

CASE NO.:
Appeal (civil) 4533 of 2001

PETITIONER:
K. RAGHUNATH

RESPONDENT:
CHANDRASEKHAR & ANR

DATE OF JUDGMENT: 01/12/2004

BENCH:
B.P.SINGH & ARUN KUMAR

JUDGMENT:
J U D G E M E N T

This appeal by special leave is directed against the Judgement of the High Court of Karnataka at Bangalore dated 13th April, 2000 in H.R.R.P No.227 of 2000. The appellant before us is a tenant and the respondents are the landlords. By the impugned judgement and order the High Court has dismissed the Revision Petition preferred by the appellant holding that the arrears of rent had not been paid or deposited by the appellant as required, in the manner contemplated by Section 29 of the Karnataka Rent Control Act, 1961 (hereinafter referred to as "the Act") before filing of the Revision Petition, and that

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no explanation had been given for not depositing the rent before filing the Revision Petition under Section 50(1) of the Act.

The facts of the case are not in dispute.

The respondent-landlords filed a petition for eviction of the appellant under Section 22(1)(h) and 22(1)(p) of the Act which was disposed of by the Small Causes Court allowing the petition and passing an order of eviction against the appellant by judgement and order of February 4, 2000. The appellant preferred a Revision Petition before the High Court on 6th April, 2000 under Section 50(1) of the Act. Before preferring the Revision Petition he had neither deposited nor paid the arrears of rent, but he sent the same by money order to the landlords on 11th April, 2000. The matter came up before the High Court on 13th April, 2000 when the High Court passed the impugned order dismissing the Revision Petition for non compliance with requirements of Section 29 of the Act.

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Counsel for the appellant argued before us that there was, in fact, no delay in filing the Revision Petition as also in payment of arrears of rent and therefore, the High Court was in error in dismissing the Revision Petition on that ground. Counsel for the respondent has supported the order of the High Court and drawn our attention to the relevant provisions of the Act.

The relevant part of Section 29 of the Act provides as follows :-

"29. 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 21, shall be entitled to contest the application before the Court under that Section or to prefer or prosecute a revision petition under Section 50 against an order made by the Court on application under Section 2(1) 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 due in respect of the premises upto 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.

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(2) The deposit of the rent 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) x x x x x x x

(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 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 premises or dismiss the appeal or revision petition, as the case may be.

(5) x x x x x x x"

Sub-Section (2) of Section 29 provides that the deposit of the rent under sub-section (1) shall be made within the time and in the manner prescribed, which means that the deposit of rent must be made in the manner prescribed and within the time provided by the Rules. Section 50 which provides for a revision to the High Court or the District Judge is as follows :-

"50. Revision.(1) The High Court may, at any time call for and examine any order passed or proceeding taken by the Court of Small Causes or the Court of Civil Judge under this Act or any order passed by the Controller under Sections 14, 15, 16 or 17 for the purpose of satisfying itself as to the legality or correctness of such order or proceeding and may pass such order in reference thereto as it thinks fit.

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(2) The District Judge may, at any time call for and examine any order passed or proceeding taken by the Court of Munsiff referred to in sub-clause (iii) of clause (d) of Section 3 for the purpose of satisfying himself as to the legality or correctness of such order or proceeding and may pass such order in reference

thereto as he thinks fit. The order of the District Judge shall be final.

(3) The costs of and incidental to all proceedings before the High Court or the District Judge shall be in the discretion of the High Court or the District Judge, as the case may be."

Rule 9 is the relevant Rule which prescribes the manner and time within which the deposit as contemplated by Section 29 shall be made. The relevant Rule is quoted below :-

"Rule 9. Deposit of rent under Section 29.-

(1) The time within which a deposit of rent under sub-section (1) of Section 29, may be made shall be fifteen days of the last date fixed in the agreement of tenancy with the landlord for payment of the rent or in the absence of such agreement fifteen days from the last date of the month next following that for which the rent is payable."

It will thus be seen that Section 50 which provides for a revision to the High Court against the order of the Court of Small Causes, as in this case, does not prescribe a limitation for preferring the

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revision. In fact the power has been conferred upon the High Court and the District Judge to act suo motu, but it is not disputed before us that the aggrieved party also may invoke that provision and seek relief.

Counsel for the parties submitted before us that in the absence of a provision providing for a limitation the High Court of Karnataka has held that such a revision must be preferred within 90 days. It was so laid down in the case of P. Kannaswamy Versus B.L. Shankaranarayana Shetty AIR 1977 Karnataka 72. A subsequent decision of the same Court in Obalappa Versus Alamelamma AIR 1983 1 Rent Control Reporter 258 has clarified that the period of 90 days though not a period of limitation prescribed by law, is all the same a guidance for the exercise of discretion in such matters. Without going into the correctness of these decisions we proceed on the basis that a revision could be preferred within 90 days, though Section 50 does not lay down the limitation for preferring such a revision.

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In view of the above if a revision is filed within 90 days as laid down by the aforesaid decisions of the Karnataka High Court, and the arrears of rent is not deposited within the period of 90 days, the situation poses no difficulty, because in that event the Court may dismiss the revision unless the revisionist is able to satisfy the Court that he had sufficient cause for not making the deposit within such time. In the instant case we are faced with a different situation. The revision was preferred against the order of the Small Causes Court dated 4th February, 2000 on 6th April, 2000. The revision petition, therefore, was filed within time. The arrears of rent were paid on 11th April, 2000. Therefore, by the time the revision came up for hearing before the High Court on 13th April, 2000, the arrears of rent had already been paid within the period allowed for preferring the revision petition. In these circumstances, we are of the view that the revision petition should have been entertained on merit and the High Court should not have dismissed it on the ground of limitation. The Court should have

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treated the Revision as duly presented on April 6, 2000, the date on which the payment was made.

Counsel for the respondents submitted that Rule 29 prescribes the period within which the deposit should be made. We have examined Rule 29 to ascertain within what period, according to the Rule, the deposit or payment of the arrears of rent should have been made. Unfortunately, the Rule is not happily worded. In our view it has not prescribed a time limit for deposit of rent in a revisional proceeding under Section 50 even though Section 29 directly refers to such a proceeding. This may perhaps be on account of the fact that the Act itself does not prescribe a limitation for invoking the revisional jurisdiction under Section 50. However, if it were permissible to compute the limitation under Rule 9, in view of the fact that we do not know the last date contemplated in the agreement of tenancy for payment of rent, we may compute the limitation on the basis of time prescribed in the last part of sub-section (1) namely "15 days from the last

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date of the month next following that for which the rent is payable".

In the instant case the order of eviction was passed on 4th February, 2000. In the absence of any evidence to the contrary we take it that rent for the month of February was due and payable. The month next following that for which the rent is payable will be the month of March, 2000, and 15 days from the last day of March would be the 15th April, 2000. Even if we so compute the limitation period allowed for depositing the arrears of rent, the payment made on 11th April, 2000 was well within time. We are, therefore, of the view that there was in fact no delay in paying the arrears of rent reading Section 29 of the Act with Rule 9 of the Rules. Even otherwise in principle we are supported in our conclusion by the decision of this Court in *The Commissioner of Income Tax, Bombay Versus M/s Filmistan Ltd.* 1961 3 SCR 893. That was a case under the Income Tax Act and the question arose in the

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context of Section 30 of the Act which provided for appeals against orders of assessment. The proviso as contained in Section 30(1) read as follows :-

"Provided that no appeal shall lie against an order under sub-section (1) of section 46 unless the tax has been paid."

The objection by the department was that the appeal was barred by limitation since the tax had not been paid when the appeal was preferred. Negating this contention this Court held :'

"The controversy between the parties revolves round the words "no appeal shall lie." The contention which was raised before us was that these words mean that there is no right of appeal till the

tax is paid and therefore if the tax has not been paid the memorandum of appeal cannot be filed and if filed it is merely a waste paper. In our opinion the meaning of the words "no appeal shall lie" in the proviso is not that no memorandum of appeal can be presented. All that it means is that the appeal will not be held to be properly filed until the tax has been paid. If, for instance, the memorandum of appeal is filed on the 20th day, i.e., 10 days before the period of limitation expires and the tax is paid within the rest of the 10 days, the appeal will be a proper appeal; it will be within time and no question of limitation will arise but if the tax is paid after the period of limitation has expired it will be taken to have been filed on the day when the tax is paid even though the memorandum of

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appeal was presented earlier and within the period of limitation. The question will then have to be decided whether there was sufficient cause for condonation of delay and that is exactly what the Tribunal had ordered and that in our opinion is the effect of the proviso to Section 30(1) read with sub-section (2) of Section 30 of the Act."

We therefore, allow the appeal and remit the matter to the High Court for disposal of the revision petition on merit. Since the need of the landlords as claimed by them is urgent as they require the premises for their bona fide personal need, we request the High Court to dispose of the revision petition as early as possible. It was also brought to our notice that during the pendency of the appeal before this Court no rent has been deposited. Unfortunately, neither the appellant voluntarily deposited the rent each month as and when it fell due, nor did the respondents seek a direction from this Court to the appellant to deposit the rent each month. However, we direct the appellant to deposit the arrears of rent due as on 30th November, 2004 within a period of four weeks from today.

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The parties are at liberty to move the High Court and seek further directions for the deposit of rent in future. If the rent as directed by us is not deposited within the period of four weeks from today, it will be open to the High Court to dismiss the revision petition on that ground alone. The parties are directed to appear before the Registrar General of the Karnataka High Court on 17th January, 2005 when he shall intimate the parties the probable date of hearing.

This appeal is allowed with no order as to costs.