

Rajendra Nath Kar

Vs

Gangadas and Others

Civil Appeal No. 1931 of 1969

(CJI Y. V. Chandrachud, V. D. Tulzapurkar, A. P. Sen JJ)

12.01.1979

JUDGMENT

CHANDRACHUD, C.J. –

1. On November 27, 1962, respondents filed a suit for eviction against the appellant under the West Bengal Premise Tenancy Act, 1954 ("the Act") on the ground that the appellant was in arrears of rent, that he had sublet the premises and that the respondents required the premises for their personal use. The summons of the suit was served on the appellant on January 9, 1963 and he deposited the arrears of rent within a period of thirty days thereafter i.e. on February 5, 1963. On July 10 respondents filed an application under Section 17(3) of the Act for striking off the defense of the appellant on the ground that though the appellant had deposited the arrears of rent he had not deposited the interest due on the arrears, as required by Section 17(1) of the Act. By an order dated July 25, 1963 the trial Court accepted the respondents' contention and struck off the appellant's defense. On August 26, 1963 the appellant filed a civil revision application in the Calcutta High Court against that order but it was dismissed by the High Court on April 4, 1968.

2. Between August 26, 1963 when the appellant filed the revision application in the High Court and April 4, 1968 when the revision application was dismissed, certain important events happened. On August 26, 1967 an ordinance was passed by the West Bengal Government by which a new section, namely, section 17-B was introduced into the Act. By that Section, tenants were given the right, if the proceeding for eviction was not yet disposed of, to apply within thirty days of the commencement of the Ordinance, for setting aside the order striking off the defense. On the expiry of that ordinance, another Ordinance containing identical provisions was passed on January 8, 1968. This Ordinance was replaced on March 26, 1968 by President's Act 4 of 1968. Section 17-B which was inserted in the Act by the two Ordinances was numbered as Section 17-A under the President's Act, the provisions of the Section remaining unaltered. Section 1(2) of the President's Act provided that the said Act shall be deemed to have come into force on August 26, 1967 which was the date on which the first Ordinance had come into force.

3. After the dismissal of the revision application on April 4, 1968, the appellant filed an application on May 3, 1968 in the trial Court under Section 17-A, praying that the order dated July 25, 1963 passed by it striking off his defense, be set aside. It ought to be mentioned that though the trial Court had passed the order striking off the appellant's defense as long back as in 1963, the eviction suit filed by the respondents continued to remain on the file because, on September 16, 1963 the High Court in the revision application filed by the appellant had issued an order staying all further proceedings in the suit. Along with the application under Section 17-A the appellant filed an application under Section 5 of The Indian Limitation Act, 1908 praying that the delay caused in

filling the application may for reasons stated therein be condoned. Both the applications were dismissed by the trial Court by an order dated August 17, 1968 which was confirmed by the Calcutta High Court in revision on June 3, 1969. Being aggrieved by the judgment of the High Court in Civil Rule 2924 of 1968, the tenant has preferred this appeal by special leave of this Court.

4. The High Court has dismissed the application filed by the appellant under Section 17-A of the Act on the ground that it was not filed within 30 days of August 26, 1967 when the first Ordinance came into force and further on the ground that since Section 5 of the Limitation Act, 1963 had no application to the proceeding, the Court had no power to condone the delay. It is patent that the application under Section 17-A was not filed within the prescribed period of thirty days. The sole question for decision, therefore, is whether the provisions of Section 5 of the Limitation Act can apply to an application under Section 17-A of the Act.

5. Section 5 of the Limitation Act provides, to the extent relevant, that any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not making the application within the said period. On the applicability of Section 5 to the proceedings under Section 17-A of the Act, the provisions of Section 39 of the Act have a material bearing and must be noticed. Section 39 of the Act provides :

Subject to the provisions in this Act relating to limitation, all the provision of the Indian Limitation Act, 1908, shall apply to suit, appeals and proceedings under this Act.

This provision, which is clear and Specific, leaves no doubt that the provisions of the Limitation Act would apply to proceedings under the West Bengal Premises Tenancy Act subject to the condition that if there is a provision in the West Bengal Act relating to limitation, that provision would prevail over the provisions of the Indian Limitation Act relating to limitation. Since the West Bengal Act prescribed a specific period of limitation for filling an application for setting aside an order striking out the defense, namely, a period of 30 days commencing on August 26, 1967 when the first Ordinance came into force, that period would undoubtedly apply to the making of the application under Section 17-A of the Act. And since the appellant did not file application under Section 17-A before the due date, that is to say, before September 25, 1967, the application must be held to be barred by limitation. But, by reason of Section 39 of the Act, all other provisions of the Limitation Act would be attached, including Section 5 of the latter Act. Whether the appellant has made out sufficient ground for the condonation of delay is another matter but, in view of the provisions of Section 39 of the Act, it seems to us clear that the application filed by the appellant under Section 5 of the Limitation Act for condonation of delay is maintainable and has to be decided on merits.

6. The learned Single Judge of the Calcutta High Court has referred in his judgment of June 3, 1969 to the provisions of Section 39 but he took the view that since Section 17-A lays down a special period of limitation for filling a petition to set aside an order striking out the defense, that period could not be extended by invoking the provisions of the Limitation Act. This view is unsupportable. The true meaning and effect of Section 39 is that if any special period of limitation is prescribed by the Act, that period will govern the proceedings under the Act in preference to the period, if any, prescribed by the Limitation Act. But, apart from such an over-riding effect of the period of limitation prescribed by the Act, not only that the other provisions of the Limitation Act do not stand excluded or superseded, but they are expressly made applicable by Section 39 of the Act. When a Court condones the delay caused in filling a proceeding, it does not extend the period of limitation prescribed by law for filing it. It treats the proceeding as if it is filed within limitation,

which it has the power to do if sufficient cause is shown for not filing the proceeding within the prescribed period.

7. In *Pokarmal Gurudayal v. Sagarmal Bengani* (76 CWN 486), a Division Bench of the Calcutta High Court took the view that Section 5 of the Limitation Act would apply even to an application made for setting aside the decree passed after and following upon an order striking out the defense. We endorse the view of the High Court which, *ex hypothesi*, would justify the application of Section 5 of the Limitation Act to an application for setting aside an order striking out the defence.

8. That leaves for consideration the question whether the appellant has shown sufficient cause for not preferring his application within a period of thirty days after August 26, 1967. On this aspect of the matter, it is relevant to bear in mind that in the revision application filed by the appellant against the order striking out his defense, the High Court on September 16, 1963 had stayed all further proceeding in the suit. If the appellant were to succeed in that revision application, the suit would have been required to be heard on merits and there would have been on reason or occasion for him to resort to the provision newly inserted by the Ordinance, under which an application could be made for setting aside the order striking out the defense. The appellant was evidently advised wrongly as regards the true legal position, as a result of which he awaited the disposal of his revision application. He filed the application under Section 17-A within 30 days of the date on which the revision application was dismissed. The appellant acted *bona fide* in pursuing his remedy by way of a revision application which he had already filed and which, if successful, could have given him effective relief. We are satisfied that he had sufficient cause for not filing the application under Section 17-A within the prescribed period. Accordingly, the delay caused in filing that application must be condoned under Section 5 of the Limitation Act and the application under Section 17-A must be allowed.

9. For these reasons, we allow the application filed by the appellant under Section 17-A of the Act, set aside the order dated July 25, 1963 striking out his defense and remit the matter back to the trial Court for deciding the respondent's suit for eviction in accordance with law. The suit has been pending since September, 1962, and we direct that it shall be disposed of expeditiously.

10. The appeal is accordingly allowed and the High Court's judgment is set aside but without an order of costs.

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