

CASE NO.:
Appeal (civil) 7253 of 2002

PETITIONER:
Manik Lal Majumdar and others

RESPONDENT:
Gauranga Chandra Dey and others

DATE OF JUDGMENT: 26/02/2004

BENCH:
D.M. Dharmadhikari

JUDGMENT:
J U D G M E N T

Dharmadhikari J.

This appeal is directed against the order dated 21.6.2001 passed by the High Court of Gauhati. The appellant is the tenant of the leased premises in dispute. The appeal to the Appellate Authority against the order of eviction from the leased premises on the ground of default in payment of rent passed by the Rent Control Court has been dismissed on the alleged failure of deposit of rent, being a mandatory pre-condition for preferring appeal under Section 20 read with Section 30 of the Tripura Buildings (Lease and Rent Control) Act 1975 (for short hereinafter referred to as the Act).

Learned Single Judge of the High Court formed an opinion that a decision of the Division Bench of the High Court in the case of Binapani Roy vs. State of Tripura [1994 (1) GLR 98], in the light of subsequent decision of the Supreme court on identical provisions of Kerala Act in the case Chinnamma vs. Gopalan [1995(6) SCC 491], requires reconsideration by a larger bench. The learned Single Judge formulated and referred the following question for decision of the larger bench.

"Whether in view of section 13 of the Act, 1975, the appellate Court is prohibited from entertaining an appeal unless the tenant has paid or pays to the landlord or deposits with the Rent Control Court or the appellate authority, as the case may be, all arrears of rent admitted by the tenant to be due in respect of the building up to the date of payment or deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building until termination of the proceedings before the Rent Control Court or the appellate authority, as the case may be?"

The Division Bench answered the question against the tenant by holding thus:

"Thus, it is clear that payment or deposit of arrears of rent admitted by the tenant and also the future rent to be due is required to enable the tenant to contest the eviction proceedings before the Rent Control Court or to file appeal against the order of Rent Control Court. This condition is sine-qua-non for the purpose of contesting the eviction proceedings or filing of an appeal. By no stretch of imagination it can be presumed that tenant may be allowed to contest the eviction proceedings or to file an appeal, without making such deposit as required by law, appeal being a creature of statute, the right conferred by the statute is also subject to any other condition imposed by the statute."

The learned counsel appearing for the tenant assailing the

correctness of the judgment of the Division Bench has contended that pre-deposit of arrears of rent and future regular payment of rent during pendency of the appeal may be a mandatory pre-condition for consideration or hearing of the appeal by the tenant but the filing or presentation of the appeal without deposit cannot be held to be incompetent. It is submitted that until the requisite deposit of rent is made the proceedings in the appeal may be suspended as provided in sub-section (3) of Section 13 but the tenant would have a right of consideration or hearing of his appeal after he makes good the requisite deposit in accordance with sub-section (1) of Section 13 read with sub-section (2) thereof.

On the other hand, learned counsel appearing for the landlord supported the reasoning and conclusion of the Division Bench in the impugned judgment.

The legal question that arises in this appeal before us is on the tenability of the appeal without pre-deposit of arrears till the date of filing or presentation of the appeal.

To answer the above question a critical examination of the provisions of sections 13 & 20, in the light of the scheme and object of the said provision in the Act, is necessary.

"Section 13(1): No tenant against whom an application for eviction has been made by a landlord under section 12 shall be entitled to contest the application before the Rent Control Court under that section, or to prefer an appeal under section 20 against any order made by the Rent Control Court on the application, unless he has paid or pays to the landlord, or deposits with the Rent Control Court or the appellate authority, as the case may be, all arrears of rent admitted by the tenant to be due, in respect of the building up to the date of payment or deposit, and continues to pay or to deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Rent Control Court or the appellate authority, as the case may be.

(2) The deposit under sub-section (1) shall be made within such time as the Rent Control Court may fix and in such manner as may be prescribed and shall be accompanied by the fee prescribed for the service of notice referred to in sub-section (4).

Provided that the time fixed by the Rent Control Court for the deposit of the arrears of rent shall not be less than forty five days from the date of the order and the time fixed for the deposit of rent which subsequently accrues due shall not be less than two weeks from the date on which the rent becomes due.

(3) If any tenant fails to pay or to deposit the rent as aforesaid, the Rent Control Court or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

(4) When any deposit is made under sub-section(1), the Rent Control Court or the appellate authority, 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 Rent Control Court or the appellate authority in that behalf.

Section 20 (1) (a). The State Government may, by general or special order notified in the Official Gazette, confer on such

officers and authorities not below the rank of a subordinate judge the powers of appellate authorities for the purposes of this Act in such areas or in such classes as may be specified in the order.

(b) Any person aggrieved by an order passed by the Rent Control Court may, within thirty days from the date of such order, prefer an appeal in writing to the appellate authority having jurisdiction.

Note: In computing the thirty days in this clause, the time taken to obtain a certified copy of the order appealed against shall be excluded.

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) The appellate authority shall call for the records of the case from Rent Control Court and after giving the parties an opportunity of being heard, and if necessary, after making such further inquiry as it thinks fit, either directly or through the Rent Control Court, shall decide the appeal.

Explanation: The appellate authority may, while confirming the order of eviction passed by the Rent Control Court, grant an extension of time to the tenant for putting the landlord in possession of the building.

(4) The appellate authority shall have all the powers of the Rent Control Court including the fixing of arrears of rent.

(5) The decision of the appellate authority, and subject to such decision, an order of the Rent Control Court shall be final and shall not be liable to be called in question in any court of law, except as provided in Section 22."

[Underlining for pointed attention]

Section 33 confers power on the State Government to make rules to carry out the purposes of the Act including for regulating the procedure to be followed by the Rent Control Courts and appellate authorities in performance of their functions under the Act. In exercise of the aforementioned rule making power Tripura Buildings (Lease and Rent Control) Rules 1979 have been framed and the relevant Rules regulating the procedure of appeals i.e. Rules 15 and 16 read as under:

"Section 15(1). Every appeal against an order either of the Accommodation controller or the Rent Control Court shall in addition to the grounds of appeal specify the date on which the order was received by the appellant. The memorandum of appeal shall be signed by the appellant or his counsel and presented to the Appellate Authority or to such officer as he appoints in this behalf by the appellant himself personally or by his recognised agent or by counsel at any time during office hours on a working day. The appeal shall be accompanied by a copy of the order of the Accommodation Controller or the Rent Control Court as the case may be against which the appeal is made.

(2) Every appeal under the Act shall be accompanied by a spare or sufficient number of spare copies thereof for service on the respondent or respondents mentioned therein.

Section 16 (1). When an appeal under the Act is preferred, the Appellate Authority shall fix a day for hearing the appeal and

send notice thereof to the appellant or appellants and the respondent or respondents mentioned in the appeal and shall also send a copy of the appeal along with notice to the respondent or respondents.

(2) The Appellate Authority after hearing the appeal may decide the appeal finally according to law of equity and good conscience or may make further enquiry. The final decision given shall be reduced into writing. In the absence of any party duly summoned to attend, the appeal may be decided *ex parte*.

(3) If the Appellate Authority decides to make further enquiry he may take additional evidence or require such evidence to be taken by the Accommodation Controller or Rent Control Court, as the case may be.

(4)
.....
[Underlining for pointed attention]

As has been rightly observed by Division Bench of the High Court in the decision of *Binapani Roy* (supra) 'Section 13 of the Act has been inserted with the intendment to avoid litigations for realization of arrears of rents which is likely to accumulate during the long period of litigation and also to deter the tenant from resorting to unfair practice to use and occupy tenanted premises without payment of rent during the long period of protracted litigation.'

The decision in *Binapani Roy* (supra) does not directly deal with and answer the question posed before us. In that case the interpretation of the words and expression "admitted by the tenant to be due" as used in sub-section (1) of Section 13, came up for interpretation. To make the said provision workable it was held that the above-mentioned expression can not be given a literal meaning as conveying only the rent which has been admitted in the pleadings by the tenant. It was held that in order to fulfil the object of the provision which is in the interest of the landlord the expression is to be understood reasonably to mean 'the rent which can be found to be due from the facts and materials on record.'

The decision of the Supreme Court in the case of *Chinnamma* (supra) which interprets similar provisions in the Kerala Act also does not deal with point involved before us. In that case it was held that provisions of Section 11(2) of the Kerala Act, which are comparable to Section 13(1) of the present Act, impose an obligation in specified terms on the tenant to enable him to contest the proceedings before the Rent Control Court. He is required to deposit the arrears of rent (along with interest and cost of proceedings) for which the landlord had sent a demand notice on him and on basis whereof the Rent Control Court had passed an order of deposit under Section 11(2) (b) of the Kerala Act which is comparable to Section 13(2) of the present Act. The Supreme Court held that the arrears of rent to be deposited before the Rent control Court as a pre-condition for contesting the case by the tenant are only arrears of rent for which a notice has been served by the landlord and 'would not include rent which might become due till the actual date of deposit under the order of the Rent Control Court.' The above proposition does not directly answer the question of the nature of the requirement of deposit of arrears as a pre-condition for preferring appeal under Section 20 of the Act under consideration before us. The Division Bench in the impugned judgment, therefore, was right in observing that the decision of the Division Bench of the High Court in *Binapani Roy's* case (supra) which was on a different point was not required to be reconsidered by the larger bench in the light of decision of this Court in *Chinnamma's* case (supra).

The question, therefore, arising needs to be answered on a proper and reasonable interpretation of the provisions of Section 13 read with Section 20 of the Act.

Sub-section (1) of Section 13 restricts right of tenant to contest proceedings before the Rent Control Court as also appeal arising from them. The language of sub-section (1) is "no tenant shall be entitled to contest the application before the Rent Control Court under that section, or to prefer an appeal under Section 20 against any order made by the Rent Control Court on the application, unless he has paid or pays to the landlord, or deposits with the Rent Control Court or the appellate authority, as the case may be, all arrears of rent admitted by the tenant to be due in respect of the building up to the date of payment or deposit, and continues to pay or deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Rent Control Court or the appellate authority, as the case may be."

Sub-section (2) of Section 13 contemplates passing of an order by the Rent Control Court fixing the time and manner of deposit to be made by the tenant under sub-section (1).

The proviso below sub-section (2) empowers the Rent Control Court to fix period of not less than 45 days for deposit of arrears of rent and not less than two weeks for future rent. The minimum period indicated in proviso to sub-section (2) for making two kind of deposits allows larger periods than the minimum prescribed to be granted by the Rent Control Court.

After the Rent Control Court has fixed the period and manner of two kinds of deposits i.e. arrears and future rent, if there is failure on the part of the tenant to make the requisite deposits within the prescribed period, the Rent Control Court in the original proceedings and appellate court in appeal proceedings can stop all further proceedings. The tenant if, however, shows sufficient cause for failure or delay in deposit, the Rent Control Court or the appellate authority, as the case may be, has discretionary power under sub-section (3) not to take adverse action against the tenant of stopping all proceedings and directing the tenant to put the landlord in possession of the building. The use of the expression "unless tenant shows sufficient cause to the contrary" as used in sub-section (3) clearly gives such a discretion. Sub-section (1) and sub-section (3) of Section 13 make express mention both of "Rent Control Court and appellate authority" for the application of those provisions to original proceedings as also to the appellate proceedings. Deposit of arrears of rent and future rent are two pre-conditions for the tenant to contest the original proceedings and avail remedy of appeal. In sub-section (2) of Section 13, there is only mention of Rent Control Court empowering it to fix time and manner of deposit of arrears and future rent. The omission of words "appellate authority" in sub-section (2) of Section 13 prima facie gives an impression that fixation of time and manner for two kinds of deposits of arrears and future rent are not required to be made by the appellate authority.

This omission of the words "appellate authority" in sub-section (2) however, is made good by incorporating sub-section (4) in Section 20. Section 20 with its sub-sections creates forum for appeals, describes nature of power of appellate authority and prescribes period of limitation for appeals, preferable either by the landlord or by the tenant, as the case may be, who feels aggrieved by the order of Rent Control Court.

Sub-section (4) of Section 20 states "the appellate authority shall have all the powers of the Rent Control Court including the fixing of arrears of rent."

The language employed in sub-section (4) gives all powers of Rent Control Court to Appellate Authority inclusive of the power of Rent Control Court to fix arrears of rent. On examination of all other provisions of the Act, power to fix arrears of rent by the Rent Control Court is to be found only in sub-section (2) of Section 13 and in no other provision. The legislative intent of conferring same power of Rent Control Court under sub-section (2) on the appellate authority is clear from incorporation of sub-section (4) in Section 20 which regulates the power and procedure of appeal. Since the appellate authority has been conferred with all powers of Rent Control Court, non-mention in sub-section (2) of 'appellate authority' with 'Rent Control Court' seems to be a deliberate omission.

It is true that when a tenant prefers an appeal there may be a case where the arrears of rent due up to the date of order of the Rent Control Court are already quantified and the dispute of quantum and/or rate of rent stands decided by the original order. That would enable the tenant to deposit the arrears at the time of filing of the appeal.

The language "all arrears of rent admitted by the tenant to be due", as has been used in Section 13(1), has been interpreted by the Division Bench of the High Court in the case of Binapani Roy (supra). I find that the Division Bench has reasonably construed that expression as not merely conveying 'such rent as has been admitted by such tenant in his pleadings.' According to the Division Bench the expression aforementioned has to be so construed as to fulfil the object of the Act to disable the tenant to withhold rent due pending eviction proceedings against him or appeal by him. The expression has been construed to mean 'the rent which is ascertainable as admitted from the record of the case.' The legislature also intends that the so-called admitted arrears and recurring rent to be deposited or paid by the tenant during eviction proceedings or appeal preferred by him, are required to be judicially or quasi-judicially determined in accordance with sub-section (2), with fixation of time and manner of its deposit or payment. Such an interpretation of expression "all arrears of rent admitted by the tenant to be due" is necessary because there may be various kinds of situations in different cases, such as, where the tenant denies his relationship with the landlord, or disputes the quantum of arrears and/or rate of rent. In such situations, it might be found necessary in original proceedings for the Rent Control Court to determine the rent which can be said to be admittedly due and similar determination might be required in appeal.

On behalf of the landlord, learned counsel has argued that sub-section (1) of section (13) which is intended to protect the interest of the landlord casts a mandatory pre-condition on the tenant to deposit or pay arrears of rent due up to the date of deposit and make future payment for preferring appeal. It is submitted that appeal without payment of arrears of rent found due against the tenant is incompetent. The appeal cannot even be filed without deposit of rent. In appeal, any order under sub-section (2) of section 13 is not contemplated which is restricted in its application to proceedings before Rent Control Court. In this respect it is submitted that a strict literal construction is required to be placed on the provisions of Section 13(1)(2) & (3) of the Act. Reliance is placed on the decision of this Court in Nasiruddin vs. Sita Ram Aggarwal [2003 (2) SCC 517].

We find that the decision of Nasiruddin (supra) of this Court turned on the express language of Section 13(4) of the Rajasthan Premises (Control of Rent and Eviction) Act 1950. The said section required a tenant to deposit or pay to the landlord the amount of rent determined by the court under sub-section (3) of that section within

15 days from the date of such determination or within such further time not exceeding three months as may be extended by the Court.

The section further provides that the tenant has to continue to deposit in court or pay to the landlord future monthly rent by 15th of each succeeding month or within such further time not exceeding 15 days as may be extended by court.

Failure to deposit or pay the rent as required by sub-section (4) in the specified time enables the court under sub-section (5) to "strike out the defence of tenant against his proposed eviction". It is on the aforesaid language of Section 13(4) of the Rajasthan Act which prescribes not only an outer limit for deposit of rent but also the outer limit of extended period for deposit to be granted by the court, that this Court put strict interpretation on the provisions regardless of the harsh consequences that may ensue against the tenant. The decision of this Court in Nasiruddin's case (supra), therefore, is clearly distinguishable on the peculiar language of provisions of Rajasthan Act interpreted therein.

It is then contended on behalf of the landlord that both sub-section (1) of section 13 and section 20 of the Act use the word "prefer" in respect of remedy of appeal meaning thereby that no appeal can be filed by tenant without fulfilling the mandatory condition of pre-deposit of arrears of rent and future rent.

The word "prefer" as used in Section 245M of the Income Tax Act came for consideration before this Court in the case of Commissioner of Income Tax Act vs. BN Bhattacharjee [1979 (3) SCR 1133]. Under the provision of Income Tax Act an assessee can approach a Settlement Commissioner for settlement of his case but the embargo under section 245 M(1) is that he would not be entitled to make an application to the Settlement Commission where Income Tax Officer had preferred an appeal under Sub-section (2) of Section 253. The proviso to Section 245M(1) of the Income Tax Act which came up for interpretation reads thus:

"Provided that no assessee shall be entitled to make an application in a case where the Income-Tax Officer has preferred an appeal under sub-section (2) of Section 253 against the order to which the assessee's appeal relate."

On the meaning of the word "prefer" an appeal this Court explained the word thus:

"Preferred" is a word of dual import; its semantics depend on the scheme and the context; its import must help, not hamper, the object of the enactment even if liberty with language may be necessary.

There is good ground to think that an appeal means an effective appeal. An appeal withdrawn is an appeal non est as judicial thinking suggests.

Black's Law Dictionary gives the following meaning:

PREFER: To bring before; to prosecute; to try to proceed with. Thus, preferring an indictment signifies prosecuting or trying an indictment.

To give advantage, priority, or privilege; to select for first payment, as to prefer one creditor over others.

Thus, it may mean 'prosecute' or effectively pursue a proceeding or merely institute it. Purposefully interpreted, preferring an appeal means more than formally filing it but effectively pursuing it."
(Emphasis added)

In clause (b) of sub-section (1) of Section 20 period of limitation of 30 days has been prescribed for preferring an appeal in writing from the order of Rent Control Court, excluding the period for obtaining certified copy. The period of limitation prescribed for preferring an appeal is not the period fixed for deposit of rent as a pre-condition for preferring an appeal by the tenant. As has been noted above, sub-section (1) of section 13 lays down two pre-conditions for preferring an appeal. First is deposit of arrears of rent due till the date of deposit for appeal and second payment or deposit of future rent due after the date of deposit. Such requirements on the part of the tenant for preferring an appeal are clear indications that 30 days' time fixed for appeal in sub-section (2) is not a period for deposit of arrears of rent due and future rent as a pre-condition for appeal.

To enable a tenant to prefer an appeal by fulfilling both the conditions of deposit of arrears and future rent, it is necessary that as is the power given to the Rent Control Court, the appellate authority, on being approached by the tenant, has to pass a judicial or quasi-judicial order not only for the purpose of fixing the time and manner of two kinds of deposits but also to determine, on the basis of record of the case, the rent which can be said to be admitted to be due by the tenant within the meaning of expression "all arrears of rent admitted by the tenant to be due" as used in sub-section (1) of Section 13.

The use of the word "prefer" therefore, in sub-section (1) of Section 13, in the context of the said provision and the other provisions in sub-sections (2) to (4) of the said Section has a meaning different from mere filing or presentation of an appeal. The word "prefer" in the context of Section 13(1), to enable the tenant to contest original proceedings, or prosecute appellate proceedings should reasonably mean that the tenant without requisite deposit of arrears of rent and future rent, shall not be allowed to prosecute the appeal or be heard in the appeal against the order passed by the Rent Control Court.

The word "prefer" as used in clause (b) of Section 20, in the context of providing a period of limitation for appeals both by the landlord and tenant, as the case may be, from the order of the Rent Control Court, if they feel aggrieved, would have a narrower meaning as mere filing or presentation of an appeal. It is so indicated in Rules 15(1)& (16) where both expressions "presentation of appeal" and "prefer an appeal" have been used synonymously.

No doubt, there is a presumption that the legislature uses same word in different parts of the same statute with the same meaning. The presumption is, however, weak and can be displaced by the context. Even when the same word is used at different places in the same clause of the same Section it may not bear the same meaning at each place having regard to the context of its use. [See Principles of Statutory Interpretation by GP Singh 8th Edition Chapter-V, Synopsis-I at pages 286-287]

The word "prefer" for the purpose of Section 13(1) has to be distinguished from mere filing of an appeal in the prescribed period of limitation. As interpreted by us above sub-section (2) of section 13 containing power of Rent Control Court, in the matter of fixing period and manner of deposit, is available to the appellate authority

by virtue of sub-section (4) Section 20. The expression "all arrears of rent admitted by the tenant to be due" as used in sub-section (1) of Section 13 requires adjudication to some extent. The right of tenant to prefer an appeal can not be denied to him until such an adjudication is made. My above conclusion is reinforced by the language of sub-section (3) of Section 13 which empowers expressly both the Rent Control Court and the appellate authority to stop all proceedings and direct the tenant to put the landlord in possession of the leased premises, if there is a failure on the part of the tenant to make requisite deposits either of arrears and/or future rent and only if he is unable to show any sufficient cause for non-deposit or delay. Such a power with discretion both in Rent Control Court and appellate authority to stop or refrain from stopping original or appellate proceedings, as the case may be, and evicting tenant in the event of default of deposit, also indicates that right of appeal to the tenant can be deprived to him only if there is a default on his part and he is unable to show any sufficient cause for such default. This also indicates that filing of an appeal within limitation and allowing the tenant to prosecute that appeal due to his failure to make deposits of arrears and future rent are two different stages or steps in both original proceedings and appellate proceedings.

Another settled rule of construction of statute is that 'it has to be presumed that the legislature does not waste its words and say anything in vain'. If sub-section (4) of section 20 is not read as conferring on the appellate authority full powers of Rent Control Court including power under sub-section (2) of Section 13, sub-section (4) of section 20 would be rendered otiose or superfluous. Such a construction which attributes redundancy to the Legislature has to be avoided. [See Principles of Statutory Interpretation by G.P. Singh, Chapter-II, Synopsis-I at Page 63].

As a result of the detailed discussion aforesaid of the provisions under consideration before us, I have come to the conclusion that a tenant can file or present a memo of appeal within the prescribed period of thirty days excluding the time for obtaining certified copy of the order in accordance with sub-section (1) of Section 20 but until and unless he seeks an order from the appellate authority in accordance with sub-section (2) of Section 13 and makes deposit of

all arrears of rent and continues to pay future rent in the manner and within the time directed by the appellate authority, he would not be entitled to prosecute the appeal and obtain any interim or final relief against the order of the Rent Control Court as is contemplated in sub-sections (2) & (3) respectively of the said Section.

In the result, the appeal preferred by the tenant is allowed. The impugned order passed by the Division Bench is set aside. The case is sent back to the appellate authority with liberty to the tenant to invoke provisions of sub-section (2) of Section 13 as interpreted above.