SUPREME COURT OF INDIA

V. K. Verma

Vs.

Radhey Shyam

C.A.No.1037 of 1963

(P. B. Gajendragadkar, K. C. Das Gupta and N. Rajagopala Ayyangar, JJ.)

17.12.1963

JUDGEMENT

DAS GUPTA, J.:

1. In a suit for ejectment instituted on September 8, 1958 the plaintiff who is the respondent before us now made an application under S. 13(5) of the Delhi and Ajmer Rent Control Act. 1952 (Act No. XXXVIII of 1952). He prayed for an order to be made on defendant - tenant to deposit all the arrears of rent and future monthly rent in accordance with law by the 15th of the following month. The arrears of rent were claimed to be Rs. 722/7/- upto the 30th June 1960. The original rent was stated to be Rs. 64/8/- and with effect from August 1, 1959 the rent was claimed at Rs. 70.95 np.

2. This application was resisted by the tenant who in his reply dated August 1, 1960 stated that the rate of rent had continued to be at Rs. 64-8-0 and only Rs. 516/- was due at the rate of Rs. 64/8/- as arrears upto June 30, 1960. He added that he was prepared to deposit it.

3. The Subordinate Judge 1st Class, Delhi, passed orders on the application on August 1, 1960. The relevant portion of the order ran thus :

"As regards the application under S. 13(5) of the Rent Control Act the defendant has no objection to deposit the arrears of rent and future rent month by month at the rate of Rs. 64/8/- per month. It is clear that under S. 13(5) an order can only be passed at the rate at which the rent was being last paid and no increase can be taken into consideration. I order accordingly."

4. On December 13, 1960 the plaintiff applied to the Sub-Judge stating that the defendants had defaulted in the deposit of rent for the month of September 1960 which was due to be deposited by the 15th October 1960 and also rent for the month of October 1960 which was to be deposited by the15th November, 1960. He prayed that the defence of the defendant against ejectment should therefore be struck out.

5. Contesting this application the defendant pleaded that no valid order has been made under S. 13 (5) and in any case no default had been made by him.

6. The learned Subordinate Judge rejected both these pleas and had held that there had been default in complying with the order made under S. 13 (5) and ordered the defence to be struck off.

7. Against this order the tenant appealed. The Court of Appeal (the Senior Sub-Judge, Delhi) agreed

with the Trial Judge that a valid order had been made under S. 13(5) and that the tenant had defaulted in making payments in accordance with the order. The Court also rejected the tenant's contention that the Trial Judge had a discretion in the matter and should have exercised that discretion in favour of the tenant by extending the time for payment of the rent. Relying on a decision of the Punjab High Court in Kanahiya Lal Balkishan Das v. Om Prakash Sharma. Civil Revn. No. 583 of 1958 D/- 23-10-1962 (Punj) the learned Senior Sub-Judge held that the Court could not in any circumstances extend the time for payment fixed in the order under S. 13(5) and could not condone the default. On this view he dismissed the appeal.

8. The tenant then approached the High Court of Punjab with a petition under S. 35 of the Delhi and Ajmer Rent Control Act. 1952. One of the grounds taken before the High Court was that the appellate court had ignored S. 57 of the Act of 1958. The High Court however dismissed the application summarily.

9. The present appeal has been filed against the High Court's order, after obtaining special leave of this Court.

10. The main contention urged in support of the appeal is that if the appellate court had take into consideration S. 57, of the 1958 Act it might have rejected the plaintiff's prayer for striking out the defences. Section 57 of the 1958 Act provides in its second sub-section that in spite of the repeal of 1952 Act all suits and proceedings pending under that Act would be disposed of in accordance with its own provisions but subject to the proviso that "in any such suit or proceeding for fixation of standard rent or for the eviction of a tenant from any premises to which S. 54 does not apply, the Court or other authority shall have regard to the provisions of the 1958 Act." The true scope and effect of this provision in S. 57 of the 1958 Act had to be considered by this Court in Karam Singh Sobti v. Pratap Chand, C. A. No. 392 of 1963 D/- 29-8-1963 : (AIR 1964 SC 1305). It was held by a majority of the Court that the only way of harmonising the substantive provisions in the section with the proviso is to accept the view that the words "shall have regard to the provisions of this Act" merely mean that "where the new Act has slightly modified or clarified the previous provisions, those modifications and clarifications should be applied."

11. To apply the principle laid down in Sobti's case, C. A. No. 392 of 1963 D/- 29-8-1963 : (AIR 1964 SC 1305) is necessary now to compare the provisions of S. 13 (5) of the old Act with those in S. 15 sub-ss. 1 to 7 of the new Act. It appears clear to us on such comparison that the provisions are substantially similar with only slight modifications. One modification is that while under S. 13(5) the application by the landlord had to be "for an order on the tenant-defendant to deposit month by month rent at a rate at which it was last paid" in all suits for ejectments S. 15 of the new Act makes a distinction between cases where the recovery of possession is sought on the ground of arrears of rent having been left unpaid within two months of the service of notice of demand and other ejectment proceedings. In the first class of cases the Controller can make an order for payment of rent at the rate at which it was last paid while in the other class of cases the Controller may make an order for payment at the rate at which it was legally recoverable. The other notable difference is that under S. 13 (5) of the old Act failure of the tenant to deposit the arrears of rent within 15 days of the date of the order or to deposit the rent for any month by the 15th of the next following month, made it incumbent on the Court to strike out the defence against ejectment. The language was that on the failure of the tenant to do these things "the Court shall order the defence against ejectment to be struck out." In the new Act S. 15(7) deals with this matter of failure of the tenant to make the payment or deposit as required by the Act and runs thus :-

"If a tenant fails to make payment or deposit as required by this section the Controller may order the defence against eviction to be struck out and proceed with the hearing of the application."

12. The change of the words from "The Court shall order the defence against ejectment to be struck out" to the words "the Controller may order the defence against eviction to be struck out" is clearly a deliberate modification in law in favour of the tenant. Under the old Act the Court had no option but to strike out the defence if the failure to pay or deposit the rent is proved; under the new Act the Controller who takes the place of the Court has a discretion in the matter, so that in proper cases he may refuse to strike out the defence.

13. On this comparison of the provision of S. 13(5) of the old Act with those in Section 15 of the new Act we have no doubt that this is a case of slight modification by the new Act of the previous provisions in the same matter and so on the authority in the decision in Sobti's case C.A. No. 392 of 1963 D/- 29-8-1963 : (AIR 1964 SC 1305) the provisions as modified by S. 15 (7) have to be applied to the present suit. The result on such application would be that the Court would not be bound to strike out the defence against ejectment but may or may not do so on a consideration of the circumstances.

14. That the Sub-Judge who made the original order or the Senior Sub-Judge, who confirmed it on appeal, did not take the provisions of S. 15(7) into consideration is clear. It is not disputed that though the rents for September 1960 and October 1960 were not paid by the tenant within the time as required by the Court's order they were paid on December 6, 1960. It appears reasonable to think that when the Subordinate Judge was dealing with the landlord's application for striking out the defence against ejectment in June 1962 he would have taken this fact of payment of rent into consideration in exercising his discretion in the matter if he had under S. 57 of the new Act paid regard to the provisions of S. 15(7) of that Act. The Senior Sub-Judge, who heard the appeal, would also have taken this fact of payment of rent in December 1960 into consideration if he had paid due regard to the provisions of S. 15(7) of the new Act, as he was bound to do under S. 57. It was in these circumstances that the tenant made his application to the High Court under S. 35 of the 1952 Act. That Section provides that "the High Court may, at any time, call for the record of any case under this Act for the purpose of satisfying itself that a decision made therein is according to law and may pass such order in relation thereto as it thinks fit."

15. The true scope of S. 35 of the Delhi and Ajmer Rent Control Act, 1952 was considered by this Court in Hari Shankar v. Girdhari Lal Choudhury, 1962 (Supp). 1 SCR 933 : (AIR 1963 SC 698). It appears that in that case the Appeal Court had interfered with a plain finding of fact so that the question of the nature of mistake of law under which the High Court may properly exercise its revisional powers did not strictly arise for consideration. Even so, that question appears to have been argued before the Court and the Court gave its decision. Mr. Justice Hidayatullah speaking for the majority stressed the distinction between appeal and revision and stated that the phrase "according to law" in S. 35 of the Act referred to the decision as a whole and was not to be equated with errors of law or of fact simpliciter. The majority also expressed its concurrence with the observations of Beaumont C. J., in Bell and Co. v. Waman Hemraj, 40 Bom LR 125 : (AIR 1938 Bom 223) with regard to the scope of S. 25 of the Provincial Small Cause Courts Act. These observations seem to suggest that generally speaking it is only where the unsuccessful party had not had a proper trial according to law that a Court could interfere. As instances of this were mentioned cases where the Court which had no jurisdiction or in which the Court had based its decision on evidence which should not have been admitted or cases where the unsuccessful party had not been given a proper opportunity of being heard or the burden of proof had been placed on the wrong

shoulders. It is important to notice however that the learned Chief Justice took care to say that these instances were not intended to exhaust the circumstances which might justify interference.

16. There can be no doubt that the statement of the law in Hari Shankar's case. 1962 (Supp) 1 SCR 933 : (AIR 1963 SC 698) continues to be binding authority so long as it is not replaced by any different statement on a re-consideration of the matter by this Court. We are of opinion however that the present case comes within the scope of S. 35 as indicated in Hari Shankar's case, 1962 (Supp) 1 SCR 933 : (AIR 1963 SC 698). Where the law requires the Court to have regard to certain provisions and the Court does not pay that regard it cannot but be said that the trial has not been according to law. Section 57 of the Act of 1958 made it the duty of the Court to have regard to the provisions of 1958 Act in certain circumstances. Neither the Subordinate Judge, who passed the original order nor the Senior Subordinate Judge, who heard the appeal from it, carried out this statutory duty. This is, therefore, in our opinion, clearly a case in which the trial had not been in accordance with law.

17. Mr. Pathak emphasised that apparently the attention of the Courts had not been drawn to the provisions of S. 57. Even if this be so, this does not alter the position. While it is true to say that Courts dispose of cases on the basis of the submissions made by Counsel, it is not possible to say that the omission of Counsel absolves a Court from the duty of following clear provisions of law. We do not think that the omission of the tenant's Counsel to draw the Court's attention to the provisions of S. 57 can be a reason for the High Court to refuse to interfere. In our opinion, this was a proper case in which the High Court ought to have exercised its power under S. 35 of the 1952 Act and made an order setting aside the order made by the Courts below striking out the tenant's defence against ejectment.

18. Accordingly, we allow the appeal, set aside the order passed by the Courts below and order that the plaintiff's application for striking out the tenant's defence against ejectment be rejected. In the peculiar circumstances of the case we order the parties to bear their own costs. We hope the suit will be dealt with expeditiously by the Act.

Appeal allowed.

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