

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4600 OF 2017
[@ SPECIAL LEAVE PETITION (C) NO. 18644 OF 2013]

SUKHESH CHAND GUPTA Appellant (s)

VERSUS

MADAN LAL Respondent(s)

WITH

CIVIL APPEAL NO. 4705 OF 2017
[@ SPECIAL LEAVE PETITION (C) NO. 17178 OF 2013]

J U D G M E N T

KURIAN, J.

1. Leave granted.

2. The appellant is aggrieved since two concurrent findings on default in payment of rent have been upset by the High Court on a petition filed under Article 227 of the Constitution of India. It is the case of the tenant that the defaulted rent had been sent by money order and it is the landlord, who refused to accept the money order.

3. There is no dispute that the case of money order was not set up before the trial court or before the first Appellate Court. That was set up only before the High Court.

4. Even assuming, the High Court could look into such materials at that stage, it is seen from the money order that the amount sent was Rs. 632/- in the month of May, 2002 when the rent was only paltry sum of Rs. 24/- per month.

5. Therefore, this is a case of willful default for all purposes and hence, the High Court was not justified in reversing the findings. The impugned Judgment of the High Court is, hence, set aside and the appeals are allowed.

6. The Judgment and order passed by the Rent Controller and as affirmed by the appellate authority is restored.

7. At this stage, the learned counsel for the tenant seeks some time to surrender vacant possession of the premises in question. It is submitted that the small shop is the only means of livelihood for his family.

8. Having regard to the entire facts and circumstances of the case, though the prayer is seriously opposed by the landlord, we are of the view that the equities could be balanced if the respondent-tenant is permitted to continue in

occupation of the premises till the end of month of Diwali in the year 2018. Ordered accordingly.

9. However, this is subject to the following conditions :-

- 1) The respondent-tenant shall file a usual undertaking before this Court within three weeks from today.
- 2) He shall undertake not to sublet the premises or to change the business or induct any new partner.
- 3) The respondent will continue to pay the amount of rent as he is paying now, as a special case, towards use and occupation charges.

10. It is made clear that in case of any default in abiding by the order, as above, the respondent-tenant shall be liable for consequences including the liability for contempt of this Court.

.....J.
[KURIAN JOSEPH]

.....J.
[R. BANUMATHI]

New Delhi;
March 28, 2017.