lower appellate court. It was contended that according to Section 19 of the JBC Act if the landlord refuses to receive the rent, the mode of tendering rent is only by way of money order. There is no provision to deposit rent in treasury by challan. Even if rent was deposited by treasury challan in view of the order of the House Controller that would not protect the tenant from becoming defaulter and he shall be liable to be evicted under Section 11(1)(d) of the JBC Act. The learned lower appellate court had relied on the judgment reported in 1963 BUR 370 in the case of "R. Modi Vs. Harihar Bhagat" and 1986 BLJ 691 (SC) in the case of "Sadanand Pass Vs. Mohd. Hussain".

6. Since the plaintiff succeeded in the appeal and got the judgment and decree passed by the trial court set aside, the "defendant has preferred this appeal before this Court which has been admitted on 05.11.2004 to decide a substantial question of law-

"Whether the deposit of rent made by the tenant-appellant in treasury in accordance with the order of the House Controller can be held to be a valid tender for holding the tenant not willful defaulter and whether the reversal of the judgment and decree of the trial court by the impugned judgment is vitiated in law?"

7. It is argued that the learned lower appellate court has wrongly reversed the judgment of the trial court. The learned Additional District Judge did not consider the fact that since July 1981, the defendant had been tendering rent by way of money order and that continued till May 1984 and the money order receipts have been marked as Exhibit D series. If that being so, the defendant never became defaulter and he has not liable to be evicted from the suit premises and no cause of action for the suit arose on 01.10.1981. Furthermore, the defendant had taken steps to tender rent and to show his willingness he has filed petition before the House Controller vide H.R. Case No. 12 of 1983. The House Controller vide order dated 06.02.1984 had directed the plaintiff to receive the rent, but it was not complied with and therefore, alternative remedy was given to the defendant and he was directed to deposit the rent by way of challan in the treasury and accordingly he had been depositing the rent through challan in the treasury. The impugned judgment passed by lower appellate court is not sustainable in law and is liable to be set aside.

8. On the other hand, the learned counsel appearing for the plaintiff who is respondent in this appeal has submitted that Section 19(1) of the JBC Act is very clear which suggests the tenant to remit rent by postal money order. The learned counsel for the plaintiff has relied upon the paragraph Nos. 2 and 3 of the judgment

reported in 1963 BUR 370 in the case of "R. Modi Vs. Harihar Bhagat" and paragraph No. 6 of the judgment reported in 1986 BLJ 691 (SC) in the case of "Sadanand Pass Vs. Mohd. Hussain".

9. It appears from the order dated 05.11.2004 that following substantial question of law has been framed-

"Whether the deposit of rent made by the tenant-appellant in treasury in accordance with the order of the House Controller can be held to be a valid tender for holding the tenant not willful defaulter and whether the reversal of the judgment and decree of the trial court by the impugned judgment is vitiated in law?"

In addition to above, below mentioned substantial question of law appears desirable to be framed-

"Whether any cause of action for filing the suit for evicting the defendant from the suit premises on 01.10.1981 arose on the ground of wilful default in making payment of rent for two consecutive month i.e., from the month of July 1981?"

10. I have gone through the record of the trial court as well as record of the lower appellate court. The learned Additional District Judge had not considered Exhibit D series which are the postal money order receipt which indicates that rent from the month of July 1981 had regularly been tendered by way of postal money order, but the plaintiff had been refusing to receive the same. Thus, from perusal of Exhibit D series, it is clear that no cause of action arose on 01.10.1981 for filing the suit and the rent for suit premises was regularly been tendered by way of postal money order as provided in Section 19 of the JBC Act. Therefore, it is apparent that the defendant was not willful defaulter since he was regularly tendering the rent by postal money order. It also appears, when the process of tendering rent by way of postal money order continued for a longer period, the defendant took another step and filed an application before the House Controller and shown his interest to pay the rent. The House Controller directed the plaintiff to receive the rent which was being tendered by the defendant by postal money order, but it was not complied with. Thereafter, alternative remedy was given to the defendant by the House Controller by order dated 06.02.1984, and he was directed to pay rent by way of challan in the treasury and it was accordingly complied with.

11. The enquiry and proceeding brought before a Rent Controller under the provisions of Jharkhand Buildings (Lease, Rent & Eviction) Control Act, 2000 is certainly a quasi judicial proceeding and the party to the proceeding are supposed to obey the order passed by the Controller in such proceeding.

12. Therefore, deposit of rent by the defendant/tenant in treasury in compliance of the order passed by the Rent Controller, in the given facts and circumstances of the case at hand can be held to be a valid tender and he cannot be held a willful defaulter. It is not a case that after refusal to receive the rent by the landlord, the

tenant had immediately started depositing rent in treasury by challan or after becoming defaulter he sought permission from the House Controller and started depositing rent in the treasury, rather it is a case in which the defendant - tenant had been complying the provision contained under Section 19(1) of the JBC Act and he had been tendering rent by way of postal money order particularly for the period for which cause of action has been indicated in the plaint. The facts which are available in the case at hand was not available in those cases which have been cited by the learned counsel for the respondent.

13. In view of the facts and discussion made above, the judgment and decree passed by lower appellate court in Title (Eviction) Appeal No. 12 of 1991 cannot be sustained and the same is hereby set aside and the judgment and decree passed by the trial court is hereby affirmed and accordingly this appeal stands allowed.