

SHIV DUTT JADIYA

v.

GANGA DEVI

FEBRUARY 20, 2002

[R.C. LAHOTI AND RUMA PAL, JJ.]

*Rent Control and Eviction*

*Rajasthan Premises (Control of Rent and Eviction) Act, 1950—Sections 13 and 19A—Subsequent suit for eviction of tenant for subsequent default in payment of rent—However, tenant continued to deposit rent in the court during the pendency of landlord's appeal against decree in first suit—Whether deposit of rent valid payment or tender—Held, yes—Tenant is not defaulter for that particular period since he continued to deposit rent in the court being one of the modes prescribed by Section 19A.*

Respondent-landlord filed suit (first suit) for recovery of rent and eviction on the ground of default in payment of rent. Trial Court refused decree for eviction since appellant-tenant deposited rent during the pendency of the suit complying with S.13(4) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950. Aggrieved, respondent-landlord filed first appeal contending that since the tenant did not strictly comply with the provisions of S.13(4) of the Act, trial Court should have passed decree for eviction. During the pendency of the first appeal, tenant continued to deposit rent in the Court month by month for the entire period of pendency of the first appeal. Meanwhile, before the appeal was withdrawn, respondent-landlord filed second suit for eviction on the ground of subsequent default in payment of rent for a particular period. Period of second default providing cause of action to the landlord in second suit was covered by the period during which the first appeal filed by the appellant was pending. Trial Court in the second suit held that after the decision in the first suit, the tenant ought to have paid or tendered rent to the landlord in accordance with S.19-A of the Act and payment by way of deposit made by the tenant in the court during the pendency of the first appeal could not come to his rescue and passed decree for eviction. Appellate court set aside the decree. However, High Court

A restored the decree passed by the Trial Court. Hence the present appeal.

B The question that arose for consideration was whether the tenant can be said to have committed default in paying or tendering the rent to the landlord for a particular period even though he had deposited such rent in the Court during the pendency of the landlord's appeal against the decree passed in the first suit and whether the amount deposited by the tenant, during the pendency of the landlord's appeal against decree in the first suit, can be held to be a valid payment or tender.

Allowing the appeal, the Court

C HELD : The tenant, in order to escape the rigour of his defence against eviction being struck out and to avail the benefit of relief against eviction under S. 13(6), of the Rajasthan Premises (Control of Rent and Eviction) Act or, to be more accurate, to see such relief as was allowed to him by the trial court being upheld by the Appellate Court, shall have to satisfy the Appellate Court also of his compliance with sub-section (4) upto the date of judgment by the Appellate Court. In the instant case, since the tenant was continuing to deposit the rent in the Court during the pendency of the appeal preferred by the landlord against the decree in the first suit, there was no occasion for the landlord to hold the tenant a defaulter for that particular period and also no cause of action accrued to the landlord to file a second suit for eviction. E The tenant was not required to pay the same rent twice over personally to the landlord or to tender the same in one of the modes prescribed by S.19-A. The question of the payment, remittance of deposit of rent by tenant in one of the modes provided by S.19-A could have arisen if there was no suit or appeal pending between the landlord and the tenant and therein the tenant was not required to deposit, or could not have made deposit of, rent in Court.

F [1173-C-F]

*Kamruddin v. Wahid Ali*, (1987) 1 RLR 290, disapproved.

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4993 of 1997.

From the Judgment and Order dated 27.2.97 of the Rajasthan High Court in S.B.C.S.A. No. 25 of 1994.

H A.B. Rohtagi, Anil Hooda, M.S. Bakshi and Harinder Mohan Singh for the Appellant.

Aruneshwar Gupta for the Respondent.

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The Judgment of the Court was delivered by

This is a tenant's appeal, putting in issue the judgment and decree of the High Court, directing the tenant to be evicted from the suit accommodation - a shop.

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The facts necessary for decision in this appeal are not in controversy. The suit shop is owned by the respondent and is held by the tenant-appellant on a monthly rent of Rs. 22. Earlier, there was a default in payment of rent by the tenant, for which, on the ground available under Clause (a) of sub-section (1) Section 13 of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter 'the Act' for short), the landlord-respondent had filed a suit for recovery of rent and for eviction. Let this suit be referred to as 'first suit'. During the pendency of this suit, the tenant complied with sub-section (4) of Section 13 by making the deposit of rent, as contemplated therein. On 14.11.1983, the Trial Court refused to pass a decree for eviction against the tenant, holding that although the tenant had committed a default in payment of rent before the institution of suit, but, in view of his having complied with the provisions of sub-section (4) of Section 13, he was entitled to benefit of relief against eviction. The landlord preferred an appeal. We have perused the contents of memo of appeal made available for our perusal by the learned counsel for the respondent. It shows that before the Appellate Court, the landlord had continued to press for a decree for eviction being passed against the tenant under Section 13(1)(a) of the Act. The grievance revised by the landlord was that the tenant had not strictly complied with the provisions of sub-section (4) and, therefore, the Trial Court should have directed the defence against eviction to be struck out under sub-section (5) and then passed a decree for eviction, holding the tenant not entitled to the benefit of sub-section (6). The occasion for deciding this appeal on merits did not arise inasmuch as, on 12.04.1993, the landlord did not press for the decision of appeal on merits and, instead, sought for withdrawal of the appeal, which was permitted by the Appellate Court.

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On 21.08.1984, much before the withdrawal of the appeal as abovestated, the landlord had filed a second suit against the tenant, praying for a decree of eviction, alleging that tenant had committed a second default by not paying or tendering the rent to the landlord for the period between 5th

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- A November, 1983 and 28th July, 1984. Admittedly the period of second default alleged as providing cause of action to the landlord in the second suit for eviction, was covered by the period during which the first appeal preferred by the appellant against the decree of the Trial Court passed in the first suit was pending. It is also admitted that during the pendency of that appeal, the tenant had continued to deposit the rent in the Court month by month, as contemplated by sub-section (4) of Section 13 for the entire period during which the appeal was pending. The Trial Court in the second suit, formed an opinion that after the decision by the Trial Court in the first suit, the tenant ought to have paid or tendered rent to the landlord in accordance with Section 19-A of the Act and any payment by way of deposit made by the tenant in the Court during the pendency of the appeal against the decree in first suit could not come to his rescue, as it was not a payment or tender, as contemplated by Section 19-A of the Act. The Trial Court, therefore, directed the second suit for eviction to be decreed by holding the tenant guilty of second default within the meaning of proviso to sub-section (6) of Section 13. The decree was reversed in appeal preferred by the tenant. However, the High Court has, by its impugned judgment and decree, set aside the decree of the Appellate Court and restored the decree passed by the Trial Court.

- The question arising for decision in this appeal is : whether the tenant can be said to have committed default in paying or tendering the rent to the landlord for the period 05.11.1983 to 28.07.1984 even though he had deposited such rent in the Court during the pendency of the landlord's appeal against the decree passed in the first suit? Answer to this question would depend on answer to another question - whether the amount deposited by the tenant, during the pendency of the landlord's appeal against decree in the first suit, can be held to be a valid payment of tender?

The relevant parts of Section 13 are as under :

"13. Eviction of tenants :-

- G (1) Notwithstanding anything contained in any law or contract, no Court shall pass any decrees or make any order, in favour of a landlord, whether in execution of a decree or otherwise, evicting the tenant (xxx) so long as he is ready and willing to pay rent therefore to the full extent allowable by this Act, unless it is satisfied.

- H (a) that the tenant has neither paid nor tendered the amount of

rent due from him for six months.

(b) to (h).....

(2) .....

(3) In a suit for eviction on the ground set forth in clause (a) of sub-section (1), with or without any of the other grounds referred to in that sub-section, the court shall, on the first date of hearing or on any other date as the court, may fix in this behalf which shall not be more than three months after filing of the written statement and shall be before the framing of the issues, after hearing the parties and on the basis of material on record provisionally determine the amount of rent to be deposited in court or paid to the landlord by the tenant. Such amount shall be calculated at the rate of rent at which it was last paid or was payable for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which such determination is made together with interest on such amount calculated at the rate of six per cent per annum from the date when any such amount was payable up to the date of determination :

Provided that while determining the amount under this sub-section, the court shall not take into account the amount of rent which was barred by limitation on the date of the filing of the suit.

(4) The tenant shall deposit in court or pay to the landlord the amount determined by the court under sub-section (3) within fifteen days from the date of such determination, or within such further time, not exceeding three months, as may be extended by the court. The tenant shall also continue to deposit in court or pay to the landlord, month by month, the monthly rent subsequent to the period up to which determination has been made, by the fifteenth of each succeeding month or within such further time not exceeding fifteen days, as may be extended by the court, at the monthly rate at which the rent was determined by the court under sub-section (3).

(5) If a tenant fails to deposit or pay any amount referred to in sub-section (4) [xxx] on the date or within the time specified therein, the court shall order the defence against eviction to be struck out and shall proceed with the hearing of the suit.

A (6) If a tenant make deposit or payment as required by sub-section (4), no decree for eviction on the ground specified in clause (a) of sub-section (1) shall be passed by the court against him :

B Provided that a tenant shall not be entitled to any relief under this sub-section, if having obtained such benefit or benefit under section 13-A in respect of any such accommodation if he again makes a default in the payment of rent of that accommodation for six months.”

C A perusal of Section 13 goes to show that failure of the tenant to pay or tender the rent due from him for a period of six months provides a ground for his eviction. On a suit for such relief being instituted by landlord, the tenant must deposit in Court or pay to the landlord the arrears of rent on the first date of hearing or within 15 days from the date of determination by the Court of provisional amount, or within the extended time, and thereafter continue to deposit in Court or pay to the landlord month by month the monthly rent falling due for the subsequent period, as contemplated by sub-section (3), and sub-section (4) of Section 13. Failure to make deposit or payment consistently with sub-section (4) may entail defence against eviction being struck out. However, compliance with sub-section (4) confers on the tenant an immunity from eviction on the ground specified in Clause (a) of sub-section (1). Such immunity is one time benefit given to the tenant. If the tenant commits a default for a second time, having earned once earlier an immunity from eviction within the meaning of sub-section (6), then, on a subsequent suit being filed, the tenant cannot once again escape the decree for eviction inspite of compliance with the provisions of sub-section (4).

F On a suit for eviction being instituted, compliance with sub-section (4) by the tenant as contemplated by Section 13 is in “Court”. The legislature has not chosen to use words “Trial Court” in the framing of Section 13. Ordinarily, an appeal is a continuation of suit. The tenant is bound to comply with provisions of sub-section (4) if the claim for eviction on having been denied by the Trial Court is pursued in appeal by the landlord. In spite of a decree for eviction having been refused by the Trial Court, the Appellate Court may still, in an appeal preferred by the landlord, pass a decree for eviction. On the date of the passing of the decree, the Appellate Court shall have to see, in view of the obligation cast on it by sub-section (6), whether the tenant had made deposit or payment, as required by sub-section (4). Any view to the contrary may result in creating an incongruous or inequitable situation. If it was to be held that on decision by the Trial Court, the obligation of the tenant

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to pay or tender the rent, in the manner prescribed by sub-section (4) comes to an end, then, although the landlord is still pursuing his claim for eviction before the Appellate Court and the decision of appeal may take its own time, the need on the part of the tenant to pay or tender the rent to the landlord or deposit the same in the Court shall stand dispensed with. We do not think that Section 13 contemplates such a situation. The object behind enacting Section 13 is that pendency of litigation should not be used by tenant as an excuse for suspending his obligation to regularly pay the rent and the landlord should not be compelled to file separate proceedings for recovery of rent falling due during the pendency of already filed eviction proceedings.

In the case before us, the issue of the tenant having committed a default and hence having incurred liability for eviction was being pursued by the landlord in appeal. The question whether the tenant's defence against eviction was liable to be struck out or not, was an issue open before the Appellate Court and was being clearly pressed by the landlord for decision. The tenant, in order to escape the rigour of his defence against eviction being struck out and to avail the benefit of relief against eviction under sub-section (6), or, to be more accurate, to see such relief as was allowed to him by the Trial Court being upheld by the Appellate Court, shall have to satisfy the Appellate Court also of his compliance with sub-section (4) upto the date of judgment by the Appellate Court. The tenant was, therefore, continuing to deposit the rent during the pendency of the appeal. There was no occasion for the landlord to hold the tenant a defaulter for the period 05.11.1983 to 28.07.1984 and file a second suit for eviction in view of the tenant continuing to deposit the rent in the appeal preferred by the landlord against the decree in the first suit. The tenant was not required to pay the same rent twice over personally to the landlord or to tender the same in one of the modes prescribed by Section 19-A. The question of payment, remittance or deposit of rent by tenant in one of the modes provided by Section 19-A could have arisen if there was no suit or appeal pending between the landlord and the tenant and therein the tenant was not required to deposit, or could not have made deposit of, rent in Court. The tenant, in the case before us, was not in default for the period 05.11.1983 to 28.07.1984 and no cause of action arose to the landlord for filing the second suit for eviction. The suit was entirely mis-conceived. The First Appellate Court deciding appeal in the second suit was, therefore, right in reversing the decree of the Trial Court and directing the second suit to be dismissed. The High Court has clearly erred in law in upholding availability of ground under Section 13(1)(a) of the Act to the landlord in the second suit.

A The appeal is, therefore, allowed. The judgment and decree of the High Court is set aside. The suit for eviction filed by the landlord is directed to be dismissed. Costs to be borne as incurred.

B Before parting, we would like to sound a note of caution. During the course of hearing a decision by Rajasthan High Court in *Kamruddin v. Wahid Ali*, (1987) RLR 290 was brought to our notice wherein the view taken by the High Court is that compliance with Section 13 of the Act need not be made during the pendency of appeal. We have taken a view to the contrary. To obviate the unforeseen difficulty which the tenants are likely to face in those matters which may be pending in appeal we would like to clarify that C before striking out the defence under sub-section (5) or denying the benefit of relief against eviction under sub-section (6), for failure to comply with sub-section (4), of Section 13 of the Act during the pendency of appeal, the Appellate Court shall afford the tenant a reasonable opportunity for compliance, on this decision coming to or being brought to its notice. However, this judgment shall not be a ground for re-opening any matter which stands already concluded.

N.J.

Appeal allowed.