

CASE NO.:
Appeal (civil) 7080 of 2001

PETITIONER:
Janak Raj

RESPONDENT:
Pardeep Kumar

DATE OF JUDGMENT: 27/11/2007

BENCH:
A.K. Mathur & Markandey Katju

JUDGMENT:
JUDGMENT

ORDER

We have heard learned counsel for the parties.

This appeal by special leave is directed against the impugned judgment and order of the learned Single Judge of the High Court of Jammu & Kashmir at Jammu dated 9th November, 2000 in Civil Second Appeal No.4 of 1995 whereby the learned Single Judge upheld the finding of the First Appellate Court and dismissed the suit of the plaintiff (appellant herein.)

The brief facts which are necessary for the disposal of the appeal are that a suit was filed by the landlord (appellant herein) for eviction of the tenant-respondent. The landlord claimed the rent for January, 1984 to January, 1985 by sending a notice dated 27.2.1985 to the tenant. Thereafter the tenant committed a second default of payment of rent for February, 1985 and March, 1985. The third default was committed in April, 1985 and May, 1985. The total amount deposited by the tenant on 25.5.1985 was Rs.6,000/-.

Section 11 (1) (i) of the Jammu & Kashmir Houses and Shops Rent Control Act, 1966 provides that if two months rent is not paid by the tenant within the period specified therein the tenant will be liable for eviction, provides that the landlord has served a notice on the tenant calling upon him to pay the arrears of rent, and the arrears are not paid within 30 days of service of the notice.

Section 11(1)(i) is however subject to Section 12 of the Act which reads as under:-

"12. When a tenant can get the benefit of protection against eviction.-(1) If in a suit for recovery of possession of any houses or shop from the tenant the landlord would not get a decree for possession but for clause (i) of the proviso to sub-section (1) of Section 11, the Court shall determine the amount of rent legally payable by the tenant and which is in arrears taking into consideration any order made under sub-section (4) and effect thereof up to the date of the order mentioned hereafter, as also the amount of interest on such arrears of rent calculated at the rate of nine and three eights per centum per annum from the day when the rent became arrears up to such date, together with the amount of such cost of the suit as if fairly allowable to the plaintiff-landlord, and shall make an order on the tenant for paying the aggregate of the amounts (specifying in the order such aggregate sum) on or before a date fixed in the order.

(2) Such date fixed for payment shall be the fifteenth day from the date of the order, excluding the day of the order.

(3) If, within the time fixed in the order under sub-section (1), the tenant deposits in the Court the sum specified in the said order, the suit,

so far as it is a suit for recovery of possession of the houses or shop, shall be dismissed by the Court. In default of such payment the Court shall proceed with the hearing of the suit:

Provided that the tenant shall not be entitled to the benefit of protection against eviction under this section, if, notwithstanding the receipt of notice under proviso to clause (i) of the proviso to sub-section (1) of section (11), he makes a default in the payment of the rent referred to in clause (i) of the proviso to sub-section (1) of section 11 on three occasions within a period of eighteen months.

In our opinion, in view of the proviso to Section 12 (3) referred to above, the respondent-tenant cannot get the benefit of Section 12.

In the present case, it is the admitted position that the rent was Rs. 500/- per month. The respondent-tenant was in default in not paying the rent from January, 1984 to January, 1985 (inclusive) but he is alleged to have deposited a sum of Rs. 6,000/- on 25.5.1985 whereas the rent for this period was Rs. 6,500/- i.e. the rent paid was short by Rs. 500/-. As such, in our opinion he is a defaulter for this period. Part payment of rent in our opinion makes the tenant a defaulter, for he has to make full payment. The second default committed by the respondent-tenant was in February, 1985 and March, 1985, and the third default committed by him was in April, 1985 and May, 1985. Therefore, he is a defaulter three times during the period of eighteen months. As such, he is not entitled to the protection of Section 12.

Unfortunately, the Courts below have taken the amount of Rs. 6, 000/- deposited by the respondent-tenant as rent towards February, 1985 and March, 1985; and April, 1985 and May, 1985 to take him out of the defaulters clause but this view taken by the Courts below cannot be countenanced. As a matter of fact he had deposited a sum of Rs. 6,000/- for the aforesaid three defaults. That sum cannot be adjusted against the second and third defaults as has been done by the Courts below.

The tenant is firstly supposed to clear the first default i.e., from 1984 to 1985, then the second default of February and March, 1985 and then the third default of April and May, 1985. One has to proceed chronologically in the matter. The sum of Rs. 6,000/- has to be first treated as part payment against the rent from January, 1984 to January, 1985. However, for the rent from January, 1984 to January, 1985 the total amount deposited by the tenant was Rs. 6,000/- which is short of the total rent due for this period by Rs. 500/-. Therefore, it will also be treated to be a default. Consequently, this default, coupled with the defaults of February and March, 1985 and April, 1985 will constitute three defaults. As such the view taken by both the Courts below cannot be countenanced.

Consequently, the judgment and order of the High Court as also the order of the First Appellate Court are set aside and the decree granted by the Trial Court for eviction is maintained.

The appeal is accordingly, allowed.

However, the respondent-tenant is directed to handover the vacant possession of the premises in question to the appellant-landlord by 31st August, 2008. The respondent shall file the usual undertaking to this effect within four weeks from today in this Court.

It is submitted by learned counsel for the respondent that the entire arrears of rent have already been paid. He shall continue to pay the rent till 31st August, 2008.