Jamnadas Harakhchand and Others

Vs

Narayanlal Bansilal and Others

Civil Appeals Nos. 1872 and 1873 of 1968

(J. C. Shah, K. S. Hegde JJ)

20.01.1970

JUDGMENT

HEGDE, J. -

1. These are two connected appeals. They arise from a suit which originated in the court of Small Causes, Bombay. Civil Appeal No. 1872 of 1968 is filed by some of the defendants in that suit and Civil Appeal No. 1873 of 1968 is brought by the plaintiff in that suit. The suit was filed to recover possession of the suit premises, rent thereof with interest, municipal taxes, insurance prima and damages. It was resisted on various grounds. In these appeals we are not concerned with the various controversies that engaged the attention the High Court and the Lower Court. The only point arising for decision in Civil Appeal No. 1872 of 1968, the appeal brought by the defendants is as to the scope of Section 20 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Bombay Rent Act). The solitary contention advanced in Civil Appeal No. 1873 of Rent Act. The solitary contention advanced in Civil Appeal No. 1873 of 1968 is that the appellate court as well as the High Court erred in determining the standard rent.

2. The Trial Court upheld the plaintiff's claim that the rent fixed under the two leases on the basis of which the suit was brought was the standard rent. A decree on that basis was granted in favour of the plaintiff. The appellant court differed from the Trial Court on that question. It came to the conclusion that the standard rent of the suit premises must be fixed by apportioning the rent of Rs. 1,700 per month paid by the National Studios to the suit premises and the other premises on 1st September, 1940. To that it added an increase of 12 1/2 per cent and thus determined the standard rent for the standard rent for the entire suit premises at Rs. 1,162 per month. After so determining the standard rent it came to the conclusion that the excess rent paid by the tenants could be appropriated under Section 20 of the Bombay Rent Act towards the rents due. In the result it gave a decrees foe the plaintiff for a sum of Rs. 4,864.94 p.

3. On the question of standard rent, the High Court agreed with the Trial Court but as regards the appropriation it came to the conclusion that the defendant's right to appropriate the excess payment towards the arrears was barred under the second part of Section 20 of the Act. In the result it substantially altered the decree of the Appellate Court. Aggrieved by this decision the plaintiff and some of the defendants have come up in appeal after obtaining certificates under Article 133(1)(a) of the Constitution.

4. So far as the question of fixing the standard rent is concerned, the finding is essentially a finding of fact. Both the Appellate Court as well as the High Court have agreed on that question. It is true that the Appellate Court thought that the standard rent could be fixed by apportioning the rent fixed

for the suit premises and other premises in 1940, on the basis of the plinth area. It failed to give due regard to Section 11 of the Rent Act. The High Court noticed this error. It went into the question of standard rent afresh having regard to the provision of Section 11 of the Rent Act. In arriving at the standard, rent, the High Court took into consideration the nature of the premises, their location, the amount of rent that it could have fetched in 1940 and other relevant circumstances. Under these circumstances we see no reason to interfere with the findings of the High Court.

5. Now coming to the scope of Section 20 of the Rent Act, the matter is concluded by the decision of this Court in Maganlal Chhotabhai Desai v. Chandrakant Motilal, AIR 1960 SC 37. In that decision it was held that Section 20 gives the tenant a general right of recovery of the over-paid rent within six months of the date of payment. Without prejudice to any other mode of recovery, the tenant may deduct the over-payment from any rent payable by him to the landlord. The deduction provided is one mode of recovery. If the amount is incapable of recovery because of the bar of limitation, it cannot be recovery by deduction. In other words the right of recovery by deduction is barred at the same time as the right of recovery by suit. If the tenant seeks recovery of the overpaid amount he must bring the suit or make the deduction within six months. This decision accords with the view taken by the High Court. Mr. S. V. Gupte, learned Counsel for the appellants in Civil Appeal 1872 of 1968 sought to challenge the correctness of the decision. That decision is binding on us and we do not feel called upon to refer the question to a large bench for reconsideration of that decision.

6. The first defendant who appeared in person contested the validity of the decree given by the Trial Court, Appellate Court as well as the High Court on the ground that the judgment of the Trial Court had not been singed by the judge who decided the case. It may be noted that he did not appeal against the judgment of the Trial Court. At one stage he filed an appeal in forma pauperis but the Court refused to allow him to appeal as a pauper. Thereafter he did not pay the court-fee and hence his appeal was dismissed. He did not appeal against the decision of the Appellate Court not has he brought any appeal to this Court. Therefore he cannot be permitted to take the contention that the decree of the Trial Court is void. That apart, we had called for and examined ourselves the judgment of the Trial Court. It had been signed by the Trial Judge. Hence there is no substance in the allegation of the 1st defendant that the judgment in question had not been signed by the Trial Court Judge.

7. In the result, both the appeals fails and they are dismissed but as the parties have partly succeeded and partly failed, we make no order as to costs in these appeals. Civil Misc. Petitions Nos. 4083 of 1968 and 841 of 1969 are also dismissed.

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