

CASE NO.:
Appeal (civil) 910 of 2001

PETITIONER:
BALWANT SINGH & ORS.

RESPONDENT:
ANAND KUMAR SHARMA & ORS.

DATE OF JUDGMENT: 28/12/2003

BENCH:
CJI, S.B. SINHA & AR. LAKSHMANAN.

JUDGMENT:

JUDGMENT

KHARE, CJI.

The appellants herein are the tenants. The landlord brought a suit for eviction of the tenant, inter alia on the ground of personal necessity as well as for default in payment of rent. The trial court dismissed the suit. However, the first appellate court allowed the appeal of landlord and the suit on the ground of default was decreed. The second appeal, by the tenants, was dismissed. The High Court held that mere acceptance of delayed rent by the Land Lord did not amount to waiver of the right which has accrued to him under the Act and also the tenant has committed default in payment of the rent. It is against the said judgment, the tenants preferred present appeal by means of a special leave petition.

When the matter came up before a Bench of this Court, the Bench was of the view that as the case may require consideration of the correctness of the view taken by a Full Bench of Patna High Court in Raj Kumar Prasad vs. Uchit Narain Singh [AIR 1980 Patna (FB) 242] and two decisions of this Court in Gowali Charan vs. Surendra Kumar Khandani and others (1987 Suppl. SCC 578) and Satyanarain Kandu vs. Smt. Hemlata and others (1996 PLR 110 SC) both by two-Judge Bench and as such has referred the matter to a Bench of three Ld. Judges. It is in this way, this matter has come up before us. Learned Counsel for the appellant urged that view taken by the High Court is in conflict with the two decisions of this Court and therefore the Judgment under challenge deserved to be set aside. We do not find any merit in the argument for the reasons stated hereinafter.

Section 11(1)(d) of the Bihar Buildings (Lease, Rent & Eviction) Control Act reads thus:

"11. Eviction of tenants (1) Notwithstanding anything contained in my contract or law to the contrary but subject to the provisions of the Industrial disputes Act, 1947 (Act XIV of 1947), and to those Section 18, where a tenant is in possession of any building, he shall not be liable to eviction therefrom except in execution of a decree passed by the Court on one or more of the following grounds:

(a) .

(b) .

(c) .

(d) Where the amount of two months rents, lawfully payable by the tenant and due from him is in arrears by not having been paid within the time fixed by contract, or in the absence of such contract, by the last day of the month next following that for which the rent is payable or by not having been validly remitted or deposited in accordance with Section 16."

The provisions of the said Act would clearly show that unlike Rent Control Statutes of other States, the expression 'wilful default' or 'habitual default' had not been used. The words are 'is in arrears'. In the event, rent for two months is not paid a cause of action arises. The statute mandates that the rent should be paid within the time fixed by the contract and in absence thereof by the last date of the month next following. The obligation on the part of the tenant to pay rent in the manner laid down under the statute, being a statutory one, he must comply therewith strictly. The statute, therefore, in other words, prescribes the period within which the rent must be rendered to the landlord by a tenant. When the statute lays down the period during which the rent is required to be paid and deposited, the same ought to be complied with.

Recently, in *F. Palanisamy vs. Palanisamy (Dead) by Lrs. And Others* (2003 SCC 122), a Division Bench of this Court observed :

"The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters"

It is also pertinent to note that the Rent Control Act is not only the beneficial enactment for the tenant but also for the benefit of the landlord. (See *Shri Lakshmi Venkateshwara Enterprises Pvt. Ltd. vs. Syeda Vajuninissa Begum (Smt.) and others* 1994 (2) SCC 671).

Yet there is another aspect of the matter which cannot be lost sight of. It is a well settled principle that if a thing is required to be by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified. In *Sutherland, Statutory Construction*, 3rd edition, Vol.3 at p. 107:

"It is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p.109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision."

At p.111 it is stated as follows :

"As a corollary of the rule outlined above, the fact that no consequences of non-compliance are stated in the statute, has been considered as a factor tending towards a directory construction. But this is only an element to be considered, and is by no means conclusive."

(See AIR 1966 Patna 144)

It is in the aforementioned backdrop the decisions of this Court relied upon by Mr. Upadhyay are required to be considered.

In *Gowali Charan vs. Surendra Kumar Khandani and others* (1987 Suppl. SCC 578), this Court did not lay down any law within the meaning of Article 141 of the Constitution of India. The judgment does not contain any reason, it does not set out any fact and it does not take notice of any precedent. It is difficult to ascertain as to on what grounds this Court observed :

"Having regard to the fact that the entire rent for the period in question from January-February, 1967 to January-February, 1968 had been paid to the plaintiff, we do not think that the High Court was justified in holding that the plea of wilful default has been established entitling the plaintiff to a decree for eviction under Section 11(1) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982."

This decision in our opinion does not lay down the correct law and must be over-ruled.

In *Satyanarain Kandu vs. Smt. Hemlata and others* (1966 PLR 110 SC), this Court passed an order presumably in exercise of its jurisdiction under Article 142 of Constitution of India. In that case, it was categorically held that the default had taken place but the same was merely a technical one. If a cause of action arose for the landlord to file a suit for eviction against the tenant, such a cause of action cannot be held to be non-existent only because, in the opinion of this Court, the default was the technical one. The said decision also does not lay down the correct view of the law and must be over-ruled.

We, therefore, are of the opinion that the High Court has rightly held that by reason of the said two decisions the Full Bench decision of the High Court cannot be said to have been over-ruled.

In C.A. No. 5077/1998, which we have decided today, we have held that where a statute empowers the Court to extend time or further time when a tenant fails to deposit rent within the stipulated time, only in such cases, the Court possesses power to extend time and in no other cases.

We, therefore, are of the opinion that the High Court has rightly held that by reason of the said two decisions the Full Bench decision of the High Court cannot be said to have been over-ruled.

For aforesaid reasons, the appeal is dismissed. However, there shall be no orders as to costs.

JUDIS