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RAMINDER SINGH SETHI

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V.  
D. VIJAYARANGAM

APRIL 17 , 2002

[ R.C. LAHOTI AND B.N. AGRAWAL , JJ . ]

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Karnataka Rent Control Act , 1961 :

Ss.2 ( 2 ) , 18 and 21 ( 1 ) ( a ) -Tenant in arrears of rent - Suit by landlord for eviction of tenant filed within five years of construction of premises <sup>C</sup> s.18 prohibiting receiving of advance rent exceeding 2 month's rent - Tenant contending that advance rent was available with landlord for adjustment Held , in view of proviso to s.2 ( 2 ) , up to the date of filing of suit s . 18 was applicable to the premises and landlord was not prevented by law from securing advance payment of rent by consent of the parties — In spite of the landlord D having advance rent available with him tenant is bound to pay or tender amount of rent falling due month by month on the date on which it is payable as per law or contract - No fault can be found with findings of High Court that tenant was in arrears and ground for eviction u / s . 21 ( 1 ) ( a ) was made out The question of additional protection to tenant conferred by 1999 Act or moulding relief by reference thereto does not arise as the 1999 Act has not E been given retrospective effect and rights of parties to litigation stand crystallised on the date of commencement of the list - s.70 of the 1999 Act does not provide for the new Act to be applicable to appeal or Proceedings pending before Supreme Court - Karnataka Rent Act , 1999 S.70 .

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 582 of 2000 .

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From the Judgment and Order dated 20.9.1999 of the Karnataka High Court in H.R. R.P. No. 3740 of 1992 .

P.R. Ramasesh , Abhay Prakash Shahay and Amar L.V. for the Appellant .

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M.S. Ganesh , Ms. Nikhil Nayyar and Mrs. Urmila Sirur for the Respondent .

The Judgment of the Court was delivered by

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A The landlord / respondent filed a suit for eviction of the tenant - appellant on the ground available under clause ( a ) of Sub - Section ( 1 ) of Section 21 of the Karnataka Rent Control Act , 1961 ( hereinafter the " Act " , for short ) .  
B Though the eviction was sought for on other grounds as well but this is the only ground on which eviction has been ordered by the High Court , and therefore , we shall confine ourselves to the question of availability of this ground for eviction .

The High Court has found that on the date of initiation of proceedings , the tenant - appellant was in arrears of rent which he neither paid nor tendered within two months of the date of service of notice on him demanding payment  
C of the arrears of rent . However , it has also been found that the tenant - appellant had paid some amount by way of advance rent at the time of creation of tenancy . The details of the arrears and the advance rent are not relevant ; suffice it to say if the amount of advance rent is adjusted against the amount  
D of arrears found due and payable by the tenant then he is not in arrears . On the other hand , if the amount of advance rent is not available for adjustment then the tenant is in arrears . Another relevant fact which is not in controversy is that the building wherein the tenancy premises are situated was constructed in the year 1977 when the tenant was inducted into the tenancy premises . The period of default in payment of rent is referable to the years 1978 to 1980 . The eviction proceedings were commenced in the year 1982 when the period  
E of 5 years from the date of construction of the building had not expired .

According to Section 18 of the Act , the landlord is prohibited from receiving ' by way of advance rent any amount exceeding two months rent . Proviso to sub - Section ( 2 ) of Section 2 provides that Part III of the Act which consists of Section 14 to 18 ( both inclusive ) shall not apply to a building  
F constructed after the 1st day of August , 1957 for a period of 5 years from the date of construction of such building . Thus up to the date of the filing of the suit , undisputedly Section 18 was not applicable to the building wherein the tenancy premises are situated .

G Every tenant is obliged to pay or tender rent to the landlord within 15 days of the month to which the rent relates . The purpose of advance rent is to protect the landlord from the unscrupulous tenant who may run into arrears and vacate the premises and comfortably walk away with arrears . The advance rent is available for adjustment or is liable to be refunded at the time of vacating of the premises except where the law or the contract between the  
H parties provides to the contrary . We have already noticed that the provisions

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of the Act do not apply to the premises and , therefore , the landlord was not A prevented by law from securing advance payment of rent by consent of the parties . It is not the case of the tenant that the contract between the parties provides for adjustment of rent no sooner it fell into arrears from out of the amount of advance rent . In short , the tenant - appellant was not absolved of his obligation to pay the rent due month by month in spite of an amount of advance rent being available with the landlord . The High Court has rightly discarded the submission made on behalf of the tenant - appellant that the landlord while serving the notice of demand on the tenant should have himself allowed an adjustment of the amount of the advance rent against the arrears and should have confined his demand only to such amount in arrears as exceeded the amount of advance rent or should have waited till the amount of rent in arrears had accumulated to exceed the amount of advance rent . In spite of the landlord having the amount of advance rent available with him the tenant is bound to pay or tender the amount of rent falling due month by month on the date on which it is payable as per law or contract .

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For the foregoing reasons , we are of the opinion that no fault can be found with the finding arrived at by the High Court that the tenant was in arrears and the ground for eviction under Section 21 ( 1 ) ( a ) of the Act was made out .

It was further submitted by the learned counsel for the appellant that E during the pendency of this appeal the Karnataka Rent Act , 1999 has come into force with effect from 27th December , 2001 which gives additional protection to the tenant and as the proceedings for eviction are still pending and have not achieved finality the benefit of additional protection conferred by the new Act should be extended to the tenant - appellant and this Court F should refuse to pass a decree for eviction unless the ground for eviction under the new Act is made out . We do not find any merit in the submission so made . The new Act has not been given retrospective effect . Ordinarily , the rights of the parties to litigation stand crystallised on the date of the commencement of lis . Section 70 of the new Act which speaks of Repeal and Savings and which also makes provision for the new Act being applicable G to certain cases and proceedings , does not speak of the new Act being applicable to the appeal or proceedings pending before the Supreme Court . The question of testing the availability of any ground for eviction by reference to the provisions of new Act or moulding the relief by reference thereto does not arise .

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The appeal is held devoid of any merit and is dismissed . However , the tenant - appellant is allowed four months ' time for vacating the suit premises subject to his clearing all the arrears of rent up - to - date within a period of four weeks and filling usual undertaking within the same time to hand over vacant and peaceful possession of the premises to the landlord - respondent on the expiry of the said period of four months .

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R.P.

Appeal dismissed .

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