(1997) 04 SC CK 0122

Supreme Court of India

Case No: Civil Appeals No"s. 2807-2808 of 1997

Bindeshwary Choudhary and another		APPELLANT
	Vs	
Ajay Kumar		RESPONDENT

Date of Decision: April 22, 1997

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: AIR 1997 SC 2561 : (1997) AIRSCW 2508 : (1997) 2 BLJR 921 : (1997) 4 JT 698 : (1997) 3 SCALE 596 : (1997) 4 SCC 708 : (1997) 3 SCR 901 : (1997) 4 Supreme 249

Hon'ble Judges: S. C. Agrawal, J; D.P. Wadhwa, J

Bench: Division Bench

Advocate: A. Sharan and Ambika Pratap Singh, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D.P. Wadhwa, J.
Delay condoned.

2. Special leave granted.

3. These are landlord"s appeals against the orders of the Patna High Court holding that landlord was entitled to arrears of rent u/s 15 of the Bihar Buildings (Lease, Rent & Eviction) Act, 1982 (for short "the Act") only from the date of institution of the suit for eviction. Section 15 is as under:

15. Deposit of Rent by tenants in suits for ejectment. - (1) If, in suit for recovery of possession of any building the tenant contests the suit as regards claim for ejectment, landlord may move an application at any stage of the suit for order on the tenant to deposit rent month by month at a rate at which it was last paid and also subject to the law

of limitation, the arrears of rent, if any and the Court after giving opportunity to the parties to be heard may make any order for deposit of rent month by month at such rate as may be determined and the arrears of rent, both of before or after the institution of the suit if any and on failure of the tenant to deposit the arrears of rent within fifteen days of the date of order or the rent at such rate for any month by the fifteenth day of the next following month, the court shall order the defence against ejectment to be struck off and the tenant to be placed in the same position as if he had not defended the claim to ejectment and further the Court shall not allow the tenant to cross examine the landlord''s witnesses.

(2) If in any proceeding referred to in Sub-section (1) there is any dispute as to the person or persons to whom the rent is payable the Court may direct the tenant to deposit in Court the amount payable by him under Sub-section (1) and in such case no person shall be entitled to withdraw the amount in deposit until the Court decides the dispute and makes an order for payment of the same.

(3) If the Court is satisfied that any dispute referred to in Sub-section (2) has been raised by a tenant for reasons which are false or frivolous the Court may order the defence against the eviction to be struck off and proceed with the hearing of the suit as laid down in Sub-section (1).

4. Landlord filed a suit against the respondent-tenant for eviction from a shop premises u/s 11(1)(c) of the Act which provided that premises could be not vacated if the came were reasonably and in good faith required by landlord for his own occupation or for the occupation of any person for whose benefit the premises were held by the landlord. On notice being issued to the tenant and after following the procedure prescribed the tenant was granted leave to defend the suit. After the tenant filed his written statement contesting the suit the landlord moved an application u/s 15 of the Act claiming arrears of rent for the period prior to filing of the suit and also the current rent. This application of the landlord was allowed by the Subordinate Court but on a revision filed by the tenant in the High Court the said order was modified. The High Court following an earlier single Judge Bench decision in Deep Narain v. Anil Kumar Sinha (1985) BBCJ 782 directed the tenant to deposit the arrears of rent only from the date of filing of the suit. The landlord thereafter filed an application in the High Court seeking review of the order on the ground that the single Judge in following the decision in Deep Narain''s case (supra) did not take notice of a Division Bench decision of the High Court in 910524 which held that the decision in Deep Narain''s case did not lay down good law and that the Court could u/s 15 of the Act direct the arrears of rent even for the period prior to the institution of the suit to be deposited u/s 15 of the Act. Thereafter it appears that in the case of 909264 another Division Bench of the High Court declared Section 15 of the Act as being violative of Articles 14 of the Constitution in so far as it empowered the court to order deposit of arrears of rent for the period prior to the institution of the suit for ejectment of a tenant. Considering the Bench decision in Ratan Lal Nai''s case (supra) the learned single Judge did not think it fit to review his earlier order whereunder he had modified the order of the

Subordinate Court and directed payment of arrears of rent from the date of institution of suit. The application for review was, therefore, dismissed. Thus these two appeals.

5. During the pendency of the special leave petitions in this Court a Full Bench of the Patna High Court in 907066 after considering all the decisions rendered earlier on the interpretation of Section 15 of the Act held that (1) the Court could order payment of arrears of rent even for the period prior to the institution of the suit for eviction and (2) the expression "subject to law of limitation" applied only with regard to claim of arrears of rent prior to the institution of the suit. Nagendra Rai, J. who spoke for the Court, in a well reasoned judgment, has observed as under:

Thus after having considered the past history of the legislation, mischief in the previous legislation, the intention of the legislature in adding the aforesaid expressions in Section 15, the purpose and object of the provision, I hold that Section 15 of the Act empowers the Court to pass an order for arrears of rent even prior to the institution of the suit for a priod not barred by limitation as well as for arrears of rent and rent by month to month during the pendency of the suit. The expression "subject to law of limitation" applies only with regard to claim of arrears of rent prior to the institution of the suit. The claim for arrears of rent during the pendency of the suit is not controlled or circumscribed by period of limitation.

6. At this stage we may also note the Bench decision of the High Court in Ratan Lal Nai"s case (supra). In this case the Bench held that Section 15 of the Act in so far as it empowered the court to order for the deposit of the arrears of rent for the period prior to the institution of a suit for ejectment of the tenant was ultra vires the powers conferred on the State Legislature. As to how it was ultra vires the judgment proceeded as under:

A suit for eviction on one or more than one of the grounds enumerated in Section 11 of the Act is a suit which may besides the relief of ejectment of the tenant include the relief of arrears of rent. A tenant may in such a suit raise defence against ejectment and also contest the claim of any money decree. A suit for arrears of rent only cannot be allowed to include any relief with respect to any claim of arrears prior to the period of limitation. It will always be possible for the plaintiff landlord to apply u/s 15 of the Act for deposit of arrears of rent in a suit for eviction of the tenant in which besides the relief of ejectment of the tenant relief of arrears of rent is also asked for unless the words "of before the institution of the suit" in Section 15 with respect of the arrears of rent are qualified by the words ''not barred by limitation''. Thus before any decree, for arrears of rent is granted by the court the landlord may achieve the object of claiming arrears already barred by limitation. Even with respect to arrears falling within the period of limitation a tenant-defendant may successfully demonstrate that he has no liability, that he can do while contesting the claim of arrears of rent in the suit. It will be unfair, therefore, to grant only on a prima facie determination arrears before the institution of the suit to the landlord as the Act has got no provision to get such arrear of rent realised by the landlord u/s 15 of the Act recovered from the landlord. A provision of law which is stricken by arbitrariness is

hit by Article 14 of the Constitution of India. The provision in Section 15 that the court may order for the deposit of the arrears of rent prior to the institution of the suit, therefore, is ultra vires.

7. The Act as the preamble shows is an Act to regulate the letting of buildings and the rent of such buildings and to prevent unreasonable eviction of tenants therefrom. The purpose of the Act is to avoid hardship to the tenants due to paucity of accommodation and also save them from exploitation by the landlords charging premium and higher rents (See Sections 3-8). At the same time a duty is cast on the tenant to pay rent to the landlord regularly so long he is entitled to protection from ejectment under the Act except on the grounds specified thereunder. One of the essential elements of lease is rent payable by the tenant to the landlord. u/s 19 of the Act when a landlord refuses to accept any rent lawfully payable to him by a tenant in respect of any building, the tenant may remit such rent and continue to remit any subsequent rent which becomes due in respect of such building, by postal money order to the landlord. At this stage we may also refer Section 16 of the Act which requires deposit of rent as determined by the Controller during the pendency of appeal or revision. Under this Section the appellate or revisional authority may require the tenant to pay the rent at the rate fixed by the Controller month to month by the fifteenth day of the following month, together with arrears, if any. Section 16 does not talk of arrears arising only during the pendency of the proceedings. In the present case before us we do not find that there is any ambiguity in the language of Section 15. Under this section the Court can require the tenant to pay all the arrears of rent even for the period prior to the institution of the suit subject to the law of limitation. It is the duty of the tenant to pay rent regularly to the landlord when he is enjoying the security of tenure under the rent restrictions laws. Considering the whole aspect of the matter, we are of the view that when the expression "subject to law of limitation" has been used in Section 15 it applies to the recovery of arrears of rent as on the date of institution of suit. The Full Bench of the Patna High Court in Priyavarta Mehta"s case has taken a correct view of the matter. We find it difficult to appreciate the reasoning advanced by the Division Bench in the case of Ratan Lal Nai (supra) holding that Section 15 suffers from the vice of arbitrariness and is ultra vires the powers of the State Legislature.

8. These appeals are accordingly allowed, the orders of the High Court are set aside and that of the Subordinate Court upheld. There will be no order as to costs.