

Rajabhai Abdul Rehman Munshi

Vs

Vasudev Dhanjibhai Mody

Civil Appeal No. 692 of 1962

(A. K. Sarkar, M. Hidayatullah, J. C. Shah JJ)

01.05. 1963

JUDGMENT

SHAH. J. –

For reasons which we will presently set out, special leave to appeal against the judgment of the High Court of Bombay granted by this Court must be vacated because it had been procured by the appellants without disclosing all the material facts.

Rajabhai Munshi who will hereinafter be referred to as 'the defendant' is since 1935 a tenant of Vasudev Mody - hereinafter called 'the plaintiff' - in respect of a piece of land situate in the town of Ahmedabad. The rent of the land as originally stipulated was Rs. 411/- per annum, and it was by mutual agreement enhanced to Rs. 851/- per annum in 1948. The plaintiff filed suit No. 2014 of 1952 against the defendant in the Court of Small Causes exercising jurisdiction under s. 28 of the Bombay Rents and Lodging House Rates (Control) Act, 1947 (Act 57 of 1947) for an order in ejectment against the defendant on the plea amongst others that the latter had made default in payment of rent due by him. The defendant contended inter alia that the rent stipulated was in excess of the standard rent payable by him. The Trial Court assessed the standard rent payable by the defendant at Rs. 446/- per annum and holding that the defendant had not made default in paying rent, dismissed the plaintiff's suit. Against that decree the plaintiff preferred Appeal No. 450 of 1953 to the District Court at Ahmedabad. On October 1, 1954 the defendant deposited in the District Court Rs. 400/- to the credit of the plaintiff. The appeal instituted by the plaintiff was not prosecuted, and the amount of Rs. 400/- deposited to the credit of the plaintiff remained deposited in Court.

The plaintiff commenced another action (Suit No. 3434 of 1955) against the defendant on the plea that the defendant had committed fresh defaults in Payment of rent. The defendant deposited in Court from time to time between November 22, 1955 and January 16, 1957 Rs. 2,126/8/- towards rent due by him and costs of the suit. The learned Trial Judge by this order dated February 26, 1957 held that taking into account Rs. 400/- lying to the credit of the plaintiff in Appeal No. 450 of 1953 the defendant had deposited in Court Rs. 2,526/8/-, and that amount was sufficient to satisfy the arrears of rent due by the defendant and also the costs of the suit, and therefore no decree in ejectment could, in view of s. 12(3)(b) of Bombay Act 57 of 1947 be granted.

In appeal the Extra Assistant Judge, Ahmedabad, reversed the decree of the Trial Court. In his view the defendant had failed to deposit the full amount of rent due and costs of the suit as required by s. 12(3)(b) and therefore a decree in ejectment must issue against the defendant. In making up the account of the rent due by the defendant, the learned Judge excluded the amount of Rs. 400/-

deposited in Appeal No. 450 of 1953 on October 1, 1954, because the defendant had withdrawn that amount before the suit was disposed of by the Trial Court. Against the decree in ejectment the defendant invoked the revisional jurisdiction of the High Court of Judicature at Bombay. Before the High Court, the advocate for the defendant contended that there was no evidence in support of the finding of the appellate Court that the amount of Rs. 400/- deposited by the defendant in Appeal No. 450 of 1953 stood withdrawn by the defendant. The High Court upheld the contention but proceeded to dismiss the petition filed by the defendant because the case did not fall strictly within s. 12(3)(b) of Bombay Act 57 of 1947 and the Court had jurisdiction, having regard to the circumstances and the conduct of the tenant, to refuse relief to him, and that the record showed that the defendant had by his conduct disentitled himself to discretionary relief. Against the order passed by the High Court, a petition for special leave to appeal to this Court was granted.

Section 12(1) of Act 57 of 1947 provides :

"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;"

and sub-s. (3) cl. (b) provides that :

"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."

It is common ground that the claim made by the plaintiff falls within the description "In any other case". The High Court assumed that even if the tenant has not paid into court the standard rent and permitted increases due on the first day of hearing of the suit, the Court may still in the exercise of its discretion refuse a decree to the landlord in ejectment, provided all the arrears of rent and costs of the suit are paid into Court by the tenant at any time before the suit is disposed of. The assumption so made at once raised a question of some nicety as to the true interpretation of s. 12(3)(b). This question may however fall to be determined only if the conclusion of the High Court that the defendant had deposited the rent due and the costs of the suit before the date of the decree passed in the Trial Court be correct. The Appellate Court had recorded that the rent due and costs of the suit were not deposited by the defendant, and therefore the defendant could not be relieved against the consequences of his default. In taking account of the amounts deposited the learned Judge excluded the amount of Rs. 400/- deposited in Appeal No. 450 of 1953 which had been withdrawn by the defendant on January 19, 1957. It is common ground before us, that Rs. 400/- deposited by the defendant in Appeal No. 450 of 1953 had in fact been withdrawn by him before the date of decree of the Trial Court. Counsel for the defendant admits that fact, and it is supported by a certified extract from the file of the District Court. At the hearing before the High Court, the advocate for the defendant pleaded that the finding of the Extra Assistant Judge that the amount of Rs. 400/- was withdrawn before the decree of the Trial Court was not supported by evidence. We are prepared to hold that the advocate was not instructed about the withdrawal of the amount, and no attempt was made by him to mislead the Court, and no blame need attach in this matter to the advocate in that behalf. But the defendant was guilty of withholding information from the Court as

well as his advocate.

In the petition for special leave, which is sworn by the defendant a deliberate attempt has been made not merely to withhold from the Court the information that the amount of Rs. 400/- originally deposited by the defendant was withdrawn by him, but sedulously attempt is made to create an impression that the finding of the High Court concerning the withdrawal was correct, and of the Extra Assistant Judge wrong, and to argue that because of the amounts deposited by him inclusive of Rs. 400/-, the defendant was entitled to the protection of sub-ss. (1) & (3)(b) of s. 12. A bare perusal of paragraphs 14, 19, 20, 23 and 25 of the petition for special leave, leaves no room for doubt that this was the object of the defendant. It was submitted in the petition that the defendant's case fell strictly within the terms of s. 12(3)(b) and that the High Court was in error in holding that it had any discretion to refuse relief to the defendant, after the defendant complied with the terms of that sub-section in the matter of deposit. The petition was sworn by the defendant. He has affirmed that the facts stated in paragraphs 1 to 32 were true to his own knowledge and the submissions made therein were believed by him to be true, and that the petition concealed nothing nor was any part of it false or untrue. He also affirmed in his affidavit, that he had "instructed counsel in the Courts below and that" he was "instructing counsel in this Court in respect of the special leave petition". The finding of the High Court, on a question of fact which to the knowledge of the defendant was erroneous, was made the foundation of what was asserted to be a substantial question of law of general or public importance. If the High Court was not persuaded to take the view which it did in the matter of the deposit of Rs. 400/- no further question would have survived; at least none such appears to have been argued.

Counsel for the plaintiff has urged that this Court would not have granted special leave to appeal if the defendant had informed the Court that the amount of Rs. 400/- which was represented to be lying to the credit of the plaintiff was not in fact available at the date of the decree in the Trial Court, because the question as to the interpretation of s. 12(3)(b) would not on the true facts fall to be determined, and special leave should be revoked because it has been procured by deliberately misleading the Court on a matter of importance.

There is a restricted right of appeal to this Court conferred by the Constitution upon litigants in civil cases. Where the amount or value of the subject-matter in dispute in the Court of the First Instance and in appeal to this Court is not less than Rs. 20,000/-, or where the judgment, decree or final order involves directly or indirectly some claim or question respecting property of like amount or value, and the judgment, decree or final order made by a Division Bench of the High Court does not affirm the judgment of the court immediately below, the party aggrieved is entitled as of right to appeal. An appeal may also lie in civil disputes with certificate by the High Court under Art. 133(1)(c) that the case is a fit one for appeal, or with special leave under Art. 136 of the Constitution. The High Court has not granted certificate under Art. 133(1)(c) as it could not in view of the Constitutional prohibition in cl. (3) of Art. 133. Exercise of the jurisdiction of the Court under Art. 136 of the Constitution is discretionary; it is exercised sparingly and in exceptional cases, when a substantial question of law falls to be determined or where it appears to the Court that interference by this Court is necessary to remedy serious injustice. A party who approaches this Court invoking the exercise of this overriding discretion of the Court must come with clean hands. If there appears on his part any attempt to overreach or mislead the Court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of the discretion, the Court would be justified in refusing to exercise the discretion or if the discretion has been exercised in revoking the leave to appeal granted even at the time of hearing of the appeal. In *Har Narain v. Badri Das* ([1964] 2 S.C.R. 203.), Gajendragadkar J. speaking for the Court observed

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"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 that case the Court revoked the leave granted because the appellant had made certain inaccurate and misleading statements in his petition for leave to appeal to this Court. Those statements were, in the view of the Court, misrepresentations of fact and the Court being satisfied that the appellant had deliberately made those misleading and untrue statements revoked the leave. In another case which was brought to this Court with special leave *S. R. Shetty v. Phirozeshah Nursservanji Colabawalla* (C.A. No. 155 of 1963 decided on April 5, 1963.), an attempt was made by the appellant in the petition for special leave to value the property in dispute at more than Rs. 20,000/- when in fact he had valued the same property in another litigation at Rs. 500/-. The Court in revoking the leave observed :

"The appellant deliberately chose to inflate the valuation of the property so as to obtain the special leave. We have no doubt that if this Court had been apprised of the true valuation, which according to the appellant himself was only Rs. 500/-, this Court would not have granted the special leave. We cannot, therefore, condone this deliberate attempt to mislead the Court in respect of a very material question, namely, the value of the property in dispute."

Counsel for the defendant has conceded that the amount of Rs. 400/- which was deposited on October 1, 1954 had been withdrawn by the defendant before the date of judgment in the Trial Court. He, however, contended that the defendant had not instructed his advocate in the High Court to raise the contention about the availability of Rs. 400/- to the plaintiff, which met with the approval of the High Court and the contention was raised by the advocate on his own initiative. Counsel further submitted that a party applying to this Court for special leave is entitled to restrict himself to what appears on the record and in the present case the defendant has correctly set out the finding of the High Court and has founded an argument on that finding. Implicit in the submission of counsel for the defendant is the suggestion that it is open to a party to mislead the High Court or the subordinate Court and thereafter approach this Court after withholding material information within his knowledge which would have seriously affected his right to move this Court, for the exercise of discretion in his favour. We cannot over-emphasize the fact that the jurisdiction of this Court is discretionary. This Court is not bound to grant special leave merely because it is asked for. A party who approaches the Court knowing or having reason to believe that if the true facts were brought to its notice this Court would not grant special leave, withholds that information and persuades this Court to grant leave to appeal is guilty of conduct forfeiting all claims to the exercise of discretion in his favour. It is his duty to state facts which may reasonably have a bearing on the exercise of the discretionary powers of this Court. Any attempt to withhold material information would result in revocation of the order, obtained from this Court. We are unable to agree with counsel for the defendant that the duty of an applicant for special leave to this Court is discharged when he merely summarises the judgment of the Courts below and claims relief on the footing that the findings are correct, when to his knowledge the findings cannot be sustained and the findings have been so recorded because the Courts below have been misled on account of representations for the making of which he was either directly or indirectly responsible. In our judgment the petition filed before this Court was misleading.

Counsel for the defendant also submitted that he was prepared to argue the appeal on the footing that the High Court was in error in reversing the judgment of the District Court on the question about the withdrawal of Rs. 400/-. If, however, the defendant has by misleading the Court obtained an order granting special leave and has under the protection of that order remained in possession of the property in dispute for a period of three years, it would be putting a premium upon the unfair conduct of the defendant to permit him to argue the appeal on some footing other than that on which the case was argued in the High Court, and to argue which presumably no special leave would have been granted.

Special leave to appeal is therefore revoked. The appellant will pay costs of the appeal to the respondent.

HIDAYATULLAH J. –

I agree that we should recall the special leave. As this is the second case in a few days, I wish to say a few words. The appellant before us is the tenant and the respondent is the landlord. One of the questions in the case was whether the tenant was in default of rent and revenue tax specially payable by him. It appears that litigation between the parties has been going on for years. The landlord was forced to file suits for ejectment on the ground that the tenant had not paid the rent. The tenant also never paid rent except in court. In the earlier rounds, the tenant has succeeded by making deposits of rent and costs at the last moment, thus, taking advantage of the Bombay Act LVII of 1947.

It appears that one such suit of the landlord was No. 2014 of 1952. During the appeal arising from the decree in that suit, the tenant had deposited on October 1, 1954, a sum of Rs. 400/- in the appeal court and had sent a notice to the landlord about this deposit. This deposit lay in court till January 19, 1957, when it was withdrawn. The last date is important.

The present suit was filed on September 8, 1955, for eviction of the tenant on the ground that he was in arrears from June 9, 1953. On January 10, 1957, the tenant deposed about the deposit and questioned the landlord about the notice, but before the case was over, he withdrew the deposit. The learned Judge, Small Causes Court, Ahmedabad, held the point of sub-letting against the landlord, and holding further that the deposit of Rs. 2126/8/- made by the tenant in his court was sufficient to cover the arrears, and that taken with the deposit of Rs. 400/-, the amount came to Rs. 2516/8/- dismissed the suit. This was on February 26, 1957.

In the appeal filed by the landlord, the accounts between 9-6-1953 and 26-2-1957 were recast. It seems that it was pointed out to the appeal court that the tenant had withdrawn the deposit of Rs. 400/-. The judgment took this fact into consideration and held the tenant to be in arrears and ordered his eviction. The tenant filed a revision application in the High Court and claimed that as the amount of Rs. 400/- was in deposit and at the landlord's disposal, he could not be held to be in default. His counsel made the point that there was nothing on the record to prove that the amount was withdrawn. The High Court held that this was so but held that it had a discretion in the matter and the tenant by his conduct over the years had deprived himself of any consideration. The application for revision was dismissed.

In applying for special leave against the order of the High Court, the tenant quoted a long extract from the judgment of the High Court where it spoke of this deposit, and then went on to say :

"The petitioner submits that the High Court was correct in coming to the conclusion

that as there was nothing on record to show that the petitioner had withdrawn the sum of Rs. 400/- deposited by him in the earlier appeal, the petitioner was not in arrears of rent and had paid the costs at the date of the judgment."

This allegation was supported by the usual affidavit which stated that the facts in the petition were true and that the petition concealed nothing. Strictly speaking, the facts were as they were pleaded in the petition, but there was more. There was one fact particularly within the knowledge of the tenant and it was that he had withdrawn the amount on January 19, 1957, and he was in default even before the judgment of the court of first instance was given on February 26, 1957. This fact was, however, not proved on the record of the case. It was, however, mentioned in the judgment of the appeal court. In the petition for special leave, no reference to this fact was made. Whether the High Court was right in a case of this kind to go by the record, or in view of what the appeal court below had said, might have called for an affidavit, it is not necessary to decide and I express no opinion about it. It is, however, a very different matter when we come to proceedings in this Court. The tenant was seeking special leave against the order of the High Court. At the forefront of this petition, he had mentioned the fact that the High Court having held that there was no proof of the withdrawal of the amount by the tenant or that the petitioner was in arrears, should have exercised the discretion, which the High Court held was possessed by it, in his favour.

The tenant hid the fact that even before the decision in the court of first instance, he was in arrears as he had withdrawn the amount of Rs. 400/-. He was thus taking advantage of a fictional deposit in court which in point of fact was not in existence. Whatever may be said about the ordinary course of litigation in which parties succeed or fail on the sufficiency or otherwise of proof on the record, it appears to me that when a party approaches this Court under Art. 136, there must be full candour on his part. The powers exercisable by this Court under Art. 136 of the Constitution are not in the nature of a general appeal. They enable this Court to interfere in cases where an irreparable injury has been caused by reason of a miscarriage of justice due to a gross neglect of law or procedure or otherwise and there is no other adequate remedy. The article is hardly meant to afford relief in a case of this type where a party is in default of rent because he withdrew a deposit lying in court but who cannot, on the record of the case, be shown to have withdrawn the amount. If the petition had mentioned that the decision of the appeal court had proceeded on the ground that the amount was taken out, it is difficult to imagine that this Court would have given special leave to decide a question of discretion.

I have considered the matter carefully. This is not a case of a mere error in the narration of facts or of a bona fide error of judgment which in certain circumstances may be considered to be venial faults. This is a case of being disingenuous with the Court by making out a point of law on a suppositious state of facts, which facts, if told candidly, leave no room for the discussion of law. The appellant has by dissembling in this Court induced it to grant special leave in a case which did not merit it. I agree, therefore, that this leave should be recalled and the appellant, made to pay the costs of this appeal.

Special Leave revoked.

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