Shah Bhojraj Kuverji Oil Mills and Ginning Factory

Vs

Subbash Chandra Yograj Sinha

Civil Appeal No. 49 of 1961

(T. L. Venkatarama Ayyar, S. K. Das, J. L. Kpur, M. Hidayatullah, J. C. Shah JJ)

21.04.1961

JUDGMENT

HIDAYATULLAH, J. -

This is a tenant's appeal, with the special leave of this Court, against an order of Naik, J., of the High Court of Bombay in Civil Revision Application No. 320 of 1959, by which he disallowed certain pleas raised by the appellants. The respondent is the landlord.

On September 11, 1942, the appellants had executed a rent note, under which they were in occupation of the premises in dispute. The period of the tenancy was 15 years, and it expired by the efflux of time on March 14, 1957. The landlord thereupon filed a suit on April 25, 1957, for possession of the premises, in the Court of the Joint Civil Judge (Junior Division), Erandol. Meanwhile, under s. 6 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (to be called the Act, in this judgment), a notification was issued, applying Part II of the Act to the area where the property is situated. The appellants claimed protection of s. 12 in Part II of the Act, which deprived the landlord of the right of possession under certain circumstances. The Civil Judge framed three preliminary Issues, which were as follows :

> "1. Whether this Court has jurisdiction to try the suit ?
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> 2. Whether the plaintiff's suit for possession of the suit property is maintainable in view of the Notification issued by the Government of Bombay on 16th August, 1958, applying Part II of the Bombay Rents, Hotel and Lodging House Rates Control Act ? If not, what order should be passed ?
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> 3. What order ?".

There Issues were decided against the appellants. They filed a revision petition before the High Court of Bombay, which was dismissed by the order under appeal. Naik, J., who heard the revision, followed a previous Full Bench ruling of the Bombay High Court reported in Nilkanth Ramachandra v. Rasiklal [(1949) 51 Bom. L.R. 280]. In that case, Chagla, C.J. (Gajendragadkar and Tendolkar, JJ., concurring) had held that s. 12 of the Act was prospective and did not apply to pending cases. Reliance was also placed by Naik, J., on the decision of this Court in Chandrasingh Manibhai v. Surjit Lal Sadhamal Chhabda [[1951] S.C.R. 221], where the opinion of the Full Bench of the Bombay High Court was approved.

Two questions have been raised in this appeal, and they are (1) whether by virtue of the first proviso

to s. 50 of the Act, all the provisions of Part II including s. 12 were not expressly made applicable to all suits; and (2) whether by virtue of s. 12(1) of the Act, which applied independently by the extension of the Act to the area where the property is situate, the suit was not rendered incompetent and the landlord deprived of his remedy of possession.

Before we deal with these contentions, it is necessary to see some of the relevant provisions of this Act. The Act was not the first to be passed on the subject of control of houses, etc. Previously, there were two other Acts in force in the State of Bombay, viz., the Bombay Rent Restriction Act, 1939 and the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944. By s. 50 of the Act, these Acts were repealed. The first proviso, however, enacted (omitting unnecessary parts) :

> "Provided that all suits and proceedings between a landlord and a tenant relating to the recovery or fixing of rent or possession of any premises to which the provisions of Part II apply..... which are pending in any Court, shall be transferred to and continued before the Courts which would have jurisdiction to try such suits or proceedings under this Act or shall be continued in such Courts, as the case may be, and all the provisions of this Act and the rules made thereunder shall apply to all such suits and proceedings."

It is this proviso which, it is claimed, has retrospective effect and s. 12 of the Act which is in Part II is said to apply to all pending cases, whenever the Act is extended to fresh areas. Section 12 of the Act reads as follows :

> "12. (1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.
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> (2) No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.
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> (3) (a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the Court may pass a decree for eviction in any such suit for recovery of possession.
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> (b) In any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court.
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> (4) Pending disposal of any such suit, the Court may out of any amount paid or

> tendered by the tenant pay to the landlord such amount towards payment of rent or permitted increases due to him as the Court thinks fit.
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> Explanation. - In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the Court under sub-section (3) of section II and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court."

By sub-ss. (1) and (2) of the second section, which dealt with the extent of the application of the Act, it was provided that Parts I and IV of the Act shall extend to the pre-Reorganisation State of Bombay, excluding transferred territories, and Parts II and III shall extend respectively to the areas specified in Schs. I and II to the Act, and shall continue to extend to any such area, notwithstanding that the area ceased to be of the description therein specified. By sub-s. (3), the State Government was authorised, by notification in the Official Gazette, to extend to any other area, any or all the provisions of Part II or Part III or of both. It would appear from this that Parts I and IV came into operation throughout the territories of the pre-Reorganisation State of Bombay. Part II came to be extended to this area by the notification, and after that extension, Parts I, II and IV of the Act began to apply, while the suit was pending. We are not concerned in this appeal with Parts III.

The contention on behalf of the appellants is that by the latter part of the proviso to s. 50, relevant portions of which have been quoted earlier, all the provisions of Part II were extended to this area, and that all pending suits and proceedings were governed, no matter when filed. The notification extending Part II of the Act to this area had, it is contended, also the same effect independently of the first proviso to s. 50. It is contended, therefore, that sub-s. (1) of s. 12, which prohibits a landlord from recovering possession of any premises so long as the tenant pays or is ready and willing to pay the amount of the standard rent and permitted increases, if any, and is also observing the other conditions of the tenancy in so far as they are not inconstant with the provisions of the Act, applies to the present case and the tenants are protected. It is also contended that if the first proviso to s. 50 was limited to such suits only as were pending on the date of the passing of the Act, s. 12(1), on its own terms, is applicable to the present case, and being retrospective in character, leads to the same result. These two contentions were apparently raised in the Court of the Civil Judge and before the High Court. The High Court, however, ruled that s. 12 was prospective in character and did not apply to pending suits or proceedings.

It is contended by the learned Attorney-General what the construction placed by the High Court upon the first proviso to s. 50 is erroneous. Though he concedes that the proviso must be read as qualifying what the substantive part of s. 50 enacts, he urges that the proviso goes beyond that purpose and enacts a substantive law of its own. He relies upon the following observations of Lord Loreburn, L.C., in Rhondda Urban Council v. Taff Vale Railway [[1909] A.C. 253, 258], where a proviso to s. 51 of the Railway Clauses Consolidation Act, 1845, was under consideration :

> "It is true that s. 51 is framed as a proviso upon preceding sections. But it is also true that the latter half of it, though in form a proviso, is in substance a fresh enactment, adding to and not merely qualifying that which goes before.",

and contends that the latter portion of the proviso, in question, being a substantive enactment, comprehends not only those suits which were pending on the date of repeal but also those cases,

which came within the language of the latter part of the proviso, whenever the Act was extended to new areas. On behalf of the landlord, the learned Solicitor-General argues that the proviso should be read as a proviso only to the substantive enactment, and must be taken to qualify the substantive portion of s. 50 only to the extent to which it makes an exception to the repeal and but for the proviso would be governed by the repealed Acts. He relies upon Craies on Statute Law, 5th Edn., pp. 201-202, where the following passage occurs :

> "The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it; and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect."

He also relies upon the following observations of Lush, J., in Mullins v. Treasurer of Surrey [(1880) 5 Q.B.D. 170, 173] :

> "When one finds a proviso to a section, the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso."

The law with regard to provisos is well-settled and well-understood. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule. But, provisos are often added not as exceptions or qualifications to the main enactment but as savings clauses, in which cases they will not be construed as controlled by the section. The proviso which has been added to s. 50 of the Act deals with the effect of repeal. The substantive part of the section repealed two Acts which were in force in the State of Bombay. If nothing more had been said, s. 7 of the Bombay General Clauses Act would have applied, and all pending suits and proceedings would have continued under the old law, as if the repealing Act had not been passed. The effect of the proviso was to take the matter out of s. 7 of the Bombay General Clauses Act and to provide for a special saving. It cannot be used to decide whether s. 12 of the Act is retrospective. It was observed by Wood, V.C., in Fitzgerald v. Champneys [(1861) 2 J. & H. 31 : 70 E.R. 958] that saving clauses are seldom used to construe Acts. These clauses are introduced into Acts which repeal others, to safeguard rights which, but for the savings, would be lost. The proviso here saves pending suits and proceedings, and further enacts that suits and proceedings then pending are to be transferred to the courts designated in the Act and are to continue under the Act and any or all the provisions of the Act are to apply to them. The learned Solicitor-General contends that the savings clause enacted by the proviso, even if treated as substantive law, must be taken to apply only to suits and proceedings pending at the time of the repeal which, but for the proviso, would be governed by the Act repealed. According to the learned Attorney-General, the effect of the savings is much wider, and it applies to such cases as come within the words of the proviso, whenever the Act is extended to new areas.

These arguments are interesting, and much can be sides on both sides, particularly as the Legislature has by a subsequent amendment changed the proviso. But, in our opinion, they need not be considered in this case, in view of what we have decided on the second point.

The second contention urged by the learned Attorney-General that s. 12(1) applied from the date on which the Act was extended to the area in question is, in our opinion, sound. Section 12(1) enacts a rule of decision, and it says that a landlord is not entitled to possession if the tenant pays or shows

his readiness and willingness to pay the standard rent and to observe the other conditions of the tenancy. The word "tenant" is defined in the Act to include not only a tenant, whose tenancy subsists but also any person remaining, after the determination of the lease, in possession with or without the assent of the landlord. The present appellants, as statutory tenants, were within the rule enacted by s. 12(1) and entitled to its protection, if the sub-section could be held applicable to this suit.

Both the Bombay High Court and this Court had, on the previous occasions, observed that s. 12 of the Act was prospective. In those cases, the learned Judges were concerned with the interpretation of sub-ss. (2) and (3) only, which, as the words of those sub-sections then existing show, were clearly prospective, and were applicable to suits to be instituted after the coming into force of the Act. But a section may be prospective in some parts and retrospective in other parts. While it is the ordinary rule that substantive rights should not be held to be taken away except by express provision or clear implication, many Acts, though prospective in form, have been given retrospective operation, if the intention of the legislature is apparent. This is more so, when Acts are passed to protect the public against some evil or abuse. (See Craies on Statute Law, 5th Edn., p. 365). The sub-section says that a landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or is ready and willing to pay the standard rent etc., and observes and performs the other conditions of the tenancy. In other words, no decree can be passed granting possession to the landlord, if the tenant fulfils the conditions above mentioned. The Explanation to s. 12 makes it clear that the tenant in case of a dispute may make an application to the court under sub-s. (3) of s. 11 for fixation of a standard rent and may thereafter pay or tender the amount of rent or permitted increases specified in the order to be made by the Court. The tenants, in the present case, have expressed their readiness and willingness to pay, and it is clear that they fulfil the requirements of sub-s. (1) of s. 12, and the landlord is, therefore, not entitled to the relief of possession.

Both the High Court as well as this Court in their previous decisions, referred to above, were not called upon to interpret sub-s. (1) of the Act. They were dealing with appeals arising out of decrees already passed. The observations that s. 12 was prospective were made with reference to sub-ss. (2) and (3) and not with respect to sub-s. (1), which did not even find a mention in those judgments. The question then was whether s. 12 by itself or read with the proviso to s. 50 was applicable retrospectively to appeals. That is not the question which has arisen here. Then again, s. 12(1) enacts that the landlord shall not be entitled to recover possession, not "not suit shall be instituted by the landlord to recover possession". The point of time when the sub-section will operate is when the decree for recovery of possession would have to be passed. Thus, the language of the sub-section applies equally to suits pending when Part II comes into force and those to be filed subsequently. The contention of the respondent that the operation of s. 12(1) is limited to suits filed after the Act comes into force in a particular area cannot be accepted. The conclusion must follow that the present suit cannot be decree in favour of the respondent. The decisions of the High Court and the Court of First Instance are thus erroneous, and must be set aside.

In the result, the appeal is allowed, and the two preliminary Issues are answered in favour of the appellants. Under the orders of this Court, the judgment of the Civil Judge was stayed. The suit will now be decided in conformity with our judgment. The respondent shall pay the costs of this Court and of the High Court.

Appeal allowed.

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