

S. P. Deshmukh

Vs

Shah Nihal Chand Waghajibai Gujarati

Civil Appeal No. 894 of 1976

(Y. V. Chandrachud, P. S. Kailasam JJ)

27.07.1977

JUDGMENT

CHANDRACHUD, J. –

1. Even after hearing an interesting argument from Mr. Nariman, who appears on behalf of the respondent-landlord, we are left in no doubt that the High Court, in spite of several decisions of this Court, has manifestly exceeded the limits of its narrow jurisdiction under Article 227 of the Constitution. We are unable to appreciate that the High Court should have persuaded itself to accept the contention of the High Court should have persuaded itself to accept the contention of the landlord in the teeth of the concurrent finding of the Rent Controller and the Collector that the tenant was not a habitual defaulter. Normally, a monthly tenant is under an obligation to pay the rent from month to month but this obligation is subject to a contract to the contrary. Such a contract need not be reflected in a formal document and can be spelt out from the conduct of the parties, spread over a fairly long period of time. The evidence in the case, which was believed by the two tribunals of fact, shows that the tenant has been paying rent at an interval of 3 or 4 months, which the landlord has been willingly accepting and always without even so much as a murmur. The landlord never complained of any irregularity on the part of the tenant in paying rent and indeed the tenant was not in arrears of a paisa when the present proceedings for his eviction were commenced by the landlord. In these circumstances, the judgment of the High Court is calculated to cause rather than correct, a grave injustice. The High Court, therefore, ought not to have interfered in the matter.

2. Accordingly, we set aside the High Court's judgment and allow this appeal with costs.

</html