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M/S. SHRIKRISHNA OIL MILL
v.
M/S. RADHAKRISHNAN RAMCHANDRA

JANUARY 9, 2002

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[R.P. SETHI AND S.N. PHUKAN, JJ.]

Rent and Eviction:

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*Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954—
Section 15(2)(ii)*

D

Eviction Suit—On the ground of default in payment of rent—Rent for the period claimed already received by the landlord before filing of the suit—Courts below ordered for eviction on the ground that he was defaulter since did not pay the rent on due date—Held, eviction cannot be ordered since landlord had no cause of action on the date of filing of the petition as rent already paid.

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Appellant-tenant took the suit premises on rent from respondent-landlord on yearly tenancy. He continued even after expiry of lease period. Respondent-landlord filed a civil suit for recovery of arrears of rent for the period between 1.11.1978 and 29.9.1981 which was paid by the appellant before the Court. Thereafter respondent filed an application for eviction of the appellant on the ground of default in payment of rent since 1.11.1978 till the date of filing of the application. The rent controller, the appellate authority and the High Court ordered for his eviction. All the Courts found that the rent for the period, in question, was received by the landlord before filing of the present eviction petition but found the appellant to be defaulter as he did not pay rent on due date and also after filing of the eviction petition for which the landlord had to file civil suit.

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In appeal to this Court, appellant contended that application for eviction was not maintainable since the rent for the period, in question, was paid by the appellant in the civil suit before the date of filling of the application for eviction. Respondent contended that appellant was a wilful defaulter since he never paid the rent on due date and, therefore, he had to file suit for recovery of rent.

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Allowing the appeal, the Court

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HELD : 1. In the present case, at the time of filing of the present eviction petition, landlord had no cause of action as the arrears of rent were paid and accepted by the landlord and, therefore, the petition became infructuous and liable to be rejected. For subsequent default also eviction cannot be ordered in view of the above legal position and in absence of any legal provision in the Act. [101-H; 102-A]

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2. The contention that there was default in payment of rent of one month is unsustainable because the tenancy was an yearly one and, therefore, there was no question of default of rent for one month as rent for the entire year was to be paid within one month from the end of the yearly tenancy and also because the plea was raised for the first time in the appeal. [102-B-C]

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Teegala Satyanarayana v. G.S. Bhagwan, [1994] Supp. 3 SCC 7415; *Sundaram Pillai and Ors. v. V.R. Pattabiraman and Ors.*, [1985] 1 SCC 591 and *K.A. Ramesh and Ors., v. Susheela Bai and Ors.*, [1998] 3 SCC 58, relied on.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6359 of 1999.

From the Judgment and Order dated 5.2.99 of the Bombay High Court in C.R. Application No. 556 of 1989.

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Sunil Kumar Verma and S.M. Jadhav for the Appellant.

S.V. Deshpande for the Respondent.

The Judgment of the Court was delivered by

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PHUKAN, J. This appeal by special leave is by the tenant. The suit premises were taken on rent by the appellant at a rent of Rs. 1500 year for the purpose of running an oil mill. After the expiry of period of lease, the tenancy continued. The respondent-landlord filed an application on 25.11.1981 under Section 15(2)(ii) of Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 (for short 'the Act') before the Controller for the eviction of the appellant on the ground of default in payment of rent since 1.11.1978 till the date of filing of the application. Prior to the filing of the present eviction application, the respondent filed a Civil Suit on 11.08.1981 for recovery of arrears of rent for the period between 1.11.1978 to 29.9.1981 amounting to Rs. 4250 and on 7.10.1981 appellant appeared before the court and deposited the

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A amount which was accepted by the respondent. Both the Rent Controller and the appellate authority held that the appellant was a defaulter and accordingly ordered for his eviction. The Revision Petition filed by the appellant-tenant before the High Court under Section 26 of the Act was also rejected by the impugned judgment.

B We may state here that by order dated March 3, 2000, this Court recorded the admitted position that possession of the suit premises was already obtained by the respondent, therefore, directed that pending this appeal, respondent shall neither alienate the property nor induct anyone else in the suit property till final disposal of the appeal.

C We have heard the learned counsel for the parties.

The short question to be decided in this appeal is whether the appellant was a willful defaulter of the rent on the date of filing of the application for eviction. From the impugned judgment, we find that the contention raised on behalf of the landlord that after the expiry of the yearly lease the appellant became a monthly tenant was rejected by the High Court holding that the appellant-tenant continued to be a yearly tenant. According to the High Court rent was to be paid within one month after end of the yearly tenancy. In arriving at the above decision, the High Court relied on sub-section (2) of Section 15 of the Act. On the question of default, the Court was of the view that there were two defaults, first one being on the completion of the year from 1.11.1978 to 20.10.1979 and second being from 21.10.79 to 7.10.1980. It was held that there was a clear default on the part of the appellant as the arrears of rent was paid by the appellant when he appeared in the regular Civil Suit on 7.10.1981 and not within one month of the end of the yearly tenancy. The High Court also found fault with the appellant as after filing of the application for eviction the landlord was required to file civil suits for recovery of rent for subsequent periods and therefore held that tenant did not care to pay rent as and when it became due to avail the protection of the provisions of law. On these facts it was held that the default was wilful.

G Learned counsel for the appellant has contended that as before the date of the filing of the application for eviction, the rent for the period in question was paid by the appellant to the respondent-landlord in the civil suit which was filed for recovery of the arrears of rent, the application for eviction was not maintainable. Per contra, learned counsel for the respondent has strenuously urged that appellant never paid rent on the due date and the respondent had to file civil suit for recovery of rent and, therefore, appellant

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was a wilful defaulter. In support, learned counsel has placed reliance on two decisions of this court in *S. Sundaram Pillai & Ors. v. V.R. Pattabiraman & Ors.*, [1985] 1 SCC 591 and *Teegala Satyanarayana v. G.S. Bhagwan*, [1994] Supp. 3 SCC 741]. It is not disputed that arrears of rent from 1.11.1978 were accepted by the landlord in the said civil suit without any protest. We may state here that all the Courts below accepted that the rent for the period in question was received by the landlord before filing of the present eviction petition but found the appellant to be defaulter as he did not pay rent on the due date and also after filing of the eviction petition for which the landlord had to file civil suits.

Learned counsel for the appellant has placed reliance on a decision of three Judge Bench of this Court in *S. Sundaram Pillai & Ors. v. V.R. Pattabiraman & Ors.*, [1985] 1 SCC 591. In that case though the tenant had committed default but he had paid the entire rent before filing of the suit by the landlord. The Court observed that in fact, the suit for eviction was filed by the landlord only to penalise the tenant for having defaulted in the past and, therefore, it was held that such a suit cannot be entertained because once the entire dues are paid to the landlord, the cause of action for filing of a suit completely vanishes.

Next decision of this Court, which has been placed before us by the learned counsel for the appellant is in *K.A. Ramesh & Ors. v. Susheela Bai & Ors.*, [1998] 3 SCC 58. In that case arrears of rent were due from July, 1988 to December, 1988. Before filing of the eviction petition, the tenant made full payment of arrears of rent by bank draft, which was accepted by the landlord. On these facts it was held that there was no default at all, much less wilful default on the part of the tenant in paying the rent for the months, in question, and, therefore, the application for eviction ought to have been summarily rejected. It was urged on behalf of the landlord that even during the pendency of the eviction proceeding there was default on the part of the tenant as no rent was paid and, therefore, tenant was liable to be evicted. The Court rejected the contention *inter alia* on the ground that as the eviction petition became infructuous, for subsequent default eviction cannot be ordered.

We are of the opinion that in the case in hand at the time of filing of the present eviction petition, landlord had no cause of action as the arrears of rent were paid and accepted by the landlord and, therefore, the petition became infructuous and liable to be rejected. For subsequent default also eviction cannot be ordered in view of the stated legal position and in absence

A of any legal provision in the Act. In view of the above legal position, the contention of the learned counsel for the respondent has no substance. This contention is also not sustainable in view of the decisions of this Court in *S. Sundaram Pillai* (supra) and *Teegala Satyanarayana* (supra).

B Learned counsel for the respondent has further contended that the application for eviction was filed on 25.11.1981 and for the said month of November no rent was paid. The tenancy was a yearly one and, therefore, there was no question of default of rent for one month as rent for the entire year was to be paid within one month from the end of the yearly tenancy. Therefore, this contention is also unsustainable. Moreover, this plea was raised for the first time in this appeal.

C For the reasons stated above, we find merit in the present appeal and accordingly it is allowed by setting aside the impugned judgment and judgments of the Appellate Court and the Rent Controller and consequently the application for eviction shall stand dismissed. We further direct the respondent to hand over the suit premises to the appellant within three months from today. Considering the facts and the circumstances of the case we direct the parties to bear their own cost.

K.K.T.

Appeal allowed.