V. N. Vasudeva

Vs

Seth Kirorimal Luhariwala

Civil Appeal No. 1041 of 1963

(M. Hidayatullah, J. C. Shah JJ)

09.01.1964

JUDGMENT

HIDAYATULLAH J. –

This is an appeal by special leave against the order of the High Court, Punjab, dated August 14, 1963, by which an order of the Rent Controller under s. 15(1) of the Delhi Rent Control Act, 1958, directing the appellant to deposit back rents at Rs. 300 per month from 1st July, 1957, was confirmed. The High Court granted the appellant one month's time from the date of its own order, as the original time had already run out.

The appellant is an advocate, who is practising at Delhi. He is occupying No. 43, Prithvi Raj Road, New Delhi as a tenant, and his landlord Seth Kirori Mal Luhariwala is the respondent in this appeal. The tenancy commenced on July 28, 1957, and the memorandum of tenancy, dated July 1, 1957, produced in the case, shows that the premises were taken on a monthly tent of Rs. 300. The memorandum also contains other terms which need not be mentioned here, because they are not relevant to the present appeal. It appears that Seth Kirori Mal was in arrears in payment of his income-tax, and a sum of Rs. 39,00,000 was outstanding from him. On October 31, 1957, the Income-tax Officer Central Circle, New Delhi, to whom all cases of Seth Kirori Mal were transferred, issued a notice to the appellant under s. 46(5A) of the Indian Income-tax Act directing him to deposit with the Income-tax Officer all sums due by way of rent as also future rents. The appellant sent no reply to this notice. He had, however, on September 29, 1957, addressed a letter to the respondent Seth Kirori Mal. The reply of Kirori Mal, dated October 15, 1957, figured in the arguments a great deal, and as it is brief, it may be quoted here :

#"From.....To.....##

Dated Faigarh, the 15th October. 1957.

Dear Sir,

With reference to letter No. M-17-58, dated 29th September, 1957, I am to write that you may please adjust six months rent of 43, Prithviraj Road, New Delhi, i.e., Rs. 1800 (rent from 1-10-57 to 31-3-1958) towards your professional fee in part payment thereof. The balance of your fee will be paid later at the time of final settlement.

Yours faithfully, (Sd.) Paluram Dhanania, For Kirorimal Luhariwala.##

Kirori Mal also sent a receipt, dated October 16, 1957, for the amount, and is item 23 in the record.

Kirori Mal had litigation in Calcutta. He had brought a suit against four defendants, claiming the present property as his "absolute" and "exclusive self-acquired property". The case was pending in the High Court and on May 1, 1958, an order was made appointing one Chakravarti as a Receiver of the properties including No. 43, Prithvi Raj Road. Chakravarti also sent a notice on July 8, 1958, to the appellant demanding rent already due and also as and when due. To this notice, the appellant sent a reply on July 19, 1958. He referred to the payment of rent by adjustment towards fees for the period 1st October, 1957 to 31st March, 1958, which was the subject of the letter above. He stated that as regards rent after 1st April, 1958, he had no objection to pay the amount to the Receiver or any other claimant but regretted that it was not possible for him to make the payment because of the notice served upon him by the Income-tax Officer. He asked the Receiver to get the notice withdrawn, and stated that he would be glad to remit the amount of rent to him when that was done. He also raised the question of certain other expenses which he had incurred in connection with the house which he claimed he was entitled to deduct from the rent and informed that a few repairs were required in the house. A second letter was sent by the Official Receiver on September 5, 1959, making another demand. In his reply, dated September 14, 1959, to this letter, the appellant raise the question that a sum of Rs. 23,500 was payable to him for professional services rendered by him to Seth Kirori Mal. He stated :

> "You will therefore appreciate that I am entitled to adjust the rent payable against the fees due to me and the amount due to me will absorb the rent for a little over six years.
>
> Even before this Seth Kirori Mal had paid me a sum of Rs. 1800 by way of adjustment of rent towards my professional fees due. You will, therefore, kindly agree that the rent payable is adjustable against the professional fee due to me."

With this letter, he enclosed a copy of a statement of fees amounting to Rs. 23,500 which he had submitted to his client on February 4, 1959. The Official Receiver then informed the appellant that the party concerned had denied the claim for fees as absolutely false, and observed in his letter that the professional fees should be the subject of some other proceeding but the rent should be paid without delay. He enquired if the amount of rent had been paid to the Income-tax department in response to the notice. In his reply to this letter, on July 5, 1960, the appellant for the first time stated that there was an agreement between him and Seth Kirori Mal to adjust the rent towards his professional fees until the fees were fully paid. He offered to reduce the fees if Seth Kirori Mal had any objection, but stated that till the professional fees were recouped, no rent could be considered to be due from him.

On November, 25, 1960, Seth Kirori Mal applied to the High Court at Calcutta for directions to the Official Receiver to take appropriate proceedings to realise the arrears of rent from the appellant, and on December 19, 1960, the High Court appointed Seth Kirori Mal receiver in the case. Seth Kirori Mal then served a notice on December 23, 1960, on the appellant sent a detailed reply which, in substance, has been his defence in the proceedings before the Rent Controller, from which the present appeal has arisen.

On January 4, 1961, Seth Kirori Mal made an application under s. 14 of the Delhi Rent Control Act before the Rent Controller, Delhi. In his written statement in reply to that application, the appellant pleaded that Seth Kirori Mal had no right to recover rent from him, inasmuch as a notice under s.

46(5A) of the Indian Income-tax Act had been issued by the Income-tax Officer, Central Circle V, New Delhi. He pleaded that the property was in the custody of the Court, and that inasmuch as a receiver had been appointed, Kirori Mal had no locus standi to maintain the petition denying at the same time that Kirori Mal had informed him that he had been appointed a receiver of the property. The appellant also contended that under the rent Control Act, a receiver had no right to act on behalf of the landlord. He referred to the alleged agreement by which fees were to be recouped from rent as and when it fell due, pointing out that on an earlier occasion a sum of Rs. 1800 was allowed to be adjusted towards fees. Some other pleas were raised, but it is not necessary to refer to them, because they were not raised before us.

The notice to quit which the appellant alleged was not issued to him was filed in the Court of the Controller on May 17, 1961. The appellant was ordered to inspect it and to be ready for his statement as to the correctness of the notice. On the next date, a statement of the appellant was recorded and he denied the notice and also its receipt. The case was then set down for arguments and after hearing the arguments, the Rent Controller passed his order on July 22, 1961. The Rent Controller held that there was no proof on the file to show that the respondent had any right to make an adjustment of the rent against his professional dues. He held that the rent was not paid after March 31, 1958. With regard to the plea that a notice under s. 46(5A) of the Income-tax Act, 1922, had been issued, the Rent Controller observed that the amount, if deposited in his court, would not be paid to Kirori Mal unless he produced a clearance certificate from the Income-tax Department. The Rent Controller also said that if in the enquiry to be subsequently made, the tenant proved that the amount of fees had to be recouped from rent, the amount would not be paid to Kirori Mal.

Against the decision of the Rent Controller, the appellant filed an appeal before the Rent Control Tribunal. The Rent Control Tribunal affirmed the decision of the Controller, observing that the plea taken by him that his professional fees were to come out of rent was an after-thought and there was no evidence to prove that there was such an agreement between the parties. On other matters, the Tribunal expressed its agreement with the Rent Controller. The appellant then appealed to the High Court of Punjab. The High Court upheld the orders so far made and pointed out that in the letter dated July 19, 1958, to the Receiver, the appellant had not mentioned the agreement. The High Court held that the order made under s. 15(1) of the Act was proper, because it was an admitted fact that rent had not been paid to anybody from April 1, 1958. The High Court endorsed the view of the Tribunals below that the notice of the Income-tax Officer did not come in the way of making the deposit of the rent in the office of the Rent Controller, because the amount was not to be paid to anyone till the rent Controller had decided who was entitled to receive it. The appeal was therefore dismissed.

In this court, emphasis is laid upon the letter of October 15, 1957, by Kirori Mal in which there was an adjustment of Rs. 1800 towards fees. It was contended that there was an oral agreement to use the rent to pay the professional fees. The letter itself does not show that there was any such agreement. In fact it shows the contrary where it says :

> The balance of your fees will be paid later at the time of final settlement.

This shows that the appellant was not entitled to retain the rent in his hands, and the Tribunals below were justified in saying that the plea about the so-called agreement was an after-thought, because till September 14, 1959, the appellant had not mentioned such an agreement. We are also satisfied that the plea was a mere device to retain the money and to avoid paying the rent. It must be remembered that there were as many as four claimants, viz., the Income-tax Officer, the Receiver

and Kirori Mal in person and Kirori Mal as Receiver, but the appellant avoided each of these in turn by pointing to the others, and in this way continued to occupy the premises without payment of any rent.

It was contended however as a matter of law that a proper opportunity ought to have been given to the appellant to prove his plea by leading evidence before ordering that the rent be deposited. Mr. S. T. Desai contended that under s. 15(1) of Delhi Rent Control Act, an order for deposit of arrears of rent can only be made after the tenant has been given an opportunity of being heard, because if the tenant makes a payment or deposit as required of him, the landlord is entitled to take the amount of the deposit and the Controller can award such costs as he may deem fit to the landlord and the case comes to and end. By was of contrast, he pointed out that the case proceeds if the tenant fails to make the payment or deposit as required of him. In other words, it was contended that an order under s. 15(1) for deposit of rent should only be made at the end of the case and not at an interlocutory stage. Mr. Desai contended that the present order was made at an interlocutory stage and it was wrong, because if the tenant deposited the money, there would be no further hearing and his plea that there was an agreement between the parties that the rent as and when it fell due should be set off against the professional fees, would remain untried. In our opinion, this reading is not permissible. Section 15 (omitting such parts as are unnecessary for the present purpose) reads of follows :

Section 15.

> (1) In every proceeding for the recovery of possession of any premises on the ground specified in clause (a) of the proviso to sub-section (1) of section 14, the Controller shall, after giving the parties an opportunity of being heard, make an order directing the tenant to pay to the landlord or deposit with the Controller within one month of the date of the order, and amount calculated at the rate of rent at which it was last paid for the period for which the arrears of the rent were legally recoverable from the tenant including the period subsequent thereto up to the end of the month previous to that in which payment or deposit is made and to continue to pay or deposit month by month, by the fifteenth of each succeeding month, a sum equivalent to the rent at that rate.
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> #.....##
>
> (3) If, in any proceeding referred to in sub-section (1) or sub-section (2), there is any dispute as to the amount of rent payable by the tenant, the controller shall, within fifteen days of the date of the first hearing of the proceeding, fix an interim rent in relation to the premises to be paid or deposited in accordance with the provisions of sub-section (1) or sub-section (2), as the case may be, until the standard rent in relation thereto is fixed having regard to the provisions of this Act, and the amount of arrears, if any, calculated on the basis of the standard rent shall be paid or deposited by the tenant within next month of the date on which the standard rent is fixed or such further time as the Controller may allow in this behalf.
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> #.....##
>
> (6) If a tenant makes payment on deposit as required by sub-section (1) or sub-section (3), no order shall be made for the recovery of possession on the ground of

> default in the payment of rent by the tenant but the Controller may allow such costs as he may deem fit to the landlord.
>
> (7) If a tenant fails to make payment or deposit as required by this section the Controller may order the defence against eviction to be stuck out and proceed with the hearing of the application."

It will be noticed that sub-section (3) also contemplates payment of interim rent determined by the Controller before the entire dispute is settled. Sub-section (6) puts the case under sub-s. (1) and sub-s. (3) on the same footing and makes no distinction between them. It is also possible to visualise cases in which the tenant may deposit the amount of rent under protest and claim that his defence be tried. It is not that even on the deposit of the arrears of rent in these circumstances the case would come to an end. The latter part of sub-section (1) further shows that not only the arrears have to be deposited but rent as it falls due has to be deposited month by month by the 15th of each succeeding month. This also shows that the order under sub-section (1) is not a final order but is preliminary to the trial of the case and is made only where the rent has in fact not been paid. For the purpose of an interim order it was not necessary that there should have been a full trial. The Rent Controller had the affidavit of the appellant and he could judge whether in the circumstances of the case, and interim order ought or ought not to be made. He came to the conclusion that the rent was not paid and the plea that it was being withheld under an agreement was an after thought and not true. The High Court and the Rent Control Tribunal have agreed with this view of the Rent Controller and the conclusion appears to us to be sound. Once such a conclusion is reached, it is quite manifest that the order was made after affording an opportunity to the appellant to be heard. No doubt, the appellant is entitled to lead oral evidence in regard to the agreement he alleges, but for that he will have an opportunity hereafter. At the moment, he is being asked to deposit the arrears in court, which admittedly are outstanding.

Mr. Desai next contended that the notice under s. 46(5A) amounted to a garnishee order and the appellant could not, while the notice stood, make any payment without incurring personal liability. There was no question of a personal liability because the Rent Controller had stated in his order that the amount would not be paid to anyone till the clearance certificate was obtained from the Income-tax Department. The Rent Controller had informed the Income-tax authorities and the appellant ran no risk it depositing the arrears of rent in the circumstances.

It was contended that the notice under s. 46(5A) amounted to an attachment of the rent in the hands of the appellant and reference was made to the provisions of s. 46 sub-s. 5A para 5. The argument overlooks the next para which provides :

> "Where a person to whom a notice under this sub-section is sent objects to it on the ground that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, to the Income-tax Officer."

If there was an agreement between the parties and Kirori Mal was indebted for such a large amount, the appellant could have objected on the ground that he did not hold any money of or on account of the assessee and then he would not have been required to pay any sum to the Income-tax Officer. The appellant did nothing in the matter except to deny the payment to everyone. He paid nothing to the Income-tax Officer, declined to deposit the money before the Rent Controller and refused to

recognise the demands by the Receiver and his landlord. In other words, he was trying to take full advantage of the law, when he could have informed the Income-tax Officer about his own position and paid the money to the Rent Controller subject to its being paid to the Income-tax Department.

Reference was made in this connection to a decision of Calcutta High Court reported in Nalinakhya Bysack and another v. Shyam Sunder Haldar and others (A.I.R. (1952) Cal. 198) in which Harries C.J. observed that before making an order for the deposit of the rent, a full enquiry should be made. That was a case in which the tenant had pleaded that there was an agreement between him and the landlord that any amount spent on repairs would be set off against be rent. Harries C.J. held that without ascertaining the truth of the plea that a large sum had been spent on repairs, an order to deposit the entire arrears of rent ought not to have been made. It is quite clear that the facts there were entirely different. Payment by the landlord for repairs was a part of the tenancy agreement and rent under that tenancy could not be calculated without advertence to every term of the agreement of tenancy. Here the special agreement which is pleaded is outside the tenancy agreement and the allegation about the special agreement has been held to be an after-through and false. It is therefore difficult to apply the ruling to the present circumstances.

The appeal is wholly devoid of merit and it is dismissed with costs. By the consent of parties, a period of two months from the date of hearing (20-12-1963) was granted to the appellant to deposit the arrears of rent from 1st April, 1958, in the Court of the Rent Controller.

Appeal dismissed.

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