

B. C. Kame

Vs

Nemi Chand Jain

Civil Appeals Nos. 124 of 1967, 433 and 434 of 1970

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

05.03.1970

JUDGMENT

SHAH, J. -

1. Nemi Chand Jain - hereinafter called the plaintiff - is the owner of five tenements in the town of Jabalpur and B. C. Kame - hereinafter called 'the defendant' is the tenant of those tenements under distinct tenancy agreements. After determining the tenancies by a notice, the plaintiff instituted five suits in the Court of the Civil Judge, Second Class, Jabalpur, for order in ejectment against the defendant in respect of the tenancies, on the plea that the defendant had failed and neglected to pay the rent for a period exceeding three years. The summonses in the suits were served upon the defendant on May 6, 1963. The Court re-opened after the summer recess on June 10, 1963 and the defendant deposited in Court on June 11, 1963, Rs. 1,841 being the amount of rent and other dues for 38 months. The deposit was not supported by an application by the defendant for extension of time of for condonation of delay in making the deposit. The defendant also did not continue thereafter to pay regularly the rent due by him every month according to law. Between the months of June, 1963 and May, 1965, except on two occasions, he did not pay within the prescribed time the rent accrued due.

2. By order of the Civil Judge the suits were consolidated for trial. After the evidence was recorded and during the course of the argument the defendant applied on July 26, 1965, for extension of time in making payment of rent due. This application was rejected and the Civil Court passed a decree against the defendant in respect of the five tenements. Against the orders passed by the Civil Judge, five appeals were preferred to the District Court at Jabalpur. The defendant contended that in respect of the two tenements Nos. 374 and 382 rent due was sent by money order and the Trial Court had wrongly rejected his application for producing evidence to support the case that he was not in default in respect of those tenements, and he applied for permission to lead additional evidence. The learned District Judge was of the view that the Trial Court had "rather acted harshly in refusing to give an opportunity to the defendant for adducing evidence with regard to money order coupons which he had sought to produce". In the view of the Court the "circumstances alleged and not denied by the plaintiff did point out that the fault in not getting the evidence regarding those coupons produced was not entirely due to the negligence of the defendant, and therefore, the defendant should not have been solely blamed for that", and that the defendant should have been given the opportunity to lead that evidence. The learned Judge further held that in respect of the three other premises there was default and no case was made out for extension of time. But on the assumption that by virtue of the order of consolidation there was any one trial and one judgment arising out of the suits pending before him and since the order of the Trial Court in respect of the suits arising out of the claim to premises Nos. 374 and 382 was set aside, the District Judge directed

that the orders be set aside in all the five suits the suits be remanded for trial according to law.

3. Against the order made by the District Court five revision application were preferred to the High Court of Madhya Pradesh. Two revision applications, in so far as they related to the claim for possession in respect of tenements Nos. 374 and 382 were summarily rejected by the High Court. But in the other three revision applications Nos. 409, 410 and 412 of 1965 rule was issued to the defendant to show cause why the orders made by the District Court should not be set aside. The High Court confirmed the view of the District Court that no case was made out for extension of time for payment of the amount under Section 13(1) of the Madhya Pradesh Accommodation Control Act, 1961. The High Court further held that the District Court was in error in setting aside the decree passed by the Trial Court with was the subject-matter of the three revision applications. The High Court accordingly reversed the order passed by the District Court and restored the decree passed by the Trial Court in respect of those three tenements. With special leave, the defendant has appealed to this Court.

4. The order passed by the District Court setting aside the judgment passed by the Court of First Instance in respect of those premises in respect of which there was default in payment of rent was plainly erroneous and the High Court was right in setting aside the order. But Mr. Patel appearing on behalf of the defendant contends that the Trial Court and the District Court had committed an error in holding that they had no jurisdiction to extend the time for payment of rent after the suit was instituted. Section 12 of the Madhya Pradesh Accommodation Control Act, 1961, provides by the first sub-section, in so far as it is material :

"Notwithstanding anything to the contract contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely :-

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from his within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner;

#x x x x"##

By sub-section (3), in so far as it is material, it is provided :

"No order for the eviction of a tenant shall be made on the ground specified in clause (a) of sub-section (1), if the tenant makes payment or deposit as required by Section 13.

#x x x x"##

By Section 13(1) it is provided :

"On a suit or proceeding being instituted by the landlord on any of the grounds referred to in Section 12, the tenant shall, within one month of the service of the writ of summons on him or within such further time as the Court may, on an application made to it, allow in this behalf, deposit in the Court or pay to the landlord an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the

month previous to that in which the deposit or payment is made and shall there-after continue to deposit of pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate."

By sub-sections (5) and (6) it is provided :

"(5) If a tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no decree or order shall be made by the Court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the Court may allow such cost as it may deem fit to the landlord.

(6) If a tenant fails to deposit or pay any amount as required by this section, the Court may order the defence against eviction to be struck out and shall proceed with the hearing of the suit."

5. It is clearly intended thereby that for non-payment of rent, the tenancy shall not be terminated and the Court shall not pass a decree in ejectment if within two months of the date on which a notice of demand for rent has been served on the tenant he makes payment of the amount of tenders the amount of rent due by him to the landlord. If he does so, no suit will lie against him on the ground of default in the payment of rent. Even if no such payment is made within two months as provided by Section 12(1)(a) the tenant may within one month from the service of the writ of summons deposit the amount in Court or pay to the landlord the amount due by him till then and continue to pay or deposit "month by month" the rent accruing due. Even if he does not pay the amount within one month he may on an application made by him asks for extension of time, and if the Court grants the extension the amount may be paid by him within such extended time. In such a case by virtue of sub-section (5) of Section 13, not he ground of default in payment of rent, the Court will not proceed to pass a decree in ejectment. But it is clear that under sub-section (1) of Section 13 the normal period during which the amount has to be paid to the landlord or deposited in Court is one month from the service of the writ of summons. If the tenant pays the amount of rent in arrears within one month he is immune from liability to be evicted for default in that behalf. If, however, he does not pay the amount or deposit it in Court, any subsequent payment made by him will come to his aid only if on an application made by his the Court extends the time.

6. In the present case the defendant did not pay the rent by him within one month from the date on which the amount of rent was payable by him. We need not consider the question, whether if the amount if paid on June 10, 1963, rent would have been deemed to be properly paid. The amount was deposited in Court on June 11, 1963. The deposit was clearly beyond time. The defendant made no application for extension of time and no order was made by the Court extending the time. Even after the first payment the defendant did not continue to pay regularly the amount of rent falling due by him during the pendency of the suit. It was only on July 28, 1965, that he applied for extension of time and the Court rejected the defendant's prayer for extension.

7. It is true that the learned District Judge in the course of his judgment mixed up the discussion on two different contentions, one with regard to striking out the defence of the defendant for non-payment of rent and the other relating to extensions of time for payment of rent. But on a fair reading of the judgment it appears that how was of the view that on the facts before him no case was made out by the defendant for extension of time in exercise of the jurisdiction of the Court. The High Court declined to enter upon an enquiry whether the District Judge was right in so holding, because in the view of the High Court, in a revision application under Section 115 of the Code of

Civil Procedure the decision of the District Court was binding.

8. We are unable to agree with Mr. Patel that the District Court held that it had no jurisdiction to extend the time. The Court held that it had jurisdiction to extend the time but on merits no case was made out for an order extending the time.

9. The appeals fail and are dismissed with costs. There will be one hearing fee.

</html