

Khadi Gram Udyog Trust

Vs

Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur

Civil Appeal Nos. 1313 of 1977

(N. L. Untwalia, P. S. Kailasam JJ )

28.11.1977

JUDGMENT

KAILASAM, J. -

1. On November 8, 1977, when the hearing of the appeal was concluded we pronounced an order dismissing the appeal with costs stating that a reasoned judgment would follow. We now proceed to give our reasons.

2. This appeal by special leave is preferred by Khadi Gram Udyog Trust, the tenant against the judgment of the Allahabad High Court passed in Civil Revision 2217 of 1975 directing its eviction. The respondent Shri Ram Chandraji Virajman Mandir, Sarsaiya Ghat, Kanpur, the owner of premises 49/4 General Ganj, Kanpur, served a notice on the appellant who was a tenant of a shop in the premises on a monthly rent of Rs. 200 from 1958 demanding payment of arrears as well as to quit the premises. The notice was served on July 9, 1973. Subsequently the respondent filed the suit O.S. 5 of 1973 before the District Judge, Kanpur, restricting its claim for recovery of arrears of rent from May 1, 1973 to August 8, 1973 for Rs. 3200 as damages and Rs. 322.93 as water tax alleged to be already due and Rs. 50 as water tax tentatively due pendente lite and future water tax and for ejection of the petitioner from the suit premises. In this suit the respondent relinquished his claim for rent for the period January 1, 1963 to December 31, 1970 as the relief was time-barred. The appellant paid the rent for the period January 1, 1971 to April 30, 1973 and thereafter respondent restricted his claim for the period May 1, 1973 to August 8, 1973. The appellant filed the written statement stating that he had paid the entire amount due. As the rent for the period January 1, 1963 to December 31, 1970 was barred by time, he pleaded that he was not a defaulter and was therefore not liable to be evicted from the suit premises. The appellant deposited a sum of Rs. 5972.43 in the Court being the amount of rent and damages for the period May 1, 1973 to February 28, 1975 together with interest, cost, etc. as required by Section 20(4) of the U. P. Act 13 of 1972. The suit was transferred to the Court of Sixth Additional district Judge, Kanpur, who on November 11, 1975 decreed the suit of the respondent and directed the appellant to vacate the suit premises and ordered that the entire amount deposited by appellant in the Court under Section 20(4) of the Act shall be paid to the plaintiff-respondent. The appellant filed a revision petition under Section 25 of the Small Causes Courts Act in the High Court of Allahabad. The High Court dismissed the revision petition by its judgment and order dated April 19, 1977. The present appeal is filed by special leave granted by this Court.

3. The only contention raised in this appeal is that the appellant having complied with the requirement of Section 20(4) of the Act and deposited the entire amount of rent due, the Court ought to have passed an order relieving the tenant against his liability for eviction on that ground.

Chapter IV of the U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act XIII of 1972 prescribes the procedure for eviction of a tenant. While Section 20(1) bars institution of suit for eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner, sub-section (2) enables the landlord to file a suit on any one or more of the grounds mentioned in sub-section (2). We are concerned with sub-clause (a) of sub-section (2) which provided that a suit for eviction of a tenant from a building may be instituted on the ground that the tenant is in arrears of rent for not less than four months and has failed to pay the same to landlord within one month from the date of service upon him of a notice of demand. It is not disputed that several notices were served on the appellant and that he failed to pay the rent within one month from the date of the service of the notice of demand on him. Another opportunity for payment of rent is provided to the tenant under Section 20(4) which provides that "In any suit of eviction on the ground mentioned in clause (a) of sub-section (2), if at the first hearing of the suit the tenant unconditionally pays or tenders to the landlord or deposits in Court the entire amount of rent and damages for use and occupation of the building due from him together with interest thereon at the rate of 9 per cent per annum and the landlord's costs of the suit in respect thereof, after deducting any amount already deposited by the tenant against his liability for eviction on the ground. Under this is sub-section, therefore, though the tenant has not complied with the requirement of sub-section (2) of Section 20, if he pays at the first hearing of the suit unconditionally the entire amount of rent the Court may pass an order relieving the tenant against his liability for eviction. In this case the appellant deposited on February 13, 1975 a sum of Rs. 5972.43 being the amount of rent and damages for the period May 1, 1973 to February 28, 1975 together with interest, etc. The contention of the appellant is that "entire amount of rent due" would be the rent that is recoverable and would not include the rent, the recovery for which is barred by time. According to the appellant the payment of entire amount of rent due would not include the rent for the period January 1, 1960 to December 31, 1970 as the claim is barred by time. The District Judge who tried the suit was of the view that the tenant ought to have deposited the time-barred arrears of rent also in order to claim benefit under Section 20(4). The trial Court proceeded with the trial of the Suit and found that the landlord had proved that tenant was in arrears of rent for not less than four months and had failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand and as such satisfied the requirement of sub-section (2) of Section 20 and is entitled for order of eviction. In the revision the High Court affirmed the view taken by the trial Court and dismissed the appeal.

4. It will be seen that under Section 20(2) of the Act, the landlord gets a cause of action for evicting the tenant when the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand. If the tenant pays the entire arrears of rent due at the first hearing of the suit the Court may relieve the tenant against eviction even though he had not complied with Section 20(2). The tenant can take advantage of the benefit conferred by Section 20(4) only when he pays the entire amount of rent due as required under Section 20(4). The question that arises for consideration in this appeal is whether the entire amount of rent due would include even rent which cannot be recovered as having been time-barred. There is ample authority for the proposition that though a debt is time-barred, it will be a debt due though not recoverable, the relief being barred by limitation. In Halsbury's laws of England (Third Ed.) vol. 24 at p. 205, Article 369, it is stated 'except in the cases previously mentioned, the Limitation Act, 1939 only takes away the remedies by action or by set-off; it leaves the right otherwise untouched and if a creditor whose debt is statute-barred has any means of enforcing his claim other than by action or set-off, the Act does not prevent him from recovering by those means'. The Court of Appeal in *Curwen v. Milburn* ((1889) 42 Ch D 424), Cotton, L. J. said :

Statute-barred debts are dues, though payment of them cannot be enforced by action.

The same view was expressed by the Supreme Court in *Bombay Dyeing and Manufacturing Co. Ltd. v. The State of Bombay* (1958 SCR 1122 : AIR 1958 SC 325 : (1958) 1 Lab LJ 778) where it held that the statute limitation only bars the remedy but does not extinguish the debt, except in cases provided for by Section 28 of the Limitation Act, which does not apply to a debt. Under Section 25(3) of the Contract Act a barred debt is good consideration for a fresh promise to pay the amount. Section 60 of the Contract Act provided that when a debtor makes a payment without any direction as to how it is to be appropriated, the creditor has the right to appropriate it towards a barred debt. In a Full Bench decision of the Patna High Court - *Ram Nandan Sharma v. Mt. Maya Devi* (AIR 1975 Pat 283), Untwalia, C.J. as he then was, has stated "There is a catena of decisions in support of what has been said by Tek Chand, J. in *First National Bank v. Sant Lal* AIR 1959 Punj 328, 330 (para 12)) that the Limitation Act with regard to personal actions, bars the remedy without extinguishing the right". The law is well-settled that though the remedy is barred the debt is not extinguished. On consideration of the scheme of the Act, it is clear that the statute has conferred a benefit on the tenant to avoid a decree for eviction by complying with the requirement of Section 20(4). If he fails to avail himself of the opportunity and has not paid the rent for not less than four months and within one month from the date of service upon him of a notice of demand, the landlord under Section 20(2) would be entitled to an order of eviction. Still the tenant can avail himself of the protection by complying with the requirements of Section 20(4). As he has not deposited the entire amount due the protection is no more available. We agree with the view taken by the trial Court and the High Court of Allahabad that the words "entire amount of rent due" would include rent which has become time-barred.

5. In the result the appeal is dismissed. There will be no order as to costs.

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