

CASE NO.:
Appeal (civil) 7371 of 2002

PETITIONER:
N.D. Thandani (Dead) By Lrs.

RESPONDENT:
Arnavaz Rustom Printer & Anr.

DATE OF JUDGMENT: 24/11/2003

BENCH:
R.C. LAHOTI & ASHOK BHAN.

JUDGMENT:
J U D G M E N T

R.C. LAHOTI, J.

The tenant is in appeal, by special leave, feeling aggrieved by the judgment of the High Court holding the tenant liable to be evicted from the suit premises on the ground available to the landlord-respondents under Section 10(2)(i) of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (hereinafter 'the Act', for short). The said provision entitles a landlord to evict the tenant on the latter's failure to pay or tender the rent within the specified number of days on its becoming due. The proviso appended to sub-section (2) provides for the Controller allowing the tenant a reasonable period of time not exceeding fifteen days to pay or tender the rent due by him to the landlord calculated up to the date of such payment or tender, and upon such payment or tender being made the prayer for eviction may be refused if the Controller is satisfied that the tenant's default to pay or tender the rent was not wilful. It is conceded at the Bar that the tenant shall incur the liability for eviction only on a finding arrived at by the Controller of 'wilful default' on the part of the tenant.

This litigation has a history of around thirty years broken into three rounds of litigation, each time the landlord having sought for the eviction of the tenant on the ground of wilful default and twice the tenant having successfully escaped the threat of eviction. In the third round he is struck by the findings arrived at and recorded in very many details by the learned Rent Controller in his Order dated August 25, 1993, which has been upheld by the High Court in revision.

In an earlier round of litigation the tenant had come up to this Court and this Court had, vide its order dated 12.1.1980, directed him to deposit the then arrears within a period of two months and continuously deposit the rent falling due thereafter, month by month, by the 10th day of every month, with the Rent Controller. Complaining of the default once again having been committed by the tenant, the landlords in the first instance served through their counsel a notice dated 28.10.81 on the tenant, calling upon him to furnish details of the rent deposited by him with the Controller. The tenant through his advocate gave a reply that all the arrears of rent were cleared. However, no particulars as to challans by which the rent was deposited with the Controller were furnished. On 12.11.1981, the landlord moved an application before the Controller for withdrawing the amount deposited by the tenant, and his application was returned with an endorsement by the office of the Controller that an amount of Rs.216.25 paise only was lying deposited. In a communication dated 12.11.1981, the landlord was informed by the tenant that there were arrears to the tune of Rs.6,300/- which were all deposited in one go.

Here again, the details of challans were not furnished and in fact the Controller also gave credit for the amount of deposit made by tenant on the basis of a letter of the State Bank of Hyderabad certifying the amount of deposit. In the proceedings initiated by the landlord seeking eviction of the tenant under Section 10(2)(i) of the Act, the plea taken by the tenant was that the challans, evidencing the deposit of rent with the bank, were sent to the Controller from time to time through registered post. He made a statement to that effect on 21.8.1989 when he was examined in the Court of Controller. On a prayer made by the landlord, 4 years after the date of the said statement, the tenant was recalled for further cross-examination and on 13.7.1993 he made available the challan showing deposit of Rs.6,300/- and other challans also which he had kept with himself until then. Even these challans, when scrutinized, did not support the plea of the tenant that the entire amount in arrears up to date had been cleared.

In exercise of the power conferred by Section 30 of the Act, the Governor of Andhra Pradesh has framed the Rules called 'The Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961' (hereinafter 'the Rules', for short). Rule 5 of the Rules is relevant which reads as under :

"5.(1) A tenant desirous of depositing the rent under sub-section (5) of Section 8 or Section 9 or Section 11 shall deposit the same, if the building concerned is in the City of Hyderabad, in the State Bank of Hyderabad and if the building is elsewhere, in the Controller's office or in the nearest treasury, whichever is convenient, after obtaining permission for the deposit of the rent from the controller.

(2) The challan accompanying the deposit of the rent shall be in the Andhra Pradesh Treasury Code in Form No.10 in triplicate and shall specify :-

(a) the name and address of tenant by whom or on whose behalf the rent is deposited;

(b) the name and address of the landlord entitled to receive the rent deposited;

(c) the rent at which and the period for which the rent is deposited;

(d) the description of the building in respect of which the rent is deposited;

(e) the provision of the Act including the circumstances under which the rent is deposited; and

(f) the head of account to which the rent is credited, namely :-

"P.II. Deposits and Advances \026 (Deposits and bearing interest \026 C. Other Deposit Accounts \026 Civil Deposits \026 Personal Deposits \026 Personal Ledger Account of the Controller or appellate authority, as the case may be".

(3) One copy of the challan for the deposit of rent returned by the State Bank of Hyderabad Controller's Officer or treasury, as the case may be, after endorsing thereon the receipt of the amount deposited, shall be delivered in the office of the Controller or the appellate authority as the case may be.

(4) On delivering one copy of the challan the Controller or the appellate authority, as the case may be, shall acknowledge its receipt on the back of the challan retained by the tenant and take necessary action for the service of the notice of deposit on the person or persons concerned within seven days of the delivery thereof. The notice of deposit shall be served on the person or persons concerned in one or other of the modes specified in Rule 16.

(5) Every Controller and every appellate authority shall cause proper accounts to be maintained in their offices for the rents deposited under sub-section (5) of Section 8 or Section 9 or Section 11.

(6) A tenant against whom an application for eviction has been made before the Controller shall deposit all the arrears of rent due by him, if any, in respect of the building within such reasonable time, not exceeding 15 days, as may be specified by the Controller."

A perusal of the above said Rule shows that the rule making authority has taken care to meticulously frame the rule and lay down a detailed procedure so as not to leave room for any controversy to arise between the landlord and the tenant as to the payment of the rent. The object of framing such rule is that merely because of litigation or a strained relationship existing between the landlord and the tenant, the landlord may not be harassed for realising the rent and he must be able to collect and receive the rent regularly. The tenant has to deposit the rent through a challan as prescribed accompanying the deposit wherein all the particulars provided for by sub-rule (2) have to be given. The challan is in triplicate. One copy is to be delivered to the Controller, after securing acknowledgment on another copy which is to be retained by the tenant. Such delivery of copy of the challan containing particulars specified in sub-rule (2) enables the Controller to maintain proper accounts and also to give notice of the deposit to the landlord who can thereafter withdraw the amount so deposited. A failure to comply with the provisions of the rule will result either in the deposit being lost in the jumble of hundreds of transactions which take place in the treasury or bank everyday, or would result in failure by the Controller in maintaining the accounts and giving notice to the landlord. Whatever be the situation, the landlord would be deprived of the opportunity of receiving the rent regularly in spite of the tenant having deposited the same. The whole purpose behind enacting the Rule will be frustrated because of the tenant's negligence.

Placing reliance on the decisions of this Court in *S. Sundaram Pillai & Ors. Vs. V.R. Pattabiraman & Ors.*, (1985) 1 SCC 591, and a Full Bench decision of Andhra Pradesh High Court in *Vinukonda Venkata Ramana Vs. Mootha Venkateswara Rao & Anr.*, AIR 2002 A.P. 52, the learned counsel for the tenant-appellant submitted

that a mere default by the tenant does not invite liability for eviction; the scheme of the Act draws a distinction between 'default' and a 'wilful default'. The inference as to 'wilful default' cannot be drawn unless the default is intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. However, the same decision which has been relied on by the learned counsel for the appellants states that where a tenant commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is not guilty of wilful default because such a course of conduct manifestly amounts to 'wilful default'.

The case at hand projects a picture where in spite of the leaning of the law in favour of the tenant, if anyone deserves sympathy it is the landlord and not the tenant. As already noticed, this is the third round of litigation complaining of default in payment of rent by the tenant. In the first round of litigation the rate of rent was alleged by the landlord to be Rs.160/- per month which was denied by the tenant who pleaded the rate of rent to be Rs.80/- per month only. In the litigation which ended in the apex court, the rate of rent was finally adjudged to have been Rs.160/- per month and not Rs.80/- as was pleaded by the tenant. Not only does the law itself require the tenant to pay or tender the rent month by month, the order of this Court mandated the tenant to clear all the arrears of rent within two months and thereafter to deposit the rent month by month and strictly observe compliance with the orders of the Supreme Court. The tenant did not even thereafter comply with the provisions of Rule 5. Huge amount of arrears accumulated, which were cleared in one go. Even other deposits were not regularly made. The tenant did not keep the landlords informed of the deposits either directly or by complying with the provision of the Rule. The obligation of the tenant to pay or tender the rent cannot be said to have been discharged unless and until the landlords were posted with the information along with particulars enabling them to withdraw the amount. The legal notices served by the landlords were not responded to in the desired manner so as to put an end to their grievance. A claim for eviction founded on the simple ground of default in payment remained pending for years, obviously because of the reluctance and the procrastinating tactics of the tenant. If this is not 'wilful default' then what else can it be? We are clearly of the opinion that the High Court has rightly held the tenant to be a chronic wilful defaulter. The decree for eviction is fully justified.

Before parting, and, in fairness to the learned counsel for the parties, we may place on record a submission made on behalf of the appellant that in spite of the tenant having defaulted in payment of rent for any period prior to the institution of the suit, if the arrears have been cleared (though belatedly) and the landlord has accepted the same, the default, if any, stands wiped out and the cause of action for seeking eviction of the tenant based on the preceding default does not survive. Reliance was placed on a Full Bench decision of Andhra Pradesh High Court in Vinukonda Venkata Ramana Vs. Mootha Venkateswara Rao and Anr. \026 AIR 2002 AP 52. This decision takes notice of two decisions of this Court (both by two judges benches) reported as Dakaya Alias Dakaiah Vs. Anjani - (1995) 6 SCC 500 and K.A. Ramesh and Ors. Vs. Susheela Bai (Smt.) and Ors. - (1998) 3 SCC 58. An earlier decision by a Five-judges Bench of the Andhra Pradesh High Court, namely, Pallapothu Narasimha Rao and Anr. Vs. Kidanbi Radhakrishnamacharyulu - AIR 1978 AP 319 was brought to the notice of the Full Bench deciding Vinukonda Venkata Ramana's case (supra) but the Full Bench commented that the Five-Judges Bench decision in Pallapothu Narasimha Rao and Anr. (supra) is not good law because it fails to take note of the Supreme Court's decision in the case of Dakaya Alias Dakaiah (supra). The learned counsel for the respondent pointed out that the

Five-Judges Bench decision of Andhra Pradesh High Court in Pallapothu Narasimha Rao and Anr.'s case (supra) is based on a Constitution Bench judgment of this Court in Mangilal Vs. Suganchand Rathi \026 (1964) 5 SCR 239, which was not noticed in the two Supreme Court decisions noted and followed by the Full Bench in Vinukonda Venkata Ramana's case (supra). The learned counsel for the respondent further submitted that this Court should hold the decision of the Andhra Pradesh High Court in Vinukonda Venkata Ramana's case not to be good law in view of the larger Bench decision of that very Court in Pallapothu Narasimha Rao and Anr.. The issue is substantial and we would have certainly gone into it but we find the present case is not an appropriate case for doing so. It is not the finding arrived at either by the trial court or by the High Court that the amount of arrears had stood paid by the tenant to the landlord prior to the initiation of proceedings for eviction by the latter. The question of examining the effect of such payment does not, therefore, arise in the present case. On the contrary, the finding is that the tenant was and has continued to remain in arrears upto the date of the initiation of the proceedings, and the only question arising for decision in the present case is whether the default can be said to be 'willful' or not.

The appeal is dismissed with costs throughout.

Still, to save the tenant from sudden eviction, we allow him time upto 31.5.2004 for vacating the premises, subject to his filing an undertaking on affidavit within four weeks from today, incorporating the following terms and strictly complying therewith :

- (i) that on or before 31st May, 2004, the tenant shall deliver vacant and peaceful possession to the landlord and shall not induct anyone else in possession or create any third party interest in the tenancy premises;
- (ii) that the statement of the deposits made by the tenant with all the relevant particulars, so as to satisfy the Rent Controller and the landlord that all the arrears have been cleared up to date, shall be filed within four weeks from today; and
- (iii) the amount equivalent to rent calculated upto 31.5.2004 shall be deposited in advance within a period of four weeks from today.

Failing compliance with any of the terms, the decree for eviction shall be available for eviction of the tenant-appellant forthwith.