Mranalini B. Shah and Another

Vs

Bapalal Mohanlal Shah

Civil Appeal No. 1032(N) of 1978

(R. S. Sarkaria, P. N. Kailasam JJ)

01.05.1978

JUDGMENT

SARKARIA, J. –

1. This appeal by special leave raises a question with regard to the interpretation of Section 12(3)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act 57 of 1947, which runs as follows :

> ..... No decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or no or before such other date as the court may fix, the tenant pays or tenders in court the standard rent and permitted increases then due and thereafter continues to pay or tender in court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the court.

2. It is not disputed that the expression "suit" in the aforesaid clause (b) includes an "appeal". The principal question that falls for consideration is, whether the requirement of the latter part of the above-quoted clause regarding payment or tender of rent and permitted increases, regularly during the pendency of suit/appeal is mandatory or merely directory. In other words, whether in case of a monthly tenancy, the court has a discretion to treat the payment or tender of rent made at intervals ranging from two to four months during the pendency of the suit/appeal as a regular payment or tender within the contemplated of clause (b) of Section 12(3) ?

3. Now the facts material to the consideration of this question may be set out.

4. The appellants herein filed a suit in the Court of Small Causes, Ahmedabad for possession of the suit premises and also for arrears of rent amounting to Rs. 528.33, together with future mesne profits and costs against the respondent.

5. The respondent resisted the suit on various grounds. The trial Court dismissed the suit. It, however, fixed the standard rent of suit premises at Rs. 65 p.m., including municipal taxes and further directed the defendant to pay the arrears of rent amounting to Rs. 498.33, up to the date of the suit.

6. Aggrieved by that decree, the landlord preferred an appeal before the Appellate Bench of the Small Causes Court at Ahmedabad, which by its Judgment dated January 7, 1977, dismissed the appeal and maintained the decree of the trial Judge. The landlord thereafter filed a writ petition in

the High Court, which was summarily dismissed by an Order dated July 21, 1977.

7. Against that order of the High Court, the landlord has now come in special appeal under Article 136 of the Constitution, before us.

8. The uncontroverted facts found by the courts below are : that the Civil Appeal 133 of 1973 before the Appellate Bench of the Court of Small Causes was filed on August 22, 1973. Thereafter, it remained pending there for about 40 months. During the pendency of this appeal (CA 133 of 1973), the tenant-respondent did not pay the rent or the money equivalent to rent every month as it fell due. Nor did he make any payment in advance. He deposited the rent in court 16 times at intervals ranging from 2 to 4 months. This will be apparent from the figures tabulated below :

Date of deposit Amount deposited Per Receipt No. Rs. 20-9-73 195 10017 30-12-73 195 14120 22-2-74 130 18695 3-5-74 195 2398 11-7-74 130 5673 4-10-74 195 11005 11-2-74 130 15792 14-2-75 130 20618 13-6-75 260 3258 11-9-75 195 9673 9-12-75 195 15418 12-3-76 195 22764 15-6-76 195 3639 29-7-76 130 7683 11-11-76 130 14973 6-12-76 195 16690##

There is no dispute that the rent was payable every month at the rate of Rs. 65 per month. The last instalment of rent was paid by the tenant after the conclusion of final arguments. The Appellate Bench whose judgment has been confirmed by the High Court, held that the defendant had substantially complied with the provisions of Section 12(3)(b) notwithstanding the fact that he did not pay the rent every month as it fell due, but after intervals of 2, 3 or 4 months.

9. Following the Division Bench decision of the Gujarat High Court in Lalchand v. Nanabhai (Civil Appeal No. 522 of 1971) the High Court held that term "regularly" in the latter part of Section 12(3)(b) is only directory and not mandatory and therefore, substantial compliance with this provision is enough. Obviously, it held that if the standard rent and permitted increases are paid by the tenant, even at irregular intervals during the pendency of appeal so that at the time of the decision of the appeal no rent remains in arrears, that would be a sufficient compliance with the requirement of clause (b).

10. Mr. Parekh, appearing for the appellant, submits that the decision of the High Court of Gujarat, holding that the term "regularly" in Section 12(3)(b) is only directory and a strict compliance with its provisions need not be insisted upon, has been impliedly overruled by a recent judgment of this Court in Ganpat Ladha v. Sashikant Vishnu Shinde ((1978) 2 SCC 573, 579, 580).

11. On the other hand, Mr. Shroff, appearing for the respondent, submits that an appeal against the Lalchand case (Civil Appeal No. 522 of 1971) which was followed by the courts below, is pending in this Court, and the question about the interpretation of clause (b) of Section 12(3), in general and the term "regularly", in particular, has been made that the decision in this case should stand over till the appeal in Lalchand case (Civil Appeal No. 522 of 1971) is decided by this Court. Learned counsel submits that Ganpat Ladha v. Sashikant ((1978) 2 SCC 573, 579, 580) does not pointedly deal with the point which falls for decision in the instant case.

12. We have perused the recent judgment of this Court in Ganpat Ladha v. Sashikant Vishnu Shinde ((1978) 2 SCC 573, 579, 580). In our opinion, the point raised by the appellants before us is fully covered by that judgment. The following observations of Beg. C.J., who spoke for the court, are apposite : (SCC pp. 579 & 580, paras 10 & 11)

..... We think that the problem of interpretation and application of Section 12(3)(b) need not trouble us after the decision of this Court in Shah Dhansukhlal Chhaganlal case (Shah Dhansukhlal Chhaganlal v. Dalichand Virchand Shroff, AIR 1968 SC 1109 : (1968) 3 SCR 346 : (1968) 2 SCJ 687) followed by the more recent decision in Harbanslal Jagmohandas v. Prabhudas Shivlal ((1977) 1 SCC 575) which completely covers the case before us.

It is clear to us that the Act interferes with the landlord's right to property and freedom of contract only for the limited purpose of protecting tenants from misuse of the landlord's power to evict them, in these days of scarcity of accommodation, by asserting his superior right in property or trying to exploit his position by extracting too high rents from helpless tenants. The object was not to deprive the landlord altogether of his rights in property which have also to be respected. Another object was to make possible eviction of tenants who fail to carry out their obligation to pay rent to the landlord despite opportunities given by law in that behalf ... But where the conditions of Section 12(3)(a) are not satisfied, there is a further opportunity given to the tenant to protect himself against eviction. He can comply with the conditions set out in Section 12(3)(b) and defeat the landlord's claim for eviction. If, however, he does not fulfil those conditions, he cannot claim the protection of Section 12(3)(b) and in that event, there being no other protection available to him, a decree for eviction would have to go against him. It is difficult to see how by any judicial valour discretion exercisable in favour of the tenant can be found in Section 12(3)(b) even where the conditions laid down by it are satisfied to be strictly confined within the limits prescribed for their operation. We think that Chagla, C.J., was doing nothing less than legislating in Kalidas Bhavan case (Kalidas Bhavan v. Bhagvandas Sakalchand, 60 Bom LR 1359) in converting the provisions of Section 12(3)(b) into a sort of discretionary jurisdiction of the court to relieve tenants from hardship. The decisions of this Court referred to above, in any case, make the position quite clear that Section 12(3)(b) does not create any discretionary jurisdiction in the court. It provides protection to the tenant on certain conditions and these conditions have to be strictly observed by the tenant who seeks the benefit of the section. If the statutory provisions do not go far enough to relieve the hardship of the tenant the remedy lies with the legislature. It is not in the hands of courts.

13. The above enunciation, clarifies beyond doubt that the provisions of clause (b) of Section 12(3) are mandatory, and must be strictly complied with by the tenant during the pendency of the suit or appeal if the landlord's claim for eviction on the ground of default in payment of rent is to be defeated. The word "regularly" in clause (b) of Section 12(3) has a significance of its own. It enjoins a payment or tender characterised by reasonable punctuality, that is to say, one made at regular times or intervals. The regularity contemplated may not be a punctuality, of clock-like precision and exactitude, but it must reasonably conform with substantial proximity to the sequence of times or intervals at which the rent falls due. Thus, where the rent is payable by the month, the tenant must, if he wants to avail of the benefit of the latter part of clause (B), tender or pay it every month as it falls due, or at his discretion in advance. If he persistently defaults during the pendency of the suit or appeal in paying the rent, such as where he pays it at irregular intervals of 2 or 3 or 4 months - as is the case before us - the court has no discretion to treat what were manifestly irregular payments, as substantial compliance with the mandate of this clause, irrespective of the fact that by the time the judgment was pronounced all the arrears had been cleared by the tenant.

14. Mr. Shroff contended that, in fact, the tenant had made two other payments, viz., Rs. 744.85 on February 4, 1970 and Rs. 183.52 on March 29, 1976 towards the municipal dues or taxes payable by the landlords and that if those items were adjusted towards the rent, the tenant would be deemed to have paid the rent, in advance, for entire period of the pendency of the appeal. In support of this contention, the respondent has filed an affidavit in this Court. This claim, which has now been made

for the first time by the tenant, has been controverted by the landlord in his rejoinder affidavit filed before us. We, therefore, decline to take it into consideration.

15. We need not dilate on the matter further, suffice it to say that on the basis of the facts found by the courts below and in the light of this Court's decision in Ganpat Ladha v. Sashikant Vishnu Shinde ((1978) 2 SCC 573, 579, 580), the question posed at the commencement of the judgment must be answered in favour of the appellant and against the respondent. In the result, the appeal is set aside and a decree for possession of the premises in favour of the appellant is passed.

16. At this stage, Mr. Shroff requests that the respondent may be granted two years' time to vacate the premises on the basis of the written undertaking of his client, which he has now filed and which has been agreed to by the appellant's counsel. Of the undertaking filed by Mr. Shroff, the agreed portion is to the following effect :

> I shall vacate and hand over to the petitioners peaceful possession of the suit premises bearing M.C. No. 802/12 situated in Panchbhai's Pole, Ahmedabad on the expiry of two years from April 30, 1978 i.e. on or before April 30, 1980 (thirtieth day of April, one thousand nine hundred and eighty) and in the meanwhile I shall pay to the petitioners the monthly rent of Rs. 65 for occupation of the suit premises. I further undertake not to part with the possession of the suit premises. I further undertake not to part with the possession and create any sub-tenancy or encumbrances on the premises.

17. In paragraph 3 of his undertaking, the respondent has made a counter-claim for credit of the two items Rs. 744.85 and Rs. 183.52 which he says, he has paid towards municipal taxes and cess on behalf of the appellant-landlord. The appellants on the other hand, claim about Rs. 300 as education cess from the tenant. The parties agree before us that these claims and counter-claims may be decided within a period of six months from today by the court of the first instance - the trial Court. Subject to this condition, any amount found payable by the trial Court with regard to these counter-claims may be adjusted towards rent or shall have to be paid by the party by whom it is found due.

18. Mr. Parekh has accepted this undertaking with the modification that the amount which he would receive within the period of two years would not be "rent" but as "money equivalent to rent for use and occupation". The respondent has already deposited the "rent" up to September 1978. The appellants shall be at liberty to withdrawn the same.

19. The appeal is disposed of accordingly.

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