

Nagindas Ramdas

Vs

Dalpatram Ichharam alias Brijram and Others

Civil Appeal No. 2479 (N) of 1972

(D. G. Palekar, V. R. Krishna Iyer, R. S. Sarkaria JJ)

30.11.1973

JUDGMENT

SARKARIA, J. –

1. Whether the decree dated September 23, 1964, passed by the trial Judge in regular Suit No. 6 of 1963, filed under the Bombay rent Control Act, 1947 (for short, called Bombay rent Act) directing the eviction of the appellant is a nullity and, as such inexecutable, is the only question that falls for decision in this appeal by special leave. It arises out of these facts :

2. Appellant was a tenant of the premises at Ward No. 3, Nondh No. 1823/9 in the Salabatpur area of Surat. He was in arrears of rent since October 16, 1961. On November 16, 1962, the landlords (respondents herein) served a notice on the appellant terminating his tenancy and also requiring him to pay the arrears of rent. On January 2, 1964, the landlords instituted the suit in the Court at Surat for possession against the tenant on two grounds namely :

(i) non-payment of rent in arrears for a period of more than one year,

(ii) bona-fide requirement of the premises by the landlords for their own use and occupation.

3. The rate of contractual rent was Rs. 15 per month. On September 23, 1964 the parties arrived at a compromise, the terms of which as incorporated in the decree were as under :

" (i) The defendant do hand over possession of the suit premises by 30.9.1968 without any objection. The tenant to pay Rs. 532.50 P as arrears of rent and mesne profits up to 30.9.1964. The plaintiff is to receive Rs. 380 deposited by the defendant in Court and the remaining amount is to be said by the defendant to the plaintiffs on or about 31.12.1964. The defendant is to pay Rs. 15 p.m. as mesne profits from 1.10.1964.

(ii) The relationship of the landlord and tenant between the parties has come to an end and no such relationship is to be created by the compromise. The defendant has been given time to vacate the suit premises by way of grace. If the defendant fails to comply with the aforesaid terms of the decree, the plaintiffs would be entitled to execute the decree both for the decretal amount as well as for possession of the suit premises.

(iii) If the plaintiff get for the defendant the lease of the premises bearing Nondh No. 1602 of Ward No. 3 on a monthly rent of Rs. 50 the defendant is to hand over the possession of the suit premises immediately.

(iv) The parties are to bear their own costs."

4. On January 12, 1968, the landlord filed a petition for execution of the decree. It was dismissed as premature. The tenant having failed to pay Rs. 152.50 i.e. the balance of arrears by the agreed date the decree-holders on January 17, 1968 again took out execution for the recovery of the said amount. thereafter, on October 3, 1968 the landlords filed the second petition to recover possession of the suit premises in execution of the decree.

5. The tenant admitted that he had, according to the compromise agreed to give possession on September 30, 1968, but added that in 1968 A.D., the ground floor of the premises had become submerged in flood waters and thereupon the decree-holders seeing his (tenant's) plight orally agreed to allow him to continue in the premises on payment of a monthly rent of Rs. 15, and thus the decree had been adjusted and satisfied. Subsequently, by another application, the judgment-debtor raised an objection that since the decree had been passed by the Court without satisfying itself as to the existence of a ground of eviction under the Bombay Rent Act, it was nullity and as such, not executable.

6. The executing Court (Joint Civil Judge, Surat) rejected the story of adjustment and satisfaction of the decree, but accepted the other objection holding that the decree was void because "the Court did not apply its mind while allowing it under Section 13 (1) (j), Rent Act". With regard to the second ground, it was said that it had ceased to exist because "under the terms of compromise the default in payment of rent was waived and the defendant was given time to pay up to 30.9.1968". In the result, the execution was dismissed.

7. From the order of the executing Court, the decree-holders carried an appeal to the Extra Assistant Judge, Surat, who held that there was ample material in the shape of admissions in the compromise itself, from which the Court could be satisfied about the existence of both the statutory grounds for eviction alleged in the plaint. He, therefore, set aside the dismissal of the execution and reminded the case to the executing Court "to be dealt with in accordance with law". Aggrieved by that order of the Extra Assistant Judge, the tenant preferred a revision petition in the High Court of Gujarat. The revision was dismissed in limine by an order dated October 26, 1972, against this appeal by special leave has been filed.

8. Mr. Dholakia, learned Counsel for he appelland, contends that in view of public policy which underlies all Rent Control Acts including the Bombay Rent Act, no decree or order of eviction can be passed unless the Rent Court or Tribunal is satisfied, on the basis of extrinsic material as to the existence of all the essential facts constituting a statutory ground for eviction. It is stressed that in the instant case, the material, if any, preceding the decree or even the so-called admission of the rent being in arrears in the compromise, itself, was far too insufficient to make out a ground for eviction under Section 12 (3) of the Bombay Rent Act. Clause (a) of Section 12 (3), proceeds the argument, could not cover the case because the tenant had deposited the rent due up to the date of the suit and had also made an application for fixation of standard rent; and clause (b) of the same sub-section did not apply because no interim standard rent had been fixed by the Court. As regards the ground of bona-fide personal requirement of the landlords, it is urged that there was not even a scintilla of material from which the satisfaction of the Court as to the existence of a ground under Section 13

could be spelled out. The decree, concludes the Counsel, being based solely on the consent of the parties, was a directly hit by the rule laid down by this Court in *Bahadur Singh v. Muni Subrat Dass*, *Kaushalya Devi v. Shri K. L. Bansal* and *Ferozi Lal Jain v. Man Mal*. Learned Counsel has further attempted to distinguish this Court's decision in *K. K. Chari v. R. M. Seshadri*, on the ground that there was documentary and oral evidence of the plaintiff which had not been challenged in cross-examination, from which the statutory ground of the premises being required by the landlord for bona-fide personal occupation had been fully made out. Reference has also been made to *Jeshwant Rai Mulukchand v. Anandilal Bapalal*, and *Shah Rasiklal Chunilal v. Sindhi Shyamlal Mulchand*.

9. On the other hand, Mr. Parekh, learned contentions : (1) The appeal should be dismissed on the preliminary ground that there is no equity in this case in favour of the appellant who has, in spite of the ample time granted to him, contumaciously failed to comply with the decree and surrender possession even five years after the expiry of the agreed of this contention the decisions of this Court in *A.M. Allison v. B. L. Sen*, and *Shri Balwantraai Chimanlal Trivedi v. M. N. Nagrashna and Ors.* (ii) The principle laid down by this court in the cases relied upon by Mr. Dholakia, is not applicable to a compromise decree passed under the Bombay Rent Act because : (a) The provisions of Section 13 of the Delhi and Ajmer Rent (Control) Act, 1952 (for short, Delhi Rent Act) and Section 10 of the Madras Buildings (Lease and Rent Control) Act, 1960 (for short Madras Rent Act), on the interpretation of which the said decisions are based are materially different from Section 12 and 13 of the Bombay Rent Act; (b) by virtue of Rule 8 of the Bombay Rent Act Rules, the Code of Civil Procedure, including Order 23, Rule 3, which gives a mandate to the Court to pass a decree in terms of a compromise, are applicable to suits under the Bombay Rent Act, but the application of the Code to proceedings before the Rent Controller/Tribunal under the Delhi Rent Act of Madras Rent Act has been expressly excluded. In support of this contention reliance has been placed on *Chandan Bai v. Surjan*. (iii) Even if the ratio of the said Supreme Court decisions applies to decrees under the Bombay Rent Act, then also both the statutory grounds for eviction pleaded in the plaint, had been expressly or impliedly admitted by the defendant in the compromise, and it will be presumed that in passing the eviction decree, the Court was satisfied about the existence of those grounds. In this view, according to the counsel, the instant case will fall within the ratio of *Seshadri's case (supra)*.

10. At the stage of the final hearing of the appeal, specially after the learned Counsel for the appellant had addressed us on merits, we do not propose to go into the preliminary ground urged by Mr. Parekh. If the decree turns out to be without jurisdiction, this equitable plea will be no avail; because equity cannot operate to annul a statute. If the decree is found to be in conformity with the statute, the appeal will fail on the ground, alone, and it will be wholly unnecessary to consider the equitable aspect of the matter.

11. We, therefore, come straight to the contention (ii) raised by Mr. Parekh. In order to find out whether or not a decree or order of eviction can be passed by the Rent Court Tribunal exercising special jurisdiction under any of these statutes-Delhi Rent Act, Madras Rent Act and Bombay Rent Act-on a ground of eviction, it is necessary to have a peep into the historical background of the Rent Control laws, in general, and a quick look at the board scheme and language of the relevant statutory provisions of these Acts.

12. The strain of the last World War, Industrial Revolution, the large scale exodus of the working people to the urban areas and the social and political changes brought in their wake social problems of considerable magnitude and complexity and their concomitant evils. The country was faced with spiraling inflation, soaring cost of living, increasing urban population and scarcity of

accommodation. Rack renting and large scale eviction of tenants under the guise of the ordinary law, exacerbated those conditions making the economic life of the community unstable and insecure. To tackle these problems and curb these evils, the Legislatures of the States in India enacted Rent Control legislations.

13. The preamble of the Bombay Rent Act states that the object of the Act is "to amend and consolidate the law relating to the control of rents and repairs of certain premises, of rates of hotels and lodging houses and of eviction". The language of the preambles of the Delhi Rent Act and Madras Rent Act is strikingly similar. The broad policy and purposes as indicated in their landlords in respect of the rents, evictions and repairs. With the same beneficent end in view, all the three Acts interfere with contractual tenancies and make provisions for fixation of fair and standard rents, or protection against eviction of tenants not only during the continuance of their contractual tenure but also after its determination. Indeed, the neologism "statutory tenant" has come into existence because of this protective policy which is common to all enactments of this kind. Further, all the three Acts create Courts/Tribunals of special and exclusive jurisdiction for the enforcement of their provisions.

14. Section 28 of the Bombay Rent Act which begins with a non-obstante clause specifies Courts which shall have exclusive jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant inter alia relating to (a) recovery of rent of any premises; (b) recovery of possession of any premises to which the provisions of Part II apply. The words "to which the provisions of Part II Apply" are significant. They indicate that the exclusive jurisdiction for recovery of possession is to be exercised when the provisions of Part II which include Sections 12 and 13 apply.

15. All these three Acts lay down specific grounds more or less similar, on which a decree or order of eviction can be passed by the Rent Court or the Tribunal exercising exclusive jurisdiction. In the Delhi Rent Act, such grounds are specified in a consolidated form under Section 13, while the same thing has been split up into two and provided in two Sections (12 and 13) in the Bombay Rent Act which represent the negative and positive parts of the same pattern. Taken together, they are exhaustive of the grounds on which the Rent Court is competent to pass a decree of possession. Similarly, in the Madras Rent Act, the grounds on which a tenant can be evicted, are given in Section 10, 14 to 16.

16. Section 13 of the Delhi Rent Act starts with a non obstante clause viz, "Notwithstanding anything to the contrary contained in any other law or any contract, no decree or order of the recovery of possession of any premises shall be passed by any Court in favour of the landlord against any tenant..." Likewise, Section 10 (1) of the Madras Rent Act starts with the clause, "a tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this Section or Sections 14 to 16".

17. It will thus be seen that the Delhi Rent Act and the Madras Rent Act expressly forbid the Rent Court or the Tribunal from passing a decree or order of eviction on a ground which is not any of the grounds mentioned in the relevant Sections of those statutes. Nevertheless, such a prohibitory mandate to the Rent Court that it shall not travel beyond the statutory grounds mentioned in Sections 12 and 13, and to the parties that they shall not contract out of those statutory grounds, is inherent in the public policy built into the statute (Bombay Rent Act).

18. In *Rasiklal Chunilal's case* (supra), a division Bench of the Gujarat High Court has taken the

view that in spite of the fact that there is no express provision in the BOMBAY Rent Act prohibiting contracting out, such a prohibition would have to be read by implication consistently with the public policy underlying this welfare measure. If we may say so with respect, this is a correct approach to the problem.

19. Construing the provisions of Sections 12, 13 and 28 of the Bombay Rent Act in the light of the public policy which permeates the entire scheme and structure of the Act, there is no escape from the conclusion that the Rent Court under this Act is competent to pass a decree for possession either in invitum or with the consent of the parties on a ground which is de hors the Act or ultra vires the Act. The existence of one of the statutory grounds mentioned in Section 12 and 13 is a sine qua non to the exercise of jurisdiction by the Rent Court under these provisions. Even parties cannot by their consent confer such jurisdiction on the Rent Court to do something which, according to the legislative mandate, it could not do.

20. In the view we take we are fortified by the ratio of the decision in *Barton v. Finchman*. Therein the Court of Appeal was considering the scheme of the Rent Restrictions Act, 1920, the language of Section 5 of which was similar to Section 13 of the Delhi Rent Act. In that context, *Atkin, L.J.*, stated the law on the point thus :

"the section appears to me to limit definitely the jurisdiction of the Courts in making ejectment in the case of premises to which the Act applies. Parties cannot by agreement give the Courts jurisdiction which the Legislature has enacted they are not to have.

21. It is true that in *Barton's* case just as in *Seshadri's* case (*supra*), the statute under consideration expressly prohibited the Court from passing a decree on a ground which was not covered by the statute but the principle is equally applicable to cases under statutes which place such a fetter on the jurisdiction of the Court, by necessary implication.

22. The mere fact that Order 23, Rule 3, of the Code of Civil Procedure is applicable to the proceedings in a suit under the Bombay Rent Act, does not remove the fetter on the Rent Court or empower it to make a decree for eviction de hors the statute. Even under that provision of the Code, the Court, before ordering that the compromise be recorded, is required to satisfy itself about the lawfulness of the agreement. Such lawfulness or otherwise of the agreement is to be judged, also on the ground whether the terms of the compromise are consistent with the provisions of the Rent Act.

23. In view of what has been said above, it is clear that the general principles enunciated by this Court in cases referred to by the learned Counsel for the appellant, are a relevant guide for determining whether in a particular case the consent decree for possession passed by the Court under the Bombay Rent Act is or is not a nullity. But the case in hand is not in line with *Bahadur Singh's* case (*supra*), *Kaushalya Devi's* case (*supra*) and *Ferozi Lal Jain's* case (*supra*). On facts, they are distinguishable from the instant case. In those cases, there was absolutely no material, extrinsic or intrinsic to the consent decree on the basis of which, the Court could be satisfied as to the existence of a statutory ground for eviction.

24. The case before us falls well nigh within the ratio of *Seshadri's* case (*supra*). Therein, *K. K. Chari*, who was under an eviction order, purchased the suit premises in the same city for his occupation. *Seshadri* was then the tenant of the suit premises under the vendor, and after the purchase, he attorned in favour of the appellant and had been paying rent to him. *Chari* issued

notices under Section 106 of the Transfer of Property Act, terminating the tenancy of Seshadri. Since Seshadri did not surrender possession, Chari filed a suit for eviction under Section 10 (3) (a) (i) of the Madras Act mainly on the ground that he required the premises for his bona-fide use and occupation. Seshadri controverted Chari's claim. At the commencement of the enquiry. Chari was examined before the Court. He particularly testified how he had purchased the house for his own occupation. He also filed a number of documents to establish that the requirement of premises for his own occupation was true. Seshadri did not prefer to cross-examine Chari. About 1 1/2 months thereafter, both the parties entered into a compromise in these terms :

" (1) the respondent hereby withdraws his defence in the aforesaid petition and submits to a decree for eviction unconditionally.

(2) The respondent prays that time for vacating up to June 5, 1969, might please be given and the petitioner agrees to the same.

(3) The respondent agrees to vacate the petition premises and hand over possession of the entire petition premises to the petitioner on or before the said date viz., June 5, 1969, without fail under any circumstances and undertakes not as apply for extension of time.

(4) It is agreed by both the parties that this memo of compromise is executable as a Decree of Court".

25. The Court, after referring to the petition of the landlord being under Section 110 (3) (a) (i), of the Act on the ground of his own occupation, passed the following order :

"Compromise memo filed and recorded. By consent eviction is ordered granting time to vacate till June 5, 1969. No costs."

26. The aforesaid terms of the compromise were also incorporated in the order. After distinguishing the former three cases viz. Bahadur Singh's case, Kaushalya Devi's case and Ferozi Lal Jain's case, Vaidialingam, J., speaking for himself and Dua, J., (comprising majority) enunciated the law on the point, thus : (p. 774)

"The true position appears to be that an order of eviction based on consent of the parties is not necessarily void if the jurisdiction fact viz., the existence of one or more of the conditions mentioned in Section 10 were shown to have existed when the Court made the order. Satisfaction of the Court, which is no doubt a pre-requisite for the order of eviction, need not be by the manifestation borne out by a judicial finding. If at some stage the Court was called upon to apply its mind to the question and there was sufficient material before it, before the parties invited it to pass an order it terms of their agreement, it is possible to postulate that the court was satisfied about the grounds on which the order of eviction was based..... If the tenant in fact admits that the landlord is entitled to possession on one or other of the statutory grounds mentioned in the Act, it is open to the court to act on that admission and make an order for possession in favour of the landlord without further enquiry."

27. From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the

Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class so admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.

28. We do not find any force in the contention of Mr. Dholakia, that the facts admitted in the compromise, itself were insufficient to make out even a prima facie ground for eviction mentioned in Section 12 (3) (a) of the Bombay Rent Act, merely because the tenant had made an application for fixation of standard rent, which was still pending at the time of passing of the decree. By admitting to pay the arrears of rent and mesne profits at the rate of Rs. 15/- per month, the tenant had clearly withdrawn or abandoned his application for fixation of standard rent. The admission in the compromise was thus as admission of the material facts which constituted a ground for eviction under Section 12 (3) (a). Rent was admittedly payable by the month; since the application for fixation of fair rent stood withdrawn there was no dispute with regard to the amount of standard rent. Further, the rent was admittedly in arrears for a period of more than six months; so much so that in the present case, the tenant had neglected to pay the balance of arrears, amounting to Rs. 152/50, even long after the decree and the landlord was compelled to recover the same by execution.

29. The case of Jeshwant Rai Mulukchand (supra), cited by Mr. Dholakia, does not advance his stand. In that case, there was a serious dispute regarding the amount of standard rent. Though the final order of standard rent was passed by the Court of Small Causes, neither the landlord nor the tenant accepted the determination and each side questioned the amount by filing Revision Petitions. In the present case, however, no dispute regarding the standard rent was subsisting at the time of compromise. That dispute was put an end to by the compromise itself.

30. Be that as it may, in cases where an objection as to the non-executability of the decree on the ground of its being a nullity, is taken, the executing Court is not competent to go behind the decree, if the decree on the face of it, discloses some material on the basis of which, the Rent Court could be satisfied with regard to the existence of a statutory ground for eviction. In such a case it must accept and execute the decree as it stands. If, on the face of it, the decree does not show the existence of such material or jurisdictional fact, the executing Court may look to the original record of the trial Court to ascertain whether there was any material furnishing a foundation for the trial Court's jurisdiction to pass the decree it did. The moment it finds that prima facie such material existed, its task is complete. It is not necessary for it to go further and question the presumed or expressed finding of the trial Court on the basis of that material. All that it has to see is whether there was some material. All that it has to see is whether there was some material on the basis of which the Rent Court could have-as distinguished from must have-been satisfied as to the statutory ground for eviction. To allow the executing Court to go beyond that limit, would be to exalt it to the status of super Court sitting in appeal over the decision of the Rent Court. Since in the instant case, there was a clear admission in the compromise, incorporated in the decree, of the fundamental facts that could constitute a ground for eviction under Section 12 (3) (a), the executing Court was not

competent to go behind the decree and question its validity.

31. For the foregoing reasons the appeal fails and is dismissed with costs.

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