(2016) 01 KAR CK 0100

KARNATAKA HIGH COURT

Case No: H.R.R.P. No. 31 of 2011

C.S. Sheshagiri		APPELLANT
	Vs	
Smt. Jayalakshmi alias Jayalakshmamma		RESPONDENT

Date of Decision: Jan. 7, 2016

Citation: (2016) 3 AirKarR 537 : (2016) 4 ICC 207 : (2016) ILRKarnataka 1866 : (2016) 3 KCCR 2226 : (2017) 1 RCRRent 20 : (2016) 2 RentLR 288

Hon'ble Judges: N. Kumar and G. Narendar, JJ.

Bench: Division Bench

Advocate: Sri T.V. Vijay Raghavan, Advocate, for the Appellant; Sri Ramesh Chandra, Advocate for C/R, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N. Kumar, J.—This House Rent Revision Petition is placed before this Division Bench by virtue of the order of reference passed by the Hon''ble Chief Justice on 17.3.2015. The learned Single Judge, who sought the reference, has framed the following two questions.

(1) In view of decision in Smt. Lakshmamma and others v. B.P. Thirumala Setty & others, ILR 2005 KAR 5599 is the decision in the case of Sri. Saleem v. Sri. Syed Yousuff and others, 2009 (5) KCCR 3746, a good law?

(2) As provision of Section 43 is an independent provision requiring the Court dealing with petitions under provisions of Rent Act to refer the question regarding jural relationship between parties to have their rights adjudicated by a competent Court of Civil jurisdiction, will not Section 45 to be inapplicable in view of the phrase operating under Section 45 against any order passed but on an application under Section 27 of the Act?

2. In order to answer the aforesaid questions, it is necessary to know the factual background and for the sake of convenience, the parties are referred to as they are referred in the original proceedings.

3. The petitioner Smt. Jayalakshmi filed HRC No. 299/2008 invoking provisions of Section 31(a) & (c) read with Section 27(2)(a)(b) and (r) of the Karnataka Rent Act, 1999 (for short, hereinafter referred to as ''the Act'') seeking eviction of the respondent Sri. C.S. Seshagiri from the schedule premises, of which she is the owner. The respondent was a tenant of the schedule premises on a monthly rent of Rs. 100/-. On the ground that he did not pay the rents from 01.03.1981 to 31.12.2007 i.e., for 322 months amounting to Rs.32,200/- in spite of repeated requests and demand, a legal notice came to be issued calling upon him to pay the said amount. When the rents were not paid, he became liable for eviction under Clause (a) of Section 27(2) of the Act. In fact, the petitioner had preferred an eviction petition under Section 21(1)(a)and (b) of the Karnataka Rent Control Act, 1961, which came to be repealed. In the said proceedings, the respondent contended that he was not a tenant but was in possession of the schedule property in part performance of agreement of sale dated 14.05.1979. Relying on such a plea, the earlier eviction proceeding was dismissed. Thereafter, the respondent filed O.S.No.3507/1987 for enforcement of the specific performance of the agreement of sale dated 14.05.1979 and it was decreed after contest. The petitioner preferred RFA No. 891 2004 against the said judgment and decree before this Court. This Court by judgment and decree dated 18.09.2006, allowed the appeal, set aside the decree of the trial Court and dismissed the suit for specific performance. However, this Court directed refund of Rs.27,000/-to the respondent with interest @ 6% p.a. After the said decree in RFA No. 89/2004, the jural relationship of landlord and tenant was revived and the petitioner deposited Rs.27,000/-in terms of the decree of the Appellate Court, which the respondent was entitled to withdraw.

4. As the petitioner was a senior citizen, aged about 80 years and after expiry of her husband on 19.9.1990, she was in need of the premises for her own use and occupation, she invoked the beneficial provision of Section 31 (a) and (c) of the Act to get immediate possession. She also invoked the provision of Section 27(2)(r) of the Act.

5. The respondent resisted the eviction petition. He denied the jural relationship of landlord and tenant. He contended that the suit filed by him was decreed. He is in possession of schedule premises in terms of agreement of sale, which falls within the ambit of Section 53(A) of the Transfer of Property Act. Therefore, he contended that he is not in possession as a lessee but as a person in possession of part performance of agreement of sale. He also contended in order to decide the question of jural relationship, the case has to be referred to the Civil Court. In fact, during the pendency of the proceedings, the petitioner died and her LRs were brought on record and it is they who are prosecuting the matter. Consequent to the

death of the petitioner the ground urged under Section 31 (a) of the Act is not available to the legal representatives of the petitioner.

6. Thereafter, the respondent filed an application under Section 43(1) and (2) of the Act requesting the trial Court to stop all further proceedings and to direct the parties to approach the competent Court of civil jurisdiction for declaration of their rights. The petitioners filed objections to the said application and contended that the respondent is a tenant; according to their understanding, after disposal of RFA No. 89/2004 the lease revived.

7. The learned Judge after recording of evidence on the question of existence of jural relationship of landlord and tenant, after taking note of the decree passed by the trial Court in O.S.No.3507/1987 and the Appellate Court in RFA No.89/2004 and the deposition recorded in the original suit and after taking note of the clauses in the agreement of sale, recorded a finding that the agreement of sale does not say that the respondent was allowed to be in possession of the property under part performance of the agreement as required under Section 53(A) of the Transfer of Property Act; and the agreement of sale dated 14.5.1979 came to an end in view of the judgment passed by the High Court in RFA No. 89/2004. When the petitioner complied with the order by tendering a demand draft of Rs.27,000/- with interest which was acknowledged by the respondent, the pre-existing rights of the landlord would revive and merely because the agreement of sale was entered into, tenancy rights cannot be said to have merged with the rights of agreement holder, as the respondent was in the petition schedule premises as a tenant prior to agreement of sale dated 14.5.1979. Since the said agreement came to an end, the respondent''s status of tenant got revived and there exists the relationship of land- lord and tenant between the petitioner and the respondent. There will be statutory attornment of tenancy of the respondent in favour of the petitioners who are none other than the legal representatives of the deceased original petitioner and accordingly, he dismissed the application filed under Section 43 of the Act. It is against this order, the revision petition is filed by the respondent.

8. It is not in dispute that before filing of this petition, the respondent did not deposit the arrears of rent. Therefore, the petitioner in this revision petition filed an application under Section 45(1) of the Act on 28.2.2011 requesting the Court to dismiss the revision petition as not maintainable. In the affidavit filed in support of the application, it is sworn to the fact that the respondent is in arrears of Rs.36,000/- being the rent for 360 months @ Rs. 100/- per month. Since the respondent has not deposited the same, he has no right to prefer the revision petition and therefore, in view of Section 45(5) of the Act, the revision petition is liable to be dismissed.

9. It is after hearing both the learned Counsel for the parties on the said application, the learned single Judge by his order dated 24.03.2011 has sought for reference as set out above.

10. In the course of reference order, the learned Single Judge has taken pains not only in extracting the statutory provisions but also in referring to various judgments rendered both under the repealed Act and under New Act. As he was unable to agree with the judgment rendered by a Coordinate Bench, in the case of Sri. Saleem v. Syed Yousuff and others which according to him runs counter to the judgment of the Division Bench in the case of Smt. Lakshmamma & others v. B.P. Thirumala Setty & others, he sought for reference. It is in this background, this revision petition is placed before us for answering the aforesaid two questions of law.

11. Sri. T.V. Vijay Raghavan, learned Counsel appearing for the tenant/respondent contended that the judgment rendered by the Division Bench of this Court in Smt. Lakshmamma''s case squarely covers the field and therefore, Section 45 has no application when a revision petition is filed against an order passed under Section 43 of the Act. He also relied on the judgment of the learned Single Judge passed in Mary George v. N.D.H. Enterprises, Bangalore and another, reported in 2010 (4) KCCR 2992) and contends that the application filed under Section 45(1) of the Act is liable to be rejected.

12. Per contra, Sri. Ramesh Chandra, learned Counsel appearing for the landlord/ petitioner points out that Section 45 of the Act is in pari materia with the provision of Section 29 of the repealed Act except for addition of the words ''other charges''. A Division Bench of this Court in the case of Medical Research Laboratory Private Limited v. K.C.A Ajith, reported in ILR 1984 (2) Kar 510 dealing with an identical issue has categorically held that this Court has consistently understood the words ''against an order made by the Court on an application under Sect ion 21'' occurring in Section 29(1) of the Repealed Act, as ''any order made by the trial Court on an application under Section 21 of the Act''. This law holds the field and the judgment of the Division Bench in Smt. Lakshmamma''s case does not run counter to the legal proposition.

13. The judgment in Mary George''s case has no application to the facts of this case because in that decision the Court was considering the question whether Section 45 has an application to an order passed under Section 5 of the Act which is not the case in this case. On the contrary, in the judgment in the case of Sri. Saleem, the learned single Judge of this Court, after considering the similar questions held that when the respondent is held, prima facie, to be a tenant and seeks to challenge that finding by way of a revision petition, he would necessarily have to deposit the rent claimed. A plain reading of Section 45 would indicate that this is the object. The application under Section 43 is not an independent proceedings under the Act. It is in the nature of interlocutory application filed in a proceeding initiated for eviction of tenant. When such an application is filed in a proceedings initiated under Section 27 of the Act, the order passed thereon is in the nature of an order passed under Section 27 as held by the Division Bench of this Court under the repealed Act in Medical Research Laboratory Private Limited and therefore, the present revision

petition filed against the order under Section 45, without deposit of arrears of rent, is not maintainable and needs to be rejected.

14. It is in the background of these rival contentions, we have to answer the two questions of law referred to us for decision.

Question No. 1:

15. In the case of Lakshmarnma, the landlord filed eviction petition under Section 21(1) of the 1961 of the repealed Act on one or the other ground and evidence was also recorded. After introduction of the Act, those grounds find place in the Act under Section 27(2) of the Act. Since the New Act, provides for immediate possession of the premises to certain categories of landlords, an application was filed seeking eviction under the Act by invoking Section 31(1)(c) of the Act. Accordingly, eviction orders were passed under Section 31(1)(c) of the Act and not under Section 27(2) of the New Act which corresponds to Section 21 (1) of the old Act. The tenant challenged the said order of eviction by filing revision petition under Section 46 of the Act. It is in the said revision petitions, the landlord took up a contention that since none of the tenants deposited the arrears of rent as on the dale of the filing of the revision petition by virtue of Section 45(1) of the Act, the revision petitions are not maintainable and is liable to be dismissed. Repelling the said contention, the Division Bench at Para 52 held as under :-

"52. By reading Section 45 of the new Act, it is clear that the benefit conferred on the landlord under Section 45 is only with reference to the eviction petitions filed under Section 27 of the new Act or a revision petition under Section 46 against any order by a Court on application under Section 27. The arguments of the Learned Counsel for the landlord in this regard was in the absence of availability of such benefit to the classified landlords by virtue of Rule 33 of the new Act Section 151, CPC should be made applicable. This argument of the learned Counsels is not acceptable to us for the simple reason while enacting Section 45 intentionally applicability of Section 45 is provided only for the eviction petitions filed Section 27 of the Act. Sections 28 to 31 confer special benefit or protection to certain categories of landlord. Normally, unless one or the other grounds of eviction contemplated under Section 27 of the New Act is made out, landlords would not be successful to get the vacant possession of the premises. As a measure of check on tenants, Section 45 (Section 29 of the Old Act) is incorporated. There is vast difference in the procedure between eviction petition filed under general grounds (Section 27) and eviction petitions filed under Sections 28 to 31 of the Act. The legislature has purposely excluded the benefit to the special category landlords pursuing eviction petitions on the ground other than the grounds available under Section 27. Therefore, by virtue of Section 151, CPC, one cannot extend the benefit enduring to the landlords generally under .Section 45 to special category landlords. Hence, Section 45 of the Act has no application to the eviction petition pursued under grounds enumerated in Sections 28 to 31 of the new Act.

16. As could be seen from the aforesaid judgment, what has been laid down is, Section 45 of the Act has no application to the eviction proceedings initiated under the grounds enumerated in Sections 28 to 31 of the New Act. In this Judgment, the question whether Section 45(1) of the Act deals with only final order passed under Section 27 or any interlocutory order passed in a proceedings under Section 27 was not gone into. In fact, that was the question which arose for consideration in Saleem''s case referred to supra.

17. In Saleem''s case, an eviction petition came to be filed against the tenant under Section 27 of the Act contending among other grounds including the denial of relationship of landlord and tenant Thereafter, he filed an application under Section 43 of the Act for stoppage of all further proceedings and to refer the matter to the Civil Court for adjudication of the rights of the parties. The Court dismissed the said application holding that there exists the jural relationship of'' landlord and tenant. Aggrieved by the said order, the tenant preferred a revision petition under Section 46 of the Act before the High Court. In the revision, it was contended that as the tenant has not deposited the arrears of rent along with the filing of the revision petition before this Court the revision is not maintainable. Controverting the said argument, it was contended that as the present petition is filed only against an order under Section 43, there is no requirement for the tenant to make any pre-deposit while seeking to prosecute the revision petition. Answering the said question, the learned Single Judge held as under: -

"Having regard to the object of the Act, a person, who is arrayed as a respondent-tenant in an eviction petition is bound to pay the rent and continue to pay the same. The tenant seeking to raise the contention that there is no jural relationship of landlord and tenant is one of the defences that may be set up in contesting the petition. This does not preclude the tenant from making the deposit of rent. Even assuming that till such time that the trial Court takes a decision on the application, which is again on a prima facie test of relationship of landlord and tenant, and the respondent who has set up such a defence is precluded from making such a deposit temporarily. If the application is allowed in his favour and the parties are relegated to a Civil Court as provided under Section 43, then the liability of paying the rent would not arise. But when the respondent who is held, prima facies, to be a tenant, seeks to challenge that finding by way of a revision petition he would necessarily have to deposit the rent claimed. For otherwise, it would enable such a person to have the luxury of prosecuting the revision petition and possibly stalling further proceedings before the trial Court, which is not the object of the Act. The very decisions cited by the learned Counsel for the petitioner would support this proposition.

4. A plain reading of Section 45 would indicate that this is the object. Therefore, the submission of the counsel for the petitioner that since the words employed in the Section would indicate that it is only if a revision petition is preferred against an

order under Section 27, that would require the petitioner to deposit the arrears of rent cannot be accepted. If this interpretation is given to the Section, then in that event it would lead to unjust results. As for instance, if the petitioner has suffered an interim order for payment of arrears of rent before the trial Court, which may not be an order under Section 27, the petitioner would yet be enabled to file a revision petition against the said order without depositing the arrears of rent. Hence, the object of the Section is to disentitle the person who is in occupation of the premises and who is said to be a tenant, from contesting any original petition or prosecuting a revision petition without depositing or paying the arrears of rent or the current rent. Therefore, there is no doubt that the petitioner is required to deposit the rents claimed by the landlord before the trial Court in the event that he wants to prosecute the present revision petition. The petitioner admittedly not being in a position to pay the huge arrears of rent claimed, that is required to be deposited, the petition is rejected as not maintainable."

18. The law laid down in these two cases according to the learned single Judge is since not consistent. He has expressed the doubt whether the law laid down in Saleem''s case is a good law in view of the decision in Lakshmamma''s case. This question has to be answered holding that both the decisions lay down good law insofar as the issues involved therein are concerned.

Question No. 2 :

19. Section 43 deals with dispute of relationship of landlord and tenant. It reads as under: -

"43. Dispute of relationship of landlord and tenant(1) Where in any proceedings before the Court, a contention is raised denying the existence of relationship of landlord and tenant as between the parties it shall be lawful for the Court to accept the document of lease or where there is no document of lease, a receipt of acknowledgement of payment of rent purported to be signed by the landlord as prima facie evidence of relationship and proceed to hear the case.

(2)Where :-

(a) the lease pleaded is oral and either party denies relationship and no receipt or acknowledgement of payment of rent as referred to in sub-section (1) above is produced; or

(b) in the opinion of the Court there is reason to suspect the genuine existence of the document of lease or the receipt or acknowledgment of payment of rent, the Court shall at once stop all further proceedings before it and direct the parties to approach a Competent Court of civil jurisdiction for declaration of their rights."

20. This provision provides the procedure to be followed by the Court when a tenant, in a proceeding initiated under the provisions of the Act, denies the existence of the relationship of a landlord and tenant. It provides that, it shall be

lawful for the Court to accept the document of lease or a receipt of acknowledgement of payment of rent as prima facie evidence of relationship and proceed to hear the case on merits. If these basic documents are missing or if the Court has reason to suspect the genuineness or existence of such documents, then it has no option except to stop all further proceedings before it and direct the parties to approach a competent Court of civil jurisdiction for declaration of their rights. In other words, the Court shall not embark upon an enquiry by recording evidence to decide the issue as to existence of the jural relationship of landlord and tenant.

21. Section 43 is a new provision inserted by the legislature in the Act. Similar provision was conspicuously absent in the repealed Act. Under the repealed Act when such contention was raised in a proceeding either under Section 21 (1) of the repealed Act or in an application filed under Section 29 (1), the Court had to decide the jurisdictional aspects as a preliminary point after holding an enquiry. After such enquiry it could record a finding either that such relationship existed or not. If the finding was that there existed no such relationship, the Court had no option except to dismiss the petition. However, if the Court held that such a relationship existed, then it could proceed to decide the case on merits or pass an order adjudicating the rate of rent as well as the arrears of rent.

22. Having regard to the way the repealed Act was enforced and substantial time was wasted in deciding these jurisdictional aspects, that came in the way of speedy disposal of the eviction petitions. The legislature consciously with a definite purpose of reducing the time span of eviction petition has inserted Section 43. Now, it is not obligatory on the part of the Court to hold a roving enquiry to find out the existence of jural relationship. If a lease deed exists or a rent receipt exists and if the authenticity of the document is not disputed or if the Court is prima facie convinced that such a document exists, then it can proceed to hold that there exists relationship of landlord and tenant and thereafter proceed to decide the case on merits. But, if the documents are missing and if there is no other prima facie material on record to prove the existence of the relationship of landlord and tenant, the Court shall at once stop all further proceedings before it and direct the parties to approach the competent Court of civil jurisdiction for declaration of their rights. However, the application under Section 43 is not an independent proceedings. It is in the nature of an interlocutory application that can be filed in any proceedings initiated under the Act. Therefore, any order passed on this application would be an order in the proceedings initiated under the Act.

23. Now, the question for consideration is, if a tenant who has suffered an order under Section 43 of the Act holding that he is a tenant of the premises in question, prefers a revision petition under Section 46 of the Act challenging such finding, whether the obligation cast on him under Section 45 is attracted or not?

24. The argument of the respondent in the petition is that. Section 45 applies only to an application for eviction filed under Section 27 or a revision petition filed against a final order passed under Section 29 of the Act. In other words, passing of an eviction order under Section 27 is a condition precedent for application of Section 45 of the Act.

25. It is thus necessary to understand Section 45 of the Act. It reads as under: -

"45. Deposit and payment of rent during the pendency of proceedings for eviction:- (1) No tenant against whom an application for eviction has been made by a landlord under section 27, shall be entitled to contest the application before the Court under that section or to prefer or prosecute a revision petition under section 46 against an order made by the court on application under section 27 unless he has paid or pays to the landlord or deposits with the Court or the district Judge or the High court, as the case may be, all arrears of rent and other charges due in respect of the premises up to the date of payment or deposits and continues to pay or to deposit any rent which may subsequently become due in respect of the premises at the rate at which it was last paid or agreed to be paid, until the termination of the proceedings before the Court or the district Judge or the High Court as the case may be.

(2) The deposit of the rent and other charges under sub-section (1) shall be made within the time and in the manner prescribed and shall be accompanied by such fee as may be prescribed for the service of the notice referred to in sub-section (5).

(3) Where there is any dispute as to the amount of rent and other charges to be paid or deposited under sub-section (1), the Court shall, on application made to it either by the tenant or the landlord and after making such enquiry as it deems necessary determine summarily the rent to be so paid or deposited.

(4) If any tenant fails to pay or deposit the rent as aforesaid, the Court, the district Judge or the High Court as the case may be, shall unless the tenant has shown sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the premises or dismiss the appeal or revision petition, as the case may be.

(5) When any deposit is made under subsection (1) the court, the District Judge or the High Court as the case may be, shall cause notice of the deposit to be served on the landlord in the prescribed manner and the amount deposited may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him to the Court in this behalf."

26. This new Section 45 under the Act is in pari materia with Section 29 of the Act except with the addition of the words "other charges due in respect of the premises" found in subsection (1) of Section 45. The contention urged before us in the context of Section 45 was also the subject matter for consideration before the Division Bench of this Court under the old Act in the case of Medical Research Laboratory

Private Limited v. K.C.A Ajith, 1984 (2) ILR 510. This again was a case placed before the Division Bench on a reference. In the aforesaid judgment, the Division Bench having noticed the earlier judgments of two Division Benches on the point observed that the case could have been decided according to the well established practise, convention and rule of stare decisis and thereafter proceeded to hold as under : -

"11. It is manifest from the aforementioned facts, that in ail the said decisions, this Court has laid down the law under Section 29(1) of the Act that before preferring a revision petition or an appeal, as the case may be, the tenant has got to either pay off the arrears of rent due till then, to the landlord or deposit the same in Court i.e. to enable him to prefer the revision petition. None of the orders impugned in the aforementioned decisions were the final orders passed under Section 21. Therefore, we have no hesitation to hold that this Court has consistently understood the words ''against an order made by the Court an application under Section 21'' occurring in Section 29(1) of the Act as any order made by the trial Court on an application under Section 21 of the Act.: Sri. Shekara Shetty argued that in none of the decisions this aspect of the matter has been specifically adverted to and the law laid down. We are not impressed by this submission in view of the reasons already narrated."

27. Section 29 of the repealed Act is in pari materia with Section 45 of the Act. Already three Division Benches of this Court have answered the question. Both the rule of stare decisis and the law of precedent compel us to take the very view which has held the field for more than 40 years and we do not see any justification to depart there from.

28. The argument of the learned counsel for the respondent was when three Division Benches of this Court took that view under the repealed Act, a provision similar to Section 43 was not there in that statute. Because in the present Act Section 43 has been inserted, the said decisions have no application to the case on hand.

29. We do not see any substance in the said contention. Both under the new Act and the old Act, in a proceeding initiated by the landlord, if a tenant were to deny the jural relationship of landlord and tenant, the Court is under an obligation to decide this jurisdictional issue first and only if such a relationship exists, the Court has the jurisdiction to proceed in the matter. Even in the absence of a Section like Section 43 under the repealed Act, whether on an application under Sections 21 (1) or 29 (1) or under any other independent original proceedings there under, the Court was under an obligation to decide that issue. The only difference was either it should dismiss the petition if there was no such relationship or proceed with the matter if such a relationship existed.

30. By introducing Section 43 in the present Act, the only difference that the legislature thought it fit to make is to relieve the Court of such a roving enquiry in each case and it has simplified the procedure. If the landlord produces a lease deed

or a rent receipt, prima facie the Court could proceed on the basis of the said documents and decide the case on merits unless the Court suspected the genuineness of those documents. If such documents were not produced, all that the Court has to do is to stop all further proceedings and refer the matter for adjudication before a competent Court of civil jurisdiction. Therefore, Section 43 does not substantially make any difference in so far as application of Section 45 to an eviction proceedings is concerned.

31. Therefore, in order to attract Section 45 of the Act, the order which is challenged under revision under Section 46 should be an order passed in a proceedings under Section 27 of the Act. The words used are "against an order made by the Court on an application under Section 27". If it is to be interpreted that the order referred to therein in Section 45 (1) is an order of eviction, then it would be a final order to be passed in a proceeding under Section 27. The word "final" is conspicuously missing in the said provision. It is settled law that the Court cannot legislate. It cannot rewrite the Section. It cannot read the word "final" before the order and lay down that Section 45 is attracted only to a final order made by the Court on an application under Section 27. If we keep in mind the object with which this stringent provision is made both under the old Act and the new Act, it is clear that the tenant who is squatting on the property of a landlord, if he were to continue n possession after the commencement of the eviction proceedings without paying rents, not only the landlord is deprived of the possession of the property but also the rent. If such an interpretation were to be placed all that the tenants have to do is to wreck vengeance on the landlord, deny the relationship, squat on the property without paying rents and ultimately if an order of eviction were to be passed, walk out of the premises. It is to avoid such a contingency the legislature advisedly and consciously has inserted these provisions, that is Section 29 in the repealed Act and which is retained in the present Act in the form of Section 45.

32. The opening words of Section 45 are couched in negative words. It states that no tenant against whom an application for eviction has been made by a landlord under Section 27 shall be entitled to contest the application before the Court under that Section or u prefer or prosecute a revision petition under Section 46 against an order made by the Court on an application under Section 27 unless he has paid or pays to the landlord or deposits with the Court or the District Judge or the High Court as the case may be all arrears of rent and continues to pay or to deposit any rent which subsequently become due in respect of the premises at the rate at which last paid or agreed to be paid.

33. Here, we have to notice the distinction between the words "paid" or "pays to the landlord or deposits with the Court", the District Judge or the High Court. If the tenant does not dispute the relationship, then he is liable to pay the rent. Then the dispute could be either regarding rate of rent or arrears of the rent. In the case where he disputes the relationship and the Court holds against him, he has a right

to challenge such order in which event he is under no obligation to pay the rent to the landlord. If he is challenging the said order in a District Court or a High Court, the phrase used is "he shall deposit". If in the original Court he deposits either the rate of rent or the arrears of rent, he is under an obligation to deposit the disputed amount at the rate last paid or agreed to be paid in the Court of original jurisdiction. The intention of the legislature is unambiguous and clear.

34. Therefore, to attract Section 45 two conditions must be fulfilled. Firstly, the person who is contesting the original proceedings or an order on an application under Section 27 should be a tenant and there should be an order in a proceeding under Section 27. Secondly, even though a tenant disputes the jural relationship, once the Court holds that he is a tenant for the purpose of Section 45, he is bound to comply with the obligation imposed under Section 45 and deposit the rent.

35. Then the words used are "preferred" or "prosecute". Ultimately if he succeeds in the revision, the amount in deposit would be refunded to him. But, without depositing the rent, a person who is held to be a tenant by an order of a Court in a proceedings under Section 27 is neither permitted to prefer or prosecute the revision. The word "preferred" refers to deposit of arrears of rent till the date of filing of the revision petition. On such deposit, his obligation to pay future rents does not cease. Not only he should deposit the rent as on the date he preferred the revision petition but also continue to pay the rent, if he wants to prosecute the revision.

36. As stated earlier an application under Section 43, if it is filed in a proceedings under Section 27 and an order is passed by the Court, it is in the nature of an order passed on an application under Section 27. Therefore, a harmonious reading of the words in Section 45 that an order made by the Court on the application under Section 27 along with the words any order passed or proceedings taken by the Small Causes the word "Civil Judge (Junior Division)" in Section 46(1), would only mean that the order referred to in Section 45 is not to be confined to a final order to be passed on an application under Section 27. but it equally applies to all orders passed in proceedings on an application passed under Section 27.

37. In view of the law laid down by the three Division Benches of this Court, while interpreting Section 29 (1), we have to adopt the same interpretation while construing Section 45. Accordingly, question No. 2 is answered holding that an order passed under Section 43 would be an order passed on an application under Section 27 of the Act and if the respondent-tenant intends to challenge the said order under Section 46 of the Act, he shall deposit the arrears of rent due by him to the landlord from the day the amount became due till the date of filing of revision petition. Otherwise, the revision petition is liable to be dismissed.

38. In view of the above discussion, we answer the aforesaid two questions as under : -

1. There is no conflict between the law laid by the Division Bench in Sri. Lakshamma and others v. B.P. Thirumala Setty and others, ILR 2005 KAR 5599 and Sri. Saleem v. Sri. Syed Yousuff and others, 2009 (5) KCCR 3746 and both lay down the correct legal position and they are good law''s.

2. Even when a tenant were to challenge an order passed under Section 43 of the Act holding that he is a tenant by way of a revision under Section 46 of the Act, Section 45 is attracted and without paying the rent from the day it fell due till the date of filing the revision petition, tenant cannot maintain the revision petition.

39. Registry is directed to send a copy of this judgment along with the file to the learned single Judge for further proceedings.