

PETITIONER:
K.A. RAMESH & ORS.

Vs.

RESPONDENT:
SMT. SUSHEELA BAI & ORS.

DATE OF JUDGMENT: 13/02/1998

BENCH:
S.B. MAJMUDAR, S.P. KURKUKAR

ACT:

HEADNOTE:

JUDGMENT:

THE 13TH DAY OF FEBRUARY, 1996

Present:

Hon'ble Mr. Justice S.B. Majmudar

Hon'ble Mr. Justice S.P. Kurdukhar

Mr. K. Ramakrishna Reddy, Sr. Advocate, Mr. P.S. Narasimha and Mr. V.G. Pragasam, Advocate with him for the appellants. Mr. Subodh Markandaya, Mr. Ashok Kumar Sharma, Mr. Alok Singh and Mrs. Chitra Markandaya, Advocated for the respondents.

O R D E R

The following Order of the Court was delivered:
Leave granted.

With the consent of learned counsel for the parties the appeal was finally heard today and is being disposed of by this order.

The appellants are the tenants in the premises situated at Secunderabad in Andhra Pradesh. Provisions of A.P. Building (Lease, Rent & Eviction) Control Act, 1960 ['the Act' for short] govern the relationship between the appellants tenants and the respondent-landlords.

The short question is whether the appellant-tenants were whiling defaulters in payment of rent on which ground the decree for possession has been passed by the courts below under Section 10 of the Act. The arrears of rent were from July 1988 to December 1988. The appellants sent a telegram dated 17th December 1988 to the respondent-landlords calling upon them to issue receipts for the rent which they had already paid apprehending that the respondent ma make out a case for default in payment of rent for these relevant months. The landlords responded by giving reply dated 19th December 1988 stating that the rent was not paid and it was not correct to say that the receipts were not issued despite payment of rent for the relevant months. Under these circumstances the appellant sent a bank draft for the entire arrears on 02nd February 1989. Presumably having knowledge that the bank draft was being sent to them, the respondents filed an Eviction Petition on 06th February 1989 and it appear that on the next date the bank draft reached them. They got it encased. On the ground that the appellants had committed willful default in payment of rent

for the relevant months the eviction proceedings were prosecuted by the respondents before the authority. These eviction proceedings were under sub-section (2) (i) of Section 10 of the Act. The said provision reads as under:

"10. Eviction of tenants:-

(1).....

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied.

(i) that the tenant nor paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable; or

(ii).....

(iii).....

(iv).....

(v).....

(vi).....

The Controller shall make an order direction the tenant to put the landlord in possession of the building and if the Controller is not so satisfied, he shall make an order rejecting the application:.....

There is a proviso to the said Section which reads as under:

"Provided that in any case falling under clause (i), if the Controller is satisfied that the tenant's default to pay or tender the rent was not willful, he may, notwithstanding anything in Section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and so such payment or tender, the application shall be rejected."

It is obvious that if the evidence led before the Controller shows that the tenant had not committed willful default in payment of rent during the relevant time for which grievance is made in the Eviction Petition moved by the landlord, then despite what is stated in Section 11 a reasonable time has to be given to the tenant to pay up the amount. On the facts of the present case, we fail to appreciate how it could be said that the said proviso was not attracted. It has to be seen that even months before the filing of the Eviction Petition the tenants had made a grievance by sending a telegram to the respondents on 17th December 1988 that though the rent was paid for those months receipts were not issued. Even that apart, by sending a bank draft on 02nd February 1989 when there was no litigation between the parties, full payment of arrears was tendered. That was accepted and realised pending the eviction proceedings. The clearly shows that there was no default at all much less willful default on the part of the tenant in paying the rent for the months from July 1988 to December 1988. Consequently, the eviction proceedings were not required to be proceeded any further as the aforesaid proviso shows that even if the rent was not paid, there was a locus penitentiae with the appellant-tenants to get reasonable time not exceeding fifteen days for paying up the

arrears by showing that default was not willful and if during the time granted by the court the default was made good, the application for possession, in that eventually, has to be rejected. In the present case as the bank draft dated 02nd February 1989 for the entire arrears sent prior to the filing of the proceedings, was already got encased by the respondent-landlords, the proviso got clearly complied with and there remained no occasion for the Controller to again ask the appellant to pay the very same amount twice over. Therefore, the application was required to be summarily rejected. However, it was proceeded further and resulted in eviction order which was challenged in appeal unsuccessfully and further before the High Court in revision, that too unsuccessfully and that is how the appellants are before us.

Once the aforesaid conclusion is reached, on the facts of this case, it must be held that the eviction proceedings are liable to be dismissed. However, learned counsels for the respondents vehemently contended that even pending these proceedings there was default on the part of the tenants as they had not paid rent during the pendency of these proceedings. He heavily relied on sub-section (1) and (2) of Section 11 of the Act, which read as under:

"11. Payment or deposit of rent during the pendency of proceedings of eviction :- (1) No tenant against whom an application for eviction has been made by a landlord under Section 10, shall be entitled to contest the application before the Controller under that Section or to prefer any appeal under Section 20 against any order made by the Controller on the application, unless he had paid to the landlord or deposits with the Controller, or the appellate authority, as the case may be, all arrears of rent 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 Controller or the appellate authority, as the case may be.

(2) The deposit of rent under sub-section (1) shall be made within the time and in the manner prescribed."

He submitted that under these circumstances a statutory right arose to the respondents to get all further proceedings stopped and for a direction to the appellant tenants to put the respondent landlords in possession of the building. In support of this contention, reliance was placed on sub-section (4) of Section 11 which reads as under:

"11(4). If any tenant fails to pay or to deposit the rent as aforesaid, the Controller 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."

We fail to appreciate how this contention can be pressed into service on the peculiar facts of this case. As we have seen earlier, the eviction proceedings have themselves become infructuous once the bank draft dated 02nd February 1989 for the full amount of arrears was already got encashed by the respondents. That apart, even if there was any default pending such proceedings, it was open to the respondents to enforce the statutory right available to them under Section 11(1) read with Section 11(4) of the Act for getting all further proceedings stopped before the Rent Controller and for asking immediate, decree for possession, and/or in appeal of the appellant-tenants to request the appellate court to dismiss the appeal and put the respondent-landlords forthwith in possession on account of such default. Nothing of this sort was done by the respondents, If they had tried to enforce this right, the appellants would have got an opportunity to show to the Trial Court or the Appellate Court, as the case may be that there was sufficient cause for not passing such an order under Section 11(4) of the Act. That opportunity never became available to the appellants as the respondents did not invoke this provision. It can, therefore, easily be said that the respondents waived this right available to them under the Statute presumably because they themselves were satisfied on getting full payment of arrears of rent by encashing the bank draft dated 02nd February 1989, Consequently, even this contention cannot be on any assistance to the respondents.

In the result, this appeal is allowed. The order passed by the Rent Controller and as confirmed by the appellate authority as well as by the High Court is set aside and the eviction proceedings are dismissed with no order as to costs all throughout.