Union of India

Vs

Jal Rustomji Modi and Another

Civil Appeal No. 2563 of 1966

(K. S. Hegde, A. N. Grover, J. C. Shah JJ)

02.03.1970

JUDGMENT

GROVER, J. -

1. This is an appeal against a judgment of a Division Bench of the Calcutta High Court reversing in appeal a decision of the Trial Judge by whom the suit had been dismissed.

2. In 1943 the 2nd and 3rd floor of premises No. 46/7, Lower Chitpur Road, Calcutta, were taken on rent by the Government, the agreement of tenancy having been entered into by the then Governor-General-in-Council. The rate at which the rent was payable was Rs. 2225.50 n.p. per month apart from the occupier's share of taxes. The respondents are the trustees under a deed of settlement executed by R. K. Modi who had originally leased out the premises. On the Rent Controller being moved for fixation of the standard rent it was fixed at Rs. 3427-4-3 per month with effect from December 1, 1948. The tenancy in favour of the Governor-General-in-Council devolved upon the Union of India which is the appellant before us. The tenant continued to pay rent at the above rate along with the occupier's share of taxes up to the end of May, 1960 but stopped paying any rent after June, 1960.

3. On March 21, 1961 the respondents filed a suit for recovery of Rs. 23990.89 n.p. as arrears of rent of the aforesaid premises for the period July 1, 1960, to December 31, 1960, at the rate of Rs. 3427.27 per month. In addition a sum of Rs. 716.00 was claimed on account of occupier's share of taxes as also the interest at the rate of 12 per cent. from November 1, 1960, a notice having been given under the Interest Act of 1839. The substantial defence of the appellant was that under the provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, hereinafter called the "Act" the standard rent came to the following amounts for the periods mentioned below :

> #1. April 1, 1950 to October 30, 1951 Rs. 2448.05 p.m.2. December 1, 1951 onwards Rs. 2815.26 p.m.##

It was alleged that by mistake the appellant had continued to pay to the respondents the standard rent fixed under the Act of 1948 at the rate of Rupees 3427.27 n.p. per month up to the end of May, 1960. This was discovered for the first time in June, 1960. Consequently a sum of Rs. 82,009.42 n.p. had been paid in excess to the respondents. There was thus no liability to pay the rent claimed until the said excess payment had been adjusted or appropriated.

4. Amongst the issues framed by the Trial Court the following two issues alone need be reproduced :

"4 (a) Did the defendant pay rent at the rate of Rs. 3427.27 n.p. per month up to the end of May, 1960, by mistake ?

4 (b) If so, is the defendant entitled to set-off and/or adjust the payment made in excess against the plaintiff's claim for rent ?"

5. It was held by the Trial Judge that from April 1, 1950 the appellant was not liable to pay more than Rs. 2815.26 per month as rent and, therefore, the total excess payment made came to Rs. 82,009.42. He, therefore, held that the excess payment had been made through mistake. The appellant was found entitled to ask for adjustment or set off in respect of the amount that had been so paid. The suit was dismissed. The appeal court referred to Sections 7 to 11 and 17 of the Act of 1950 and expressed the view that the Legislature intended to define and alter, if necessary, the rights of the landlords and tenants immediately after the Act came into force. If a tenant was under the impression that the rate at which he was paying rent was higher than what would be the standard rent under the Act he could at once apply for fixation of standard rent. Conversely if a landlord thought that the rent was lower than that which would be fixed as the standard rent he could similarly apply to the Controller for fixation of the standard rent. So long, however, as the standard rent was not fixed the landlord was precluded by reason of Section 11 from claiming rent at a rate higher than that of which he was in receipt. If the tenant had paid or deposited any amount in excess of the standard rent he could within six months from the date of payment or deposit apply to the Rent Controller for refund or adjustment in terms of Section 7. Both the landlord and the tenant stood to lose the benefit of the Act at least in part if they did not take stock of their position as soon as Act came into force and applied in accordance with its provisions for the necessary relief. In the present case the appellant did not make any application under Section 7 and therefore no question of adjustment or refund arose. It was, further, held that Section 72 of the Contract Act had no application to the facts of the case. The appeal was allowed and the decree for the period claimed was granted at the rate of Rs. 2815.26 n.p. per month.

6. The relevant provisions of the Act of 1950 may be noticed. "Standard rent" is defined by Section 2(10) to mean (a) the standard rent determined in accordance with the provisions of Schedule A; (b) where the rent has been fixed under Section 9, the rent so fixed; or at which it would have been fixed if application were made under the said section. Section 3 provides that any amount in excess of the standard rent of any premises shall be irrecoverable notwithstanding any agreement to the country. According to Section 7(1) where any sum has been paid or deposited on or after the date of commencement of the Act on account of rent being a sum which is by reason of the provisions of the Act irrecoverable the Controller may on application made to him at any time within a period of six months from the date of such payment or deposit by the tenant order the landlord to refund such sum to the tenant or order the adjustment of any sum so paid or deposited in any other manner. Section 9 gives the cases in which standard rent is to be fixed by the Rent Controller. Section 11 provides that nothing in the provisions of the Act including Schedule A shall entitle the landlord to claim rent from tenant at a rate different from that at which it is being paid at the time except by agreement with the tenant valid in law including the Act or unless a different rent is fixed under Section 9. Section 17 lays down that such portion of rent as exceeds the standard rent determined according to the provisions of the Act shall be irrecoverable from the month of the tenancy next after the month in which the Act comes into force whether the rent was fixed by agreement or by proceedings under the Act of 1948. If further provides that where standard rent has been fixed under the provisions of the Act of 1948 whether by the Controller or on appeal from his order the Controller shall, on application made to him, refix the standard rent according to the provisions of the Act.

7. On an examination of the above provisions of the general scheme of the Act the appeal court may be right in saying that it was not necessary for a tenant to go to the Controller for fixation of standard rent in order to claim relief under Section 3 of the Act. If it could be shown that the rate at which the rent was being sought to be collected was in excess of the standard rent determined in accordance with Schedule A the Court trying the suit for recovery of arrears of rent could give relief to the tenant. But he could get such relief only in respect of the rent which had remained unpaid at the date of the suit. It is, however, unnecessary, to express any final opinion on this point.

8. Now in the present case the entire claim of the appellant for adjustment of the excess rent that had been paid was based on the provisions of the Act which made any amount in excess of the standard rent irrecoverable. The determination of the standard rent had also to be made in accordance with relevant provisions of the Act. It is not possible to see how the appellant could rely on certain provisions of the Act and seek to ignore Section 7 which lays down the procedure for claiming the refund or adjustment of any sum which by the provisions of the Act is irrecoverable. The limitation for filing an application in that behalf has been laid down in clear terms in Section 7, namely, a period of six months from the date of payment or deposit of the excess amount. It is indisputable that if the limitation provided in Section 7 is to govern the present case the appellant could not claim any relief by way of adjustment of the excess amount which had been paid up to the date of the suit.

9. A faint suggestion has been made on behalf of the appellant that it was not debarred under the general law from claiming a set-off in respect of the amounts which had been paid in excess and which were irrecoverable. Such a contention cannot be entertained because no proper foundation was laid for it at prior stages nor does it have any merit by reason of the express provisions of Section 7 of the Act. It is not open to the appellant to rely on certain provisions of a special enactment and ignore the others which are contained in it. If the right and the remedy have been provided in the same statute one cannot be disassociated from the other.

10. As regards the applicability of Section 72 of the Contract Act we are unable to comprehend how its provisions can be of any avail to the appellant particularly in view of the finding given on appreciation of the relevant material by the appeal court that no mistake had been proved to have been made by the appellant in the matter of payment of the excess rent.

11. The appeal fails and it is dismissed with costs.

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