

Suleman Noormohamed and Others

Vs

Umarbhai Janubhai

Civil Appeal No. 226 of 1976

(R. S. Sarkaria, N. L. Untwalia JJ)

23.02.1978

JUDGMENT

UNTWALIA, J. -

1. s is a decree-holders' appeal by special leave. The sole respondent is the judgment-debtor. The appellants filed a suit against the respondent in the Small Causes Court at Ahmedabad in 1964 claiming a decree for eviction against him on the ground of non-payment of rent and bona fide personal necessity. The ground made out were in accordance with the relevant provisions of The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - hereinafter to be referred to as the Act. The respondent filed a written statement with a view to contest the suit. Eventually on account of the default of the defendant the suit was taken up for hearing ex parte and an ex parte decree was passed on March 16, 1966. The defendant applied under Order IX, Rules 13 of the Code of Civil Procedure - hereinafter to be referred to as the Code, for setting aside the decree. It was set aside. But ultimately the suit was disposed of on March 1, 1967 on compromise between the parties. According to the terms of the compromise decree, the judgment-debtor was to hand over possession of the suit premises to the decree-holders within a period of three years i.e. by March 1, 1970. But he did not do so. Thereupon the decree-holders filed an execution case to get possession of the property. The respondent contested the execution on the ground that the decree was a nullity. The first Court accepted his plea but on appeal by the decree-holders it was held by the Appellate Court that the decree was not a nullity and was executable. The respondent filed a revision application in the Gujarat High Court which has been allowed. The High Court has accepted the respondent's plea that the compromise decree is a nullity and hence cannot be executed.

2. It is not necessary to review again all the earlier judgments of this Court on the point. It will be sufficient to refer only to two namely, Nagindas Ramdas v. Dalpatram Ichharam alias Brijram ((1974) 2 SCR 544 : (1974) 1 SCC 242) - a judgment which is noticed by the High Court also in its order under appeal and the case of Roshan Lal v. Madan Lal ((1976) 1 SCR 878 : (1975) 2 SCC 785).

3. It was pointed out in Nagindas's case by one of us (Sarkaria, J.) that the existence of one of the statutory grounds mentioned in Sections 12 and 13 of the Act, as in the case of other similar States Statues is a sine qua non to the exercise of jurisdiction by the Rent Court in order to enable it to make a decree for eviction. Parties by their consent cannot confer jurisdiction on the Rent Court to do something which according to the legislative mandate it could not do. The Court while recording a compromise under Order XXIII, Rule 3 of the Code has to satisfy itself that the agreement between the parties is lawful; in other words is not contrary to the provisions of the Act But it has been clearly laid down in Nagindas's case at page 552 (SCC p. 251-2) :

... 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 .....

4. In Roshan Lal's case, one of us (Untwalia, J.) following Nagindas's case reiterated the same view. At page 882 delivering the judgment of this Court, it had been said : (SCC p. 789)

The Court can pass a decree on the basis of the compromise. In such a situation the only thing to be seen is whether the compromise is in violation of the requirement of the law. In other words, parties cannot be permitted to have a tenant's eviction merely by agreement without anything more. The compromise must indicate either on its face or in the background of other materials in the case that the tenant expressly or impliedly is agreeing to suffer a decree for eviction because the landlord, in the circumstances, is entitled to have such a decree under the law.

With reference to the requirement of the law under Order XXIII, Rule 3 of the Code, it has been observed further on the same page : (SCC p. 789)

If the agreement or compromise for the eviction of the tenant is found, on the facts of a particular case, to be in violation of a particular Rent Restriction or Control Act, the Court would refuse to record the compromise as it will not be a lawful agreement. If on the other hand, the Court is satisfied on consideration of the terms of the compromise and, if necessary, by considering them in the context of the pleadings and other materials in the case, that the agreement is lawful, as in any other suit, so in an eviction suit, the Court is bound to record the compromise and pass a decree in accordance therewith. Passing a decree for eviction on adjudication of the requisite facts or on their admission in a compromise, either express or implied, is not different.

5. The High Court has held the decree to be a nullity on the following grounds :

(1) Admittedly, the order passed by the learned Judge does not disclose any satisfaction recorded by him about the existence of one or more grounds of eviction under the Act. Naturally, therefore, the decree does not disclose that the learned Judge, who passed the eviction decree, was satisfied about the existence of any of the grounds for eviction.

(2) In the compromise pursis also, there is no admission on the part of the defendant, express or implied, under Section 12 or Section 13 of the Act.

6. In arriving at the said conclusions the High Court has left out of consideration the affidavit filed on behalf of the appellants at the time the suit was taken up for hearing ex parte and the ex parte decree following thereupon. We also do not propose to refer to those materials to arrive at our conclusion which are different from those of the High Court. But even apart from those materials, there is abundant intrinsic material in the compromise itself to indicate that the decree passed upon its basis was not in violation of the Act but was in accordance with it.

7. In Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai ((1964) 5 SCR 157 : AIR 1964 SC 1341), Shah, J., as he then was delivering the judgment of this Court pointed out that when the

conditions of clause (a) of sub-section (3) of Section 12 of the Act are fulfilled the Court is bound to pass a decree in ejectment against the tenant. But in relation to clause (b) it has been said at page 166 :

The clause deals with cases not falling within clause (3)(a) i.e. cases (i) in which rent is not payable by the months, (ii) in which there is a dispute regarding the standard rent and permitted increases, (iii) in which rent is not due for six months or more. In these cases the tenant may claim protection by paying or tendering in Court on the first day of the hearing of the suit or such other date as the Court may fix, the standard rent and permitted increases and continuing to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also by paying costs of the suit as directed by the Court.

If clause (b) is attracted as being any other case of the type (ii) i.e. "in which there is a dispute regarding the standard rent and permitted increases", then in such a case, "the tenant would not be in a position to pay or tender the standard rent, on the first date of hearing, and fixing of another date by the Court for payment or tender would be ineffectual, until the standard rent is fixed". Hence the Court, on the application of the tenant, has to fix the standard rent first. But if there is no dispute or no bona fide dispute, or the dispute raised is a mere pretence of it, a decree can follow under clause (b) of sub-section (3) of Section 12 of the Act in a suit in which rent is not due for six months or more but is due even for a lesser period. The tenant will get the protection against eviction in such a case only if he pays or tenders in Court on the first date of the hearing of the suit or such other date as the Court may fix the rent due (leaving aside the question of costs).

8. In the instant case the High Court was not right that on the face of the compromise pursis or the order passed thereon, there was no material to show that the tenant had either expressly or impliedly suffered a decree for eviction as being liable to be evicted in accordance with Section 12(3)(b) of the Act. While recording the compromise under Order XXIII, Rule 3 of the Code, it is not necessary for the Court to say in express terms in the order that it was satisfied that the compromise was a lawful one. It will be presumed to have done so, unless the contrary is shown. But that apart, on examination of the plaint which certainly could be looked into and which must have been in the records of the Court at the time of the passing of the compromise decree, it would be found that the landlords had claimed arrears of rent for two months at Rs. 17 per month and mesne profit also for one month up to the date of the suit at the same rate. They had also claimed light charges at Rs. 2 per month. In the compromise petition, paragraph 2, the same amount of rent, mesne profit and electric charges are admitted by the tenants to be payable to the landlords. There is nothing to indication that any genuine dispute was raised by the tenant in regard to be standard rent or the electric charges. Nor is there anything to show that he had ever filed a petition under Section 11 of the Act or any other provision of law for fixation of standard rent. In other words, there is nothing to show that the tenant could claim protection from eviction in accordance with clause (b) of sub-section (3) of Section 12 of the Act on the ground that he was not in a position to pay or tender the rent due on the first date of the hearing of the suit, which must have been fixed before the passing of the ex-parte decree. Nor was he able to show that the Court at his request had ever fixed any other date for payment of the said amount. In paragraph 3 of the compromise petition also it is admitted that the standard rent would be Rs. 17 per month plus Rs. 2 electric charges and the defendant would pay the mesne profits at the aforesaid rates from March 1, 1967. It is, therefore, manifest that there was no such dispute in this case in regard to standard rent which could give any protection to

the tenant against his eviction under Section 12(3)(b) of the Act. The facts clearly show that he had incurred the liability to be evicted under the said provisions of law and the compromise decree was passed on the tenant's impliedly admitting such liability. If a decree for possession would have been passed in invitum the tenant would not have got three years' time to vacate the premises. He, therefore, agreed to suffer a decree by consent and gained three years' time under it. But the unavoidable uncertainties of litigation and the delay in disposal of cases at all stages have enable him to gain a period of about 11 years more by now. In our judgment the decree under execution is not a nullity and has got to be executed by the Execution Court without any further loss of time, as quickly as possible.

9. In the result, we allow this appeal with costs and set aside the judgment and order of the High Court.

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