MAIKU

v.

VILAYAT HUSSAIN THROUGH L.Rs.

APRIL 10, 1986

[K.B. MISRA AND M.M. DUTT, JJ.]

United Provinces (Temporary) Control of Rent and Eviction Rent, 1947 - S. 7C - Rent tendered by tenant - Landlord refused to accept - Application for permission to deposit rent in Court - Tenant's allegations about landlord's refusal to accept rent offered by tenant sufficient to grant permission - Eviction suit - Tenant's failure to establish that landlord refused to accept rent offered by him - Tenant liable to eviction on ground of default.

Deposit of rent in Court - Service of notice on landlord - When to be made by Court.

The appellant-tenant neither paid the arrears of rent in spite of verbal demand, notice of demand, and notice under s. 106 of the Transfer of Property Act, nor vacated the premises. The landlord, therefore, filed a suit claiming arrears of rent and damages for the period of default as also pendente lite and future.

The claim was resisted by the tenant contending that he was not a defaulter, that the landlord had refused to accept the rent tendered by him and that he deposited the same in the Court under s. 7C of the United Provinces (Temporary) Control of Rent and Eviction Act, 1947. The trial Court decreed the suit holding that the deposit of arrears of rent by the tenant was not a valid deposit and, therefore, it could not absolve the liability of the tenant from eviction inasmuch as the tenant had failed to establish that the landlord had refused to accept the tender made by him.

The Additional Civil Judge allowed the appeal by the tenant and held that he was not a defaulter on account of the deposit made under s. 7C of the Act.

In the second appeal by the landlord, the High Court set

A aside the judgment and decree of the Lower Appellate Court as regards eviction and restored the decree of the trial Court.

In the appeal to this Court it was contended on behalf of the appellant-tenant: (i) that if the arrears of rent had been deposited with permission of the Court under s. 7C of the B Act, it must be presumed that the landlord had refused to accept the rent tendered by the tenant; (ii) that as the landlord did not raise any objection in the proceedings under s. 7C he can neither question the validity of the order passed in those proceedings nor the Court can go into the question of validity of the deposits made; and (iii) that the First C Appellate Court had recorded a finding of fact believing the statement of the tenant that the landlord had refused to accept the rent when tendered to him and also refused to accept the amount sent by money-order and this finding could not have been set aside by the High Court in second appeal.

D Dismissing the appeal and disposing of the Civil Miscellaneous Petition,

HELD: 1. There is no error, much less a manifest error, for interference with the judgment of the High Court. [469 D-E]

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2. The mere fact that an application under s. 7C for permission to deposit the arrear of rent has been allowed by the Munsif will not absolve the tenant from establishing before the Court, where the suit for eviction was filed that the landlord had refused to accept the rent lawfully tendered. F The tenant must establish before the trial Court the factum of refusal by the landlord when the payment was sought to be made to him. [469 C-D]

3. Section 7C permits a tenant to deposit the arrears of rent in Court only under two conditions : (i) when the G landlord refuses to accept any rent lawfully paid to him by the tenant in respect of any accommodation, and (ii) where any bona fide doubt or dispute has arisen as to the persons who were entitled to receive any rent referred to in sub-s. (1) in respect of any accommodation. If the deposit of arrears of rent was a valid deposit in accordance with the requirements H of s. 7C certainly it will amount to payment to the landlord and the tenant will be absolved from the liability of being

evicted. But the Court itself cannot go into the question whether the landlord had refused to accept the rent paid lawfully or otherwise. If the Munsif had only to accept the application and accord permission to the tenant to deposit the arrears in Court merely on the basis that necessary allegations in the application as required by s. 7C had been made, he was not obligated to enquire whether the allegations were correct or not. However, the Court trying the suit for eviction cannot be precluded from enquiring about the validity of the permission under s. 7C. [467 C-F]

4. In the instant case, the finding of fact recorded by the First Appellate Court believing the statement of the tenant that the landlord had refused to accept the rent when tendered to him and also refused to accept the amount sent by money-order, is based on surmises and conjectures than on the basis of the material on record. Therefore, the High Court was fully justified in reversing this finding in second appeal as it was vitiated in law. The only evidence is the deposition of the tenant which the trial Court did not rely upon, and even the First Appellate Court did not categorically say that it believed the deposition of the defendant. Since the compliance of the ingredients of s. 7C had not been established, the tenant-appellant was liable to be evicted. [467 G; 469 A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 413 of 1986

From the Judgment and Order dated 10th February, 1976 of the Allahabad High Court in Second Appeal No. 2337 of 1966.

R.K. Jain and Shakeel Ahmed for the Appellant.

N.A. Khan, Manoj Swarup and U.S. Prasad for the Respondents.

The Judgment of the Court was delivered by

R.B. MISRA, J. The only question for consideration in this appeal by special leave is whether the deposit of arrears of rent under s. 7C of the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 will save the tenant from the penalty of being evicted for non-payment of rent.

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The appellant is a tenant of the respondent on a monthly rent of Rs. 6.25 per mensem. He fell into arrears of rent amounting to Rs. 318.75 for the period from Ist October, 1959 to 31st December, 1963. The tenant did not pay the aforesaid amount in spite of the verbal demand. Consequently, the landlord served upon the tenant a notice of demand. The B tenant, however, failed to comply with the said notice, hence he became a defaulter. The landlord thereafter served another notice on the tenant under s. 106 of the Transfer of Property Act. The tenant, however, neither vacated the premises nor cleared the arrears of rent. The landlord was, therefore, obliged to file a suit. He, however, claimed a sum of Rs. C 176.68 as arrears of rent for the period from Ist October, 1961 to 8th February, 1964 the claim for rent for the remaining period having become barred by time. He also claimed a sum of Rs. 58.23 as damages for the period from 9th February, 1964 to 22nd October, 1964 as also pendente lite and future damages at the rate of Rs. 6.25 per mensem.

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The claim was resisted by the tenant on the ground that he was not a defaulter inasmuch as whatever rent was tendered to the landlord he refused to accept the same and, therefore, he was constrained to deposit the amount, that is, a sum of Rs. 231.25 for the period from Ist September, 1961 to 30th E September, 1964 in the Court under s. 7C of the Act. He also disputed the date of tenancy as alleged by the respondent-landlord.

The trial Court came to the conclusion that the defendant became a tenant from 17th January, 1962 and not from F 1959, as alleged in the plaint. As the deposit of arrears of rent by the tenant under s. 7C was not a valid deposit, therefore, it could not absolve the liability of the tenant from eviction inasmuch as the defendant had failed to establish that the landlord had refused to accept the tender made by the tenant. Accordingly, the suit for recovery of G arrears of rent amounting to Rs. 154 and damages amounting to Rs. 58.23 was decreed with pendente lite and future mesne profits at the rate of Rs. 6.25 per mensem.

On appeal the learned Addl. Civil Judge reversed the finding of the trial court and held that the tenant was not a H defaulter on account of the deposit made by him under s. 7C of

the said Act and set aside the judgment and decree of the trial Court for eviction. In second appeal the High Court set aside the judgment and decree of the lower appellate court as regards eviction and restored the decree of the trial Court. The tenant has now come in appeal to this Court as stated earlier, by special leave.

Shri R.K. Jain appearing for the appellant has contended that if the arrears of rent had been deposited with permission of the court under s. 7C of the Act it will be presumed that the landlord had refused to accept the rent tendered by the tenant. As a second limb to this argument it was contended that it was not open to the Court in a suit for eviction to go into the question of validity of the deposit made under s. 7C. He produced a certified copy of the order of the Munsif City, Kanpur dated 30th July, 1962 allowing the application made by the tenant for permission to deposit the arrears of rent. The Order reads :

> "This is an application under s. 7C(1) of the U.P. Act III of 1947. The opp. party was served with the notice. No objection filed. The case falls under s. 7C(1) the ingredients of which are made out. Hence the applicant tenant is allowed to deposit rent in this Court regularly under s. 7C(1) and the opp. party landlord is entitled to withdraw the money."

On the strength of this order it was strenuously contended by Shri Jain that no objection was ever raised by the landlord in proceedings under s. 7C of the Act and, therefore, it is not open to him to raise the question of validity of the order passed under s. 7C.

The question that squarely falls for consideration is whether the order granting permission to the tenant to deposit the arrears of rent in court is sacrosanct and cannot be challenged in a regular suit for eviction. Indeed, the Munsif before whom the application for permission was filed was not required to determine the rights and obligations of the tenant. All that he had to do on deposit of rent under s. 7C was to issue a notice to the landlord informing him that such deposit had been made. Section 7C so far as material, provides :

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"7C **Deposit of Rent in Court:-** (1) When a landlord refuses to accept any rent lawfully paid to him by a tenant in respect of any accommodation the tenant may in the prescribed manner deposit such rent and continue to deposit any subsequent rent which becomes due in respect of such accommodation unless
B the landlord in the meantime signifies by notice in writing to the tenant his willingness to accept.

(2) Where any bona-fide doubt or dispute has arisen as to the person who is entitled to receive any rent referred to in sub-s.(1) in respect of any
C accommodation, the tenant may similarly deposit the rent stating the circumstances under which such deposit is made and may until such doubt has been removed or such dispute has been settled by the decision of any competent Court, or by settlement between the parties, continue to deposit, in like
D manner, the rent that may subsequently become due in respect of such building.

(3) The deposit referred to in sub-s. (1) or (2) shall be made in the Court of the Munsif having jurisdiction in the area where the accommodation is
E situate.

(4) On any deposit being made under sub-s. (1), the court shall cause a notice of the deposit to be served on the landlord, and the amount of deposit may be withdrawn by the landlord on application
F made by him to the Court in this behalf.

Section 7C gives a right to the tenant to deposit rent when a landlord refuses to accept any rent lawfully paid to him by the tenant. A tenant may allege that the landlord had refused to accept any rent lawfully paid to him. The section
G itself does not require the Munsif to go into the question whether the landlord had refused to accept the rent paid lawfully or otherwise. We fail to understand how, as the learned Munsif observed, the opposite party was served with a notice. Sub-s. (4) of s. 7C contemplates of only one notice after the deposit, in pursuance of the permission granted to
H deposit the arrears of rent under this section. In the absence

of any provision for sending notice to the landlord before granting permission to the tenant, we fail to understand how a notice was sent to the landlord before the passing of the order. The sub-s. clearly contemplates that on any deposit being made under sub-s. (1) the court shall cause a notice of the deposit to be served on the landlord and the amount of deposit may be withdrawn by the landlord on application made by him to the court in this behalf. If the Munsif was to accord the permission to deposit the arrears of rent merely on being satisfied that the necessary allegation as required by s. 7C of the Act has been made, viz. the landlord had refused to accept the rent lawfully tendered to him, he was not obligated to enquire whether the allegation made in the application was correct or not.

Section 7C permits a tenant to deposit the arrears of rent in court only under two conditions : (1) when the landlord refuses to accept any rent lawfully paid to him by the tenant in respect of any accommodation, and (ii) where any bonafide doubt or dispute has arisen as to the person who was entitled to receive any rent referred to in sub-s. (1) in respect of any accommodation. If the deposit of arrears of rent was a valid deposit in accordance with the requirements of s. 7C certainly it will amount to payment to the landlord and the tenant will be absolved from the liability of being evicted. But if the Munsif had only to accept the application and accord permission to the tenant to deposit the arrears in court merely on the basis that necessary allegations in the application as required by s. 7C had been made, the court trying the suit for eviction cannot be precluded from enquiring about the validity of the permission under s. 7C.

It was next contended for the appellant that the first appellate court had recorded a finding of fact believing the statement of the tenant that the landlord had refused to accept the rent when tendered to him and also refused to accept the amount sent by money order and this finding could not have been set aside by the High Court in second appeal. We are afraid this contention has no substance. The finding recorded by the first appellate court is based more on surmises and conjectures than on the basis of the material on record. We would do no better than quote the observations made by the first appellate court :

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> "The appellant having admitted deposit of rent in court under s. 7C and the court having accepted the deposit holding the ingredients of the section to have been made out and permitting the appellant to continue depositing rent in future also, prima facie the deposit has to be treated as valid and
> B the burden lay on the plaintiff to show that the entire proceedings under s. 7C were invalid and the Munsif had absolutely no jurisdiction to entertain the application and accept the deposit...The circumstances of the case also indicate that the rent must have been tendered by the defendant and
> C might have been refused by the plaintiff. When the defendant had applied for allotment of the shop in his name, plaintiff had filed objections before the Rent Control and Eviction Officer but his objections were over-ruled and allotment was made in favour of the defendant. This was bound to cause
> D annoyance to the plaintiff and he might have refused to accept the rent on that account."

Obviously, the first appellate court was of the opinion that once permission had been granted by the Munsif to the tenant to deposit arrears of rent it would be presumed that
E the permission was a valid one under s. 7C and this view of that court had coloured its findings and it had entered into surmises and conjectures.

The trial Court had rejected the testimony of the defendant with regard to the tender of rent on the ground that
F he was an interested witness. According to his deposition he had gone to pay the arrears of rent prior to bringing the application under s. 7C and that he had twice tendered the amount of arrears by hand to the plaintiff in the presence of plaintiff's son and the plaintiff had refused to accept it. He further deposed that the rent was tendered by money order also
G but the plaintiff had refused to accept it. The defendant did not care to file the postal receipts in the present case nor did he produce the plaintiff's son before whom he made tender which was refused by the plaintiff. Unless the evidence was filed in the present case that could not be taken into consideration by the court by summoning the file of some other
H case. The first appellate court had, however, relied upon the

postal money order receipts by looking into the records of the proceedings under s. 7C. The High Court in the circumstances was fully justified in reversing the finding recorded by the first appellate court as it was vitiated in law. A

It may look hard that the tenant who had deposited the rent in court under s. 7C, has to be evicted as the ingredients of s. 7C had not been established but there is no help. In the instant case the only evidence is the deposition of the tenant which the trial court did not rely upon and even the first appellate court did not categorically say that it believes the deposition of the defendant. The law in our opinion is clear that the tenant must establish before the court in which the suit for eviction has been filed, the factum of refusal by the landlord when the payment was sought to be made to him. The mere fact that an application under s. 7C for permission to deposit the arrears of rent has been allowed by the Munsif will not absolve the tenant from establishing before the court, where the suit for eviction was filed, that the landlord had refused to accept the rent lawfully tendered. B C D

For the reasons given above we do not find any error, much less a manifest error, for interference with the judgment of the High Court. The appeal is accordingly dismissed, but there is, however, no order as to cost. With the dismissal of the appeal the stay order stands vacated and no separate order is needed. The civil miscellaneous petition is disposed of accordingly. E

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A.P.J. Appeal dismissed.