

## BRAHMANAND

v.

SMT. KAUSHALYA DEVI &amp; ANR.

April 11, 1977

[V. R. KRISHNA IYER, R. S. SARKARIA AND JASWANT SINGH, JJ.]

*Eviction on the ground of arrears of rent—Tenant due to strained relations deposits rent in the Court—Whether such deposit shall be deemed that the rent has been duly paid—United Provinces (Temporary) Control of Rent and Eviction Act 1947. S. 3(1)(a) r/w. s. 7-C(v) and (6) interpretation of.*

Section 3(1)(a) of the United Provinces (Temporary) Control of Rent and Eviction Act, 1947, permits ejection on the ground of arrears of rent when the tenant is in arrears of rent for more than three months and has failed to pay the same to the landlord within one month of the service upon him of a notice of demand. Section 7-C(1) enables deposits of rent to be made when a landlord refuses to accept any rent lawfully paid to him by a tenant and s. 7-C(6) enjoins that "in any case where a deposit has been made as aforesaid, it shall be deemed that the rent has been duly paid by the tenant to the landlord."

The appellant-tenant had extremely strained relations with his landlady leading to criminal cases. He deposited the rent payable by him in the court regularly. The trial court as well as the High Court, taking the view that such prompt deposits of rent in the court did not satisfy the provisions of s. 3(1)(a) of the United Provinces (Temporary) Control of Rent and Eviction Act, 1947, since it is not equivalent to payment of rent to the landlord, granted the ejection application filed by the respondent-landlady.

Allowing the appeal by special leave and remanding the case, the court,

HELD : (1) The construction put by the courts below on s. 7-C is too narrow and a liberal construction of the expression "paid to him by a tenant" in s. 7-C(1) is necessary. [487 B-D]

(2) A correct interpretation of s. 7 has to be conditioned by the circumstances prevailing between the parties. In a situation where not merely bitterness and friction but potentially violent terms mar the life of the parties, s. 7-C of the Act has to be read realistically. It is not necessary for the tenant to create a situation of tension and violence by physically giving the rent into the hands of the landlord. It is an idle ritual to insist on a physical tender of payment of rent where the circumstances make it impracticable. But harassing the landlord by straightaway depositing the rent in court without fulfilment of the conditions required by s. 7-C(1) is also unwarranted. [486 G-H, 487 A, D]

(3) The expression "where the deposit has been made as aforesaid" in s. 7-C(6) means that the deposit is permissible only when the condition in s. 7-C(1) is complied with. If the landlord refuses to accept rent paid to him a deposit is permissible but payment need not be by physical tender person to person. It can be by money order or through messenger or by sending a notice to the landlord asking him to nominate a bank into which the rents may be regularly paid to the credit of the landlord. If the landlord refuses under these circumstances then a court deposit will be the remedy. In the instant case the courts below have not considered whether the circumstances which drove the appellant into the depositing of rent in court were such as eliminated the other possibilities of direct payment. [487 E-F, A]

*Observation*

It would be a far more satisfactory solution of the situation between two neighbours who have fallen out, if the parties would come to terms at the gentle suggestion of the court below as to what it considers just aided by the activist endeavours of counsel, than a mere adjudication of the points of fact and law raised which will leave the parties as bitter neighbours. [The court directed the appellate court to take the initiative in the matter with a caution to be totally non-aligned in the process.] [488 A-B]

**A** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 711 of 1976.

(Appeal by Special Leave from the Judgment and Order dated the 28-4-1976 of the Allahabad High Court in Second Appeal No. 1719 of 1972)

**B** *Yogeshwar Prasad, Miss Rani Arora and Meera Bali*, for the appellant.

*S. L. Bhatia and H. K. Puri*, for respondent No. 1.

The Judgment of the Court was delivered by

**C** KRISHNA IYER, J. The defendant-tenant is the appellant and the appeal is by special leave. The landlord sued for ejection on the ground of arrears of rent as provided in s. 3 of the United Provinces (Temporary) Control of Rent and Eviction Act, 1947. Section 3(1) (a) states, among one of the grounds of eviction,

**D** "that the tenant is in arrears of rent for more than three months and has failed to pay the same to the landlord within one month of the service upon him of a notice of demand."

In the present case, the complaint of the plaintiff was that the rent was not *paid* but was deposited into court regularly. The trial court as well as the High Court took the view that such prompt deposits of rent into court did not satisfy the provisions of s. 3(1)(a) since it is not equivalent to *payment* of rent to the landlord. Counsel for the appellant contends that s. 7-C(6) of the Act strikes a different note. It reads :

"*In any case* where a deposit has been made, as aforesaid, it shall be deemed that the rent has been duly paid by the tenant to the landlord. (emphasis supplied)"

**F** S. 7-C(1) enables deposits of rent to be made when a landlord refuses to accept any rent lawfully paid to him by a tenant. In the present case the facts are glaring. The relations between the parties appears to be extremely strained and they are living in adjacent premises. There was a criminal case by the tenant against the landlord as early as 1969 for offences under ss. 323, 504, 506, 352, 354 and 452 I.P.C. The case ended in an acquittal but the relations did not improve. Even now there is a pending prosecution by the tenant of the landlord for offences of a serious nature. It is common ground that not merely bitterness and friction but potentially violent terms mar the life of these parties. In such a situation s. 7-C of the Act has to be read realistically. It is not necessary for the tenant to create a situation of tension and violence by physically offering the rent into the hands of the landlord. We are satisfied that a correct interpretation of s. 7 has to be conditioned by the circumstances prevailing between the parties. In the case we are concerned with, the relations between the parties being very estranged it is an idle

ritual to insist on a physical tender of payment of the rent where the circumstances make it impractical and, therefor, subject to what we have said later, *prima facie*, s. 7-C(1) is attracted and in such cases s. 7-C(6) makes court deposit equivalent to payment by the tenant to the landlord. Of course, in the absence of special and adequate grounds the tenant cannot drive the landlord to collect his rent every time through the court with all the attendant inconvenience and expense.

We consider the construction put by the courts below on s. 7-C too narrow. The High Court has proceeded on the footing that a deposit under s. 7-C can be made only if the landlord refuses to accept the rent tendered to him or, if there is any dispute as to the person who is actually entitled to receive the rent. "None of the conditions existed in the instant case...and the plaintiff had asked the defendant not to deposit the rent in court but to pay her the same. The defendant was accordingly required to pay the rent to her, not to deposit the same in court. The deposit, accordingly, could not constitute payment of rent to the plaintiff and the defendant, consequently, was in arrears of rent...".

As we have earlier pointed out, a liberal construction of the expression 'paid to him by a tenant' in s. 7-C(1) is necessary. Physically offering payment when the relations between the parties are strained is to ask for trouble and be impractical. But harassing the landlord by straightway depositing the rent in court without fulfilment of the conditions required by s. 7-C(1) is also unwarranted. Section 7-C(6) by using the expression 'where the deposit has been made *as aforesaid*' takes us back to s. 7-C(1). That is to say, the deposit is permissible only when the condition in s. 7-C(1) is complied with. If the landlord refuses to accept rent paid to him a deposit is permissible. But payment need not be by physical tender, person to person. It can be by money order, or through messenger or by sending a notice to the landlord asking him to nominate a bank into which the rents may be regularly paid to the credit of the landlord. If the landlord refuses under these circumstances, then a court deposit will be the remedy.

In the present case, on account of the bad blood between the parties a physical tender of the rent is ruled out. At the same time the courts below have not considered whether the circumstances which drove the appellant into depositing the rent in court were such as eliminated the other possibilities of direct payment we have indicated. It is therefore fair to set aside the finding of the courts below and remand the case to the lower appellate court (which is the final court of fact under ordinary circumstances) to ascertain whether any of the alternatives we have indicated, or may otherwise be made out by the tenant as equivalent to payment of rent, is present in the case. If no such circumstance is made out by the tenant justifying deposit of rent in court, the decree for eviction will stand. Otherwise, the petition for eviction will be dismissed.

- A** It may well be that having regard to the fact that the respondent, the landlady belonging to the weaker sex, has necessarily to live as adjacent occupant of the appellant, a fairly affluent doctor, and taking note of the fact that the relations between the parties are so embittered as to lead to criminal cases, it may be furtherance of justice if the appellate court tries to settle the dispute without taking sides. If the parties are able to come to terms at the gentle suggestion of the court as to what it considers just, aided by the activist endeavours of counsel, it would be a far more satisfactory solution of the situation between two neighbours who have fallen out than a bare adjudication of the points of fact and law raised which will leave the parties as bitter neighbours. We therefore think it proper to direct the appellate court to take the initiative in the matter but caution it to be totally non-aligned in the process.
- B**
- C** With these observations we allow the appeal and remand the case to the lower appellate court. Parties will bear their own costs upto now incurred.

S.R.

*Appeal allowed.*