

**SUPREME COURT OF INDIA**

Pioneer Paper Box Factory

Vs.

Thakurdevi Shrinivas

C.A.No.36 of 1968

(A. N. Ray and I. D. Dua, JJ.)

26.05.1970

**JUDGEMENT**

**RAY, J.:-**

1. This appeal is by special leave from the judgment dated 19 November, 1963 of the High Court of Bombay dismissing the appellant defendant tenant's application for revision in a decree for eviction of the defendant.

2. The appellant was tenant of the respondent. On 28 April, 1954 the appellant filed an application under section 11 of the Bombay Rent Act for fixation of standard rent. During the pendency of the application the respondent landlady served a notice on the appellant in the month of March, 1955 terminating the tenancy on the ground that the appellant had failed to pay rent from 1 March, 1954. On 25 April, 1955 a suit was filed for eviction of the appellant.

3. During the pendency of the Suit On 29 June, 1956, the standard rent was fixed at Rs. 55/7/- p.m. The contractual rent was Rs. 85/- p.m.

4. When the suit came up for hearing on 5 October, 1956, it appeared that the appellant paid all the arrears of rent in accordance with the standard rent but did not pay the costs at the suit. The trial court passed an ejectment decree against the appellant.

5. The appellant preferred an appeal. The appellate court took the view that the order of the trial court was justified under section 12 (3) (b) of the Bombay Rent Act. Section 12 (3) (b) of the Bombay Rent Act provides that no decree in eviction shall be passed if on the first day of the hearing of the suit or on or before such other date as the court may fix, the tenant pays or tenders in the court the standard rent and permitted increase in rent due, and thereafter continues to pay or tender in court regularly the said rent and permitted increase till the suit is finally decided and also pays costs of the suit as directed by the Court.

6. The appellant then filed an application for revision in the High Court. The contention which was advanced in the High Court and repeated here was that the courts were in error in decreeing the suit for non-payment of costs because the trial court had not passed any order fixing the amount of costs. It was said that only when an order determining the amount of costs had been made by the court that the tenant could be said to be within the mischief of the provisions of the statute for non-payment of costs so determined by the courts.

7. The High Court rightly rejected the contention for two reasons. First, though a formal order as to costs was not made, yet the trial court had made an order directing the appellant to pay the amount of costs and the appellant did not pay the costs. Secondly, the appellant stated before the trial court that the appellant was not in a position to tender what is described as "professional costs" and court costs of the suit.

8. It is indisputable that in the trial court the appellant not only admitted failure to pay costs but also inability to tender the costs. The appellant could be entitled to protection against eviction only if the appellant complied with the provisions of the statute. The appellant was required to tender not only the arrears of rent but also the costs of the suit. In the trial court the appellant admitted noncompliance with the provisions of the statute. Therefore, the trial court rightly held that the appellant was not entitled to any benefit or protection against eviction.

9. The appellate court held that because the appellant filed an application for fixation of standard rent and therefore there being a dispute between the parties regarding the standard rent no order in eviction could be passed under section 12 (3) (a) of the Bombay Rent Act. The appellate court,

however, held that the case fell within the provisions of section 12 (3) (b) of the Bombay Rent Act by reason of the failure of the appellant to pay costs of the suit.

10. Counsel for the appellant contended that the costs were deposited on 22 November, 1956 and therefore the High Court should have exercised discretion in favour of the appellant. The High Court stated that the decree was passed on 5 October, 1956 and the appeal was filed on 18 October, 1956 and the amount of costs was not deposited with the filing of the memorandum of appeal. The High Court concluded by stating that "the decree of the trial Court was made on 5 October, 1956. We are in the year 1963. The attitude adopted by the petitioner is not such in which a discretion can be exercised in favour of the petitioner." The High Court heard the application on 19 November, 1963. Counsel for of the appellant invited our attention to Paragraph 13 of the application for review made in the High Court where the appellant alleged that on 7 December, 1956 the costs were paid. No portion of the judgment of the High Court is open to any criticism for the obvious reason that when the memorandum of appeal was filed in the High Court on 18 October, 1956 the costs were not paid. The application for review also indicates that when the matter was heard before the High Court it was not brought to the notice of the High Court that the costs were said on 7 December, 1956 as alleged.

11. The appeal is from the judgment of the High Court. It would be improper to interfere with exercise , of discretion passed by the High Court when the matter was not brought to the notice of the High Court. Discretion is exercised by the Court in the facts and circumstances of the case. Any interference with the exercise of discretion in the present case would be substituting the discretion of this Court on a set of facts which were never presented to the High Court.

12. The appellant was not entitled to any relief under the provisions of the Bombay Rent Act. The High Court rightly rejected the application for revision. The appeal fails and is dismissed with costs.

Appeal dismissed.