

CASE NO.:
Appeal (civil) 4534 of 2001

PETITIONER:
K.A. Grace & Anr.

RESPONDENT:
M.S. Lakshmipathi Naidu & Ors.

DATE OF JUDGMENT: 12/05/2005

BENCH:
B.P. SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T

B.P. Singh, J.

This appeal by Special Leave is preferred by the petitioners impugning the judgment and order of the High Court of Karnataka, Bangalore of April 10, 2000 in HRRP No.668 of 1999. The aforesaid Revision Petition was preferred by the petitioners against the order of eviction passed by the XVI Additional Small Causes Judge, Bangalore city dated 16th March, 1999 in HRC No.2800 of 1992 on the grounds specified in Clauses (f) and (h) under the proviso to sub-section (1) of Section 21 of the Karnataka Rent Control Act, 1961, namely on the grounds of subletting of premises and bona fide personal need of the landlord.

The Revision Petition was presented on June 25, 1999 and was taken back to remove certain defects, whereafter it was presented on July 9, 1999. Only a day earlier, on July 8, 1999, the petitioners sent to the landlord a sum of Rs.2400/- by money order representing the arrears of rent due and payable to the landlord on the day of presentation of the Revision Petition. The High Court held that since on the date of presentation of Revision Petition namely on June 25, 1999, the arrears of rent had not been paid to the landlord, or deposited in Court, the Revision Petition was liable to be rejected for non-compliance with the provision of Section 29(1) of the Act. Section 29(1) of the Act provides as under:-

"29. Deposit and payment of rent during the pendency of proceedings for eviction.
\026 (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 21) 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".

This appeal alongwith Civil Appeal No.4533 of 2001 (K. Raghunath Vs. Chandrasekhar and another) came up for hearing before this Bench earlier. Civil Appeal No.4533 of 2001 was allowed and the case was remitted to the High Court for disposal of the revision petition on merit. The aforesaid judgment is reported in JT 2004 (10) SC 404. We have in the aforesaid judgment noted the legal provisions and the decisions having a bearing on the question involved. The instant appeal was not disposed of since it was mentioned before us that the parties were negotiating a settlement out of Court. We gave some time to the parties for this purpose, but ultimately they informed us that the parties have not been able to work out a settlement.

We have noticed in K. Raghunath (supra) that though Section 29(2) provides that the tenant ought to deposit the rent during the pendency of proceedings for eviction within the time and in the manner prescribed, Rule 9 which prescribed the manner and time within which the deposit contemplated by Section 29 shall be made only lays down that such deposit may be made within 15 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, 15 days from the last date of the month next following that for which the rent is payable.

Section 50 which provides for a revision does not lay down the period within which a revision may be preferred by the aggrieved party. Section 50 begins with the words "The High Court may, at any time call for and examine".

Having regard to the fact that the position in law was not very clear, the High Court of Karnataka in two judgments laid down that such a revision must be preferred within 90 days, though the said period of 90 days was not the period of limitation prescribed by law, and the period prescribed by the judgments was only by way of guidance for the exercise of discretion in such matters.

Keeping in view the above position, we find that the order of eviction was passed on March 16, 1999 and a revision was preferred on June 25, 1999. It was re-presented on July 9, 1999. It is not in dispute that the arrears of rent had not been paid when the Revision Petition was initially presented on June 25, 1999, but before its re-presentation on July 9, 1999 the amount representing the arrears of rent had been sent to the landlord by money order on July 8, 1999. The question is whether in such circumstance the Revision Petition ought to be dismissed as not maintainable on the ground that when it was presented first the arrears of rent had not been either paid to the landlord or deposited in Court as required, though that was done before it was re-presented on July 9, 1999.

In K. Raghunath's (supra) we have followed the principle laid down by this Court in The Commissioner of Income Tax, Bombay Vs. M/s. Filmistan Ltd. : 1961 3 SCR 893 which in effect lays down the principle that where a period of limitation is prescribed by law for preferring an

appeal, and the law requires the tax to be paid before presentation of memorandum of appeal, the appellant is entitled to pay the tax till the last date of limitation prescribed by law. Thus even if the appellant had earlier presented the appeal without payment of tax, the appeal could only be held to be not properly filed until the tax is paid.

As we have noticed, the provisions of the Karnataka Act in question are not happily worded. In fact, there is no limitation prescribed for preferring a Revision Petition. In any event, in view of the guidelines laid down by the High Court, if there was a delay of about 15 days in making the deposit or presenting the Revision Petition, the same ought to have been condoned and the revision decided on merit. We do not, therefore, consider it necessary to discuss the various legal submissions urged before us, and which were also urged before the High Court, on the question as to whether the Revision Petition shall be deemed to have been preferred on June 25, 1999, when it was initially presented, or on July 9, 1999, when it was re-presented after payment of arrears of rent. We, therefore, allow this appeal and remit the matter to the High Court for disposal of the Revision Petition in accordance with law.

We may only observe that the Karnataka Rent Control Act, 1961 has been repealed by the Karnataka Rent Act, 1999. Though, the parties urged before us submissions based on the Karnataka Rent Act, 1999, having regard to the changes brought about by the Act of 1999, we have advisedly not expressed any opinion on those questions, and we leave it to the High Court to consider those questions if raised before it. There will be no order as to costs.