

Hari Narain

Vs

Badri Das

Civil Appeal No. 14 of 1963

(P. B. Gajendragadkar, M. Hidayatullah, J. C. Shah JJ)

04.03.1963

JUDGMENT

GAJENDRAGADKAR J. -

It is not necessary to deal with the merits of the points which the appellant wanted to raise before us in this appeal, because we are satisfied that the respondent's prayer that the special leave granted to the appellant should be revoked, is well-founded. The appellant is a tenant of the premises in suit which are owned by the respondent. These premises were let out to the appellant by the respondent under a rent-note executed on December 8, 1953. The appellant was permitted to use the said premises for his Oil Mill. The terms of the lease provided that the appellant was to pay to the respondent the agreed rent every month and in case of default for three months, the respondent was entitled to evict the appellant before the expiry of the stipulated period which was five years, and in that case he was entitled also to claim the rent for the remaining period.

On May 2, 1959, the respondent sued the appellant for ejectment in the Court of Munsif, East Jaipur City. He alleged that he had received the rent from the appellant up to October 31, 1957 and that thereafter the appellant had defaulted in the payment of rent in spite of repeated demands, and that even at the date of the suit he was in arrears of rent and had failed to pay the house tax according to the agreement. His case was that the appellant's tenancy had expired on December 1, 1958 by efflux of time, but the appellant nevertheless failed to deliver over possession of the premises to the respondent. He, however, purported to deposit a lump sum of Rs. 1053/- to cover the period from November 1, 1957 to November 30, 1958 which was due from him. The respondent pleaded that the appellant had committed more than three defaults in the payment of rent of two months each during the period of 18 months and that even at the date of the suit, the rent or mesne profits for 5 months and 2 days still remained to be paid. That is the basis on which a decree for ejectment was claimed by the respondent against the appellant.

The appellant denied the respondent's claim and alleged that the respondent was not entitled to claim ejectment against him by virtue of the provisions of section 13(1)(a) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (Act XVII of 1950) (hereinafter called the Act). He also pleaded that by virtue of the fact that the respondent had accepted rent paid by the appellant, he had waived his right to evict him. In other words, he denied that there was any default, and resisted the respondent's prayer for his ejectment. At the date of the first hearing of the suit in the trial Court, the appellant deposited Rs. 648/- on account of rent due up to the said date and the said payment was accepted by the respondent without prejudice.

On these pleadings, the learned trial Judge framed four issues, the principal issue being whether the

appellant had committed three defaults of two months within the period of 18 months in the payment of rent ? The finding of the trial Court on the said issue as well as on the other issues framed by it was in favour of the appellant. In the result, the respondent's suit was dismissed.

The respondent then preferred an appeal in the Court of the Additional Sessions Judge, Jaipur City. The appellate Court held that on the facts proved by the respondent, the three defaults had been committed by the appellant, and so, he was entitled to a decree for ejectment. On these findings, the decree passed by the trial Court was set aside and the respondent's claim for ejectment was allowed.

The appellant challenged this decision by preferring a second appeal before the Rajasthan High Court. This appeal was heard by a learned single Judge of the said High Court and was dismissed. The appellant's request for leave to prefer an appeal under Letters Patent was rejected by the learned Judge. It is against the decision of the learned single Judge in second appeal that the appellant applied for and obtained special leave to appeal to this Court.

The main point which the appellant wanted to urge before this Court was in regard to the construction of section 13(1)(a) of the Act read with section 13(4), but as we have already indicated, we do not reach the stage of dealing with the merits of this point, because we are satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from this Court on the strength of what he characterises as misrepresentations of facts contained in the petition for special leave. In the said petition, the appellant has taken six grounds of appeal against the decision of the High Court. The last ground is that the respondent had claimed eviction in the trial Court on the basis of alleged non-payment and non-tender of payment of rent from December 2, 1958, but the First Appellate Court and the High Court set up a new case for the landlord by taking into consideration the alleged defaults prior to December 2, 1958 and not relied upon by the landlord himself. This ground was presumably taken in support of the main argument that the High Court had not correctly interpreted the provisions of section 13(1)(a) of the Act. The respondent contends that this is a complete mis-statement of the true position and in support of his argument he has referred us to paragraph 3 in the plaint. It appears that the rent due from the appellant for the period between November 1, 1957 to November 30, 1958, which had fallen in default was deposited by him by cheque on December 2, 1958. Paragraph 3 of the plaint specifically refers to these defaults and in fact, takes into account the said defaults for the purpose of setting up the respondent's case that the appellant had committed more than three defaults in the payment of rent of two months each during the period of 18 months. Therefore, there is no doubt that the unambiguous and categorical statement made in the last ground of the appellant's petition for special leave is wholly untrue.

Similarly, it appears that in another ground taken in the special leave petition, the appellant has made an equally inaccurate statement. In this ground the appellant represented that by reason of the payments made by him towards rent due from him to the respondent he had become a statutory tenant and "admittedly did not make any default after December 1, 1958." The statement must be read along with and in the light of the material averments contained in paragraph 6 of the petition where the appellant has stated that on the first hearing he deposited Rs. 648/- on account of rent due up to that date and the respondent accepted it. Both these statements omit to refer to the material fact that the deposit made in Court was accepted by the respondent without prejudice, and so, the statement in the ground that the appellant admittedly did not make any default after December 1, 1958, is equally untrue. Mr. Pathak for the respondent urges that in view of these serious mis-statements contained in the petition for special leave, his client is justified in assuming that special

leave may have been granted to the appellant as a result of the agreements urged by him on the strength of these mis-statements, and so, he has pressed his petition that the special leave granted to the appellant should be revoked.

On the other hand, Mr. Setalvad contended that he had appeared at the time when special leave was granted and to the best of his recollection he had not referred to these grounds, but had merely urged his contention that the High Court had mis-construed s. 13(1)(a) of the Act. We have no hesitation in accepting Mr. Setalvad's statement; but, in our opinion, in dealing with the respondent's prayer that special leave granted to the appellant should be revoked, what was actually urged before the Court cannot be decisive of the matter and may not even be very material. It is true that in the present case, special leave was granted on September 26, 1962 and it is possible for Mr. Setalvad to recall what he argued before the Court when special leave was granted. But it is necessary to bear in mind that the appeal may come on for hearing long after special leave is granted, that counsel appearing at the stage of admission may not be same as at the stage of final hearing, and the Bench that granted special leave may not necessarily deal with the appeal at the final stage. Therefore, it is no answer to the respondent's contention that though the material statements in the special leave petition may be substantially inaccurate, though not wholly untrue, those statements may not have influenced the Court in granting special leave. Mr. Setalvad has also invited our attention to the fact that the impugned statements and grounds are substantially copied from the averments made in the appeal before the High Court. That may be so, but the fact still remains that two important statements which, if true, may have been of considerable assistance to the appellant in invoking the protection of s. 13(1)(a) even on the construction placed by the High Court on that section are found to be untrue, and that, in our opinion, is a very serious infirmity in the petition itself. It is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and mis-leading. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked. Accordingly, special leave revoked and the appeal is dismissed. The appellant will pay the costs of the respondent.

Mr. Setalvad requested us to give the appellant some time to vacate the premises. He invited our attention to the fact that the appellant has invested large amounts in setting up machinery of the Oil Mill which he is running in the premises in question. Mr. Andley for the respondent has fairly conceded that on condition that the appellant unconditionally undertakes to deliver possession of the premises to the respondent within six months from the date of this judgment he would not execute the decree for ejection. Mr. Setalvad offered an unconditional undertaking on behalf of the appellant as suggested by Mr. Andley. We accordingly direct that on the appellant's undertaking, the respondent should not execute the decree for six months from today.

Special leave revoked.

Appeal dismissed.

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