O. P. Kathpalia

Vs

Lakhmir Singh (Dead) and Others

Civil Appeal Nos. 464-66 of 1971

(D. A. Desai, V. B. Eradi, R. B. Misra JJ)

23.07.1984

JUDGMENT

DESAI, J. -

1. A dispute of a trivial nature between a landlord and now his transferees and the tenant is awaiting disposal for over 3 decade thanks to the literal and unimaginative approach to the provisions of a procedural state which times without number has been described as one for advancing justice and not to make a mockery of it.

2. A bungalow with an attached cottage situated at No. 1, Hailey Road, new Delhi was taken on lease by one E. B. Brook and he inducted the appellant as a subtenant in the cottage portion which may hereinafter be referred to as demised premises. Mr Brook surrendered his tenancy and vacated the portion in his actual possession on April 1, 1955 simultaneously calling upon the appellant to hand over possession of the premises in his possession to the then landlord one Lakhmir Singh, who is no more. Appellant did not vacate the premises in his possession but reached and agreement with Lakhmir Singh, the then landlord on June 20/22, 1955 to become the direct tenant of the then landlord of the premises in him possession on a monthly rent of Rs. 277. 50 p. as stated in plaint, effective from May 1, 1955. On October 10, 1955 appellant filed a petition in the Court of Senior Sub-Judge, Delhi under Section 8 of the Delhi and Ajmer Rent Control Act, 1952 ('Act' for short) praying for determination of the standard rent of the premises effective from the date of the commencement of his tenancy. Landlord Lakhmir Singh entered appearance and contested the application inter alia contending that the petition was barred by limitation. The trial court held that the petition was not barred by limitation and fixed the standard rent at Rs. 855 p.a. with effect from October 1, 1955. This decision was rendered on August 4, 1960. In the mean time, landlord Lakhmir Singh sold the whole bungalow including the demised premises by a deed of conveyance dated December 21, 1959 in favour of respondents 2 and 3 who on their own were impleaded in the proceedings.

3. The original landlord Lakhmir Singh and the two transferees from Lakhmir Singh preferred an appeal against the order of the learned Single Judge determining the standard rent in the Court of the District Judge, Delhi. The learned District Judge was of the opinion that in view of the provision contained in Section 11(b) the petition filed by the appellant for fixation of standard rent was barred by limitation. Accordingly the appeal was allowed and the petition of the appellant was dismissed.

4. The appellant preferred Civil Revision No. 335-D of 1961 in the High Court of Punjab at Chandigarh against the order of the learned District Judge. A learned Judge of the High Court agreed with the view taken by the learned District Judge that the petition was barred by limitation

and accordingly rejected the civil revision petition by his judgment and order dated December 17, 1962 against which the appellant has preferred Civil Appeal No. 464 of 1971 by special leave.

5. During the pendency of the proceedings for determination of standard rent in the trial court, the then landlord Lakhmir Singh filed Civil Suit No. 231 of 1956 in the Court of the Senior Sub-Judge, at Delhi on July 3, 1956 against the appellant for recovering the arrears of rend and possession. Eviction was sought under Section 13(1)(a) of the Act primarily on the ground of default in payment of rent despite notice dated May 10, 1956 having been duly served upon the tenant. The appellant as defendant contested the suit inter alia contending that his petition for fixation of standard rent under Section 8 of the Act has already been instituted and in pending and unless the standard rend is determined he is not in a position to meet the demand of arrears of rent claimed at the agreed rate. It was also contended that a suitable reply stating the aforementioned facts to the notice served by the landlord was sent yet he has unnecessarily rushed to the Court without waiting for the determination of standard rent. It appears that along with filing of the written statement, the appellant-tenant deposited all the arrears of rent as claimed by the plaintiff-landlord. The then landlord made an application on August 1, 1956 for permission to withdraw the amount of rend deposited by the tenant. This application of the landlord was resisted on the ground that the amount has been deposited under protest and the landlord could not be permitted to withdraw the same till the standard tent is determined. The application was set down for hearing on October 1, 1956. In the mean time on August 27, 1956 the landlord filed an application under section 13(5) of the Act for a direction that the tenant should deposit the rent as it falls due month by month. The order sheet shows that the Court directed notice of the application to be served upon the tenant and be fixed for hearing on October 1, 1956. It appears that the application for withdrawal of the rent deposited by the tenant was heard on October 1, 1956. On October 5, 1956, the appellant-tenant moved an application under Section 9 of the Act for fixing interim rent pending the determination of the standard rent of the premises. The order sheet shows that the application was set down for hearing on the same day in the afternoon and it was as a matter of fact heard and adjourned for order to October 6, 1956 in the afternoon. An order purports to have been passed on October 6, 1956 to the effect that the Court directed the tenant to deposit future rent at the agreed rate of rent. The appellant contended that what appears to be the order dated October 6, 1956 is a subsequently interpolated writing and no such order was made. It is not necessary to refer to the unsavoury details of this allegation save and except that the two learned Judges of the High Court before whom this matter reached at different stages : Justice Tek Chand and Justice D. Falshaw; both were satisfied that the trial court appeared to be guilty of interpolation and this finding resulted in withdrawal and transfer of the suit pending before the learned Judge to another court competent to try the same. It appears that at one stage, the suit filed by the landlord was dismissed for default but the same was ultimately restored at the instance of the landlord. When the suit stood transferred to another court pursuant to the order made by Falshaw, J. an application was made by the landlord to strike off the defence of the tenant of the ground that he failed to comply with the order made on the application dated August 27, 1956 by the landlord by which a direction was given under Section 13(5) that the tenant should deposit the rent at agreed rate of rent month to month as it becomes due and payable. It may be recalled that it is in respect of this very order that the allegation of interpolation was made and accepted by the High Court. The learned Judge before whom the suit came up for hearing pursuant to the order of transfer made by the High Court by his order dated March 17, 1958 accepted the contention of the landlord and ordered the defence of the tenant to be struck off on the ground that the tenant failed to comply with the directions of the Court made under Section 13(5) of the Act. An appeal preferred by the tenant in the Court of the District Judge was dismissed as being barred by limitation after rejecting the application for condoning the delay, if any. The appellant

tenant filed two revision petitions in the High Court of Punjab; one against the order of the learned District Judge dismissing the appeal as barred by limitation after refusing to condone the delay in preferring the appeal and the second against the order of the trial court striking off the defence of the tenant on the ground that he failed to deposit the rent for the subsequent period from month to month as directed by the order dated October 6, 1956. By a common judgment dated December 17, 1962 the learned Single Judge of the High Court after observing that what purports to be the order dated October 6, 1956 was an interpolated writing for the distinct advantage of the landlord, dismissed both the revision petitions. Hence the tenant has preferred Civil Appeal Nos. 464-65 of 1971 by special leave.

6. The mere narration of events leading to the present three appeals would be sufficient to convince even the most callous person that an utterly trivial dispute in which serious allegation of interpolation in the record by the learned trial Judge having been accepted, the tenant is under a threat of eviction on the ground of failure to deposit the rent though all the arrears of rent claimed in the suit was deposited on the first day of hearing in the trial court.

7. To dispose of these three appeals, it is necessary to decide the following questions :

> (i) Whether the petition for determination of standard rent filed by the tenant under Section 8 of the Act was barred by limitation ?
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> (ii) whether in view of the finding of the two learned Judge of the High Court that the order purporting to be date October 6, 1956 on application dated August 21, 1956 was interpolated, the failure of the tenant to comply with the same should have been visited with such a drastic order as striking off the defence ?
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> (iii) Whether the tenant has made out sufficient cause for condoning the delay in preferring the appeal against the interpolated order dated October 6, 1956 ?

8. We will deal with these questions seriatim.

9. The first question is whether the application made by the appellant under Section 8 of the Act was barred by limitation or was within time. Section 8 prescribes the circumstances in which the Court can fix the standard rent of premises to which the Act applies. The Court can determine the standard rent if there is a dispute between landlord and tenant regarding the amount of standard rent payable in respect of premises in accordance with the provision of the Second Schedule; or where at any time on or after the second day of June 1944 any premises are first let and the rent at which they are let is, in the opinion of the court unreasonable. Section 11 prescribes the period of limitation for making an application for fixation of standard rent. As it is material for the present purpose it may be extracted. It reads as under :

11. Limitation for applications for fixation of standard rent. - Any landlord or tenant may file an application to the Court for fixing the standard rent of the premises or for determining the lawful increase of such rent,

> (a) in the case of any premises which were let or in which the cause of action for lawful increase of rent arose, before the commencement of this Act, within six months from such commencement;
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> (b) in the case of any premises let after the commencement of this Act, within six

months from the date on which it is so let; and

(c) in the case of any premises in which the cause of actions for lawful increase of rent arises after the commencement of this Act, within six months from the date :

Provided that the court may entertain the application after the expiry of the said period of six months if it is satisfied that the applicant was prevented by sufficient cause from filling the application in time.

Reliance is placed by the respondent on Section 11(b) for contending that the petition for determination of standard rent made by the tenant was barred by limitation. A few facts may be recapitulated to appreciate the contention. One Mr E. B. Brook had taken on rent whole of the bungalow of which the suit premises - a cottage - formed part. Appellant was inducted as a subtenant on September 1, 1954 by the head-tenant. The head-tenant surrendered his tenancy and vacated and handed over possession of the portion of premises in his possession on April 1, 1955. Prior thereto he had served notice on the appellant to vacate the premises in his occupation latest by April 1, 1955. Appellant did not vacate the premises. In June 1955 appellant and the landlord arrived at an agreement Ex. P-2 by which appellant was accepted as a direct tenant of the premises in his possession from May 1, 1955 on a monthly rent of Rs. 269.50 p. Appellant paid Rs. 539 as and by way of rent for the months of May and June, 1955. He moved a petition for determination of standard rent on October 10, 1955. On these admitted facts the question is whether the application was barred by limitation.

10. The learned trial Judge held that tenancy between the landlord and the tenant commenced from May 1, 1955 and as the application for determining the standard rent has to be made within 6 months from the time the premises are let out to the tenant, the petition filed by the tenant on October 1, 1955 is certainly within time. The reasoning appears to be wholly flawless.

11. However when the matter was taken in appeal at the instance of the landlord, the learned District Judge held that as the appellant was inducted as a subtenant on September 1, 1954 by the head-tenant Mr Brook and after Mr Brook surrendered his tenancy the appellant was accepted as a direct tenant effective from May 1, 1955, for the purpose of computing limitation, the tenancy of the appellant could be said to have commenced from September 1, 1954 when he was inducted as a subtenant and therefore his petition under Section 8 filed on October 1, 1955 was beyond the period of 6 months and therefore barred by limitation. We find considerable difficulty in accepting this construction of sub-clause (b) of Section 11.

12. Section 11 enables either a landlord or a tenant to make an application to the Court for fixing the standard rent of the premise. Sub-clause (b) provides that such a petition has to be filed within 6 months from the date on which premises have been let if they have been so let after the commencement of the Act. Admittedly, in this case the premises were let after the commencement of the Act. When it is said that the premises have been let it only means premises law-fully let by the landlord to the tenant. Undoubtedly expression 'tenant' in Section 2(i) of the Act includes a subtenant and other persons as have derived the title under a tenant under the provisions of any law before the commencement of the Act but where the subtenant has been inducted after the commencement of the Act which is the situation in the present case, the tenant does not include a sub-tenant because Section 13(1)(b) removes the protection of a tenant against eviction if after the commencement of the Act he has sublet or assigned or otherwise parted with possession without obtaining the consent of the landlord in writing. Appellant was inducted as a sub-tenant after the

commencement of the Act and there is no evidence to show that he was so indicted with the written consent of the landlord. The scheme of the Act prohibits subletting, assigning or otherwise parting with possession of the whole or any part of the premises without obtaining the consent of the landlord in writing. Admittedly, the appellant was inducted as subtenant by the head-tenant Mr Brook. However it is an admitted position that after Mr Brook surrendered his tenancy the subtenant was accepted as tenant of the premises by the landlord with effect from May 1, 1955 with some increase in the monthly rent.

13. As the tenancy commenced in this case after the commencement of the Act, a petition for determining standard rent has to be filed within 6 months from the date on which the premises have been let. The learned District Judge was of the opinion that as standard rent is to be fixed in respect of the premises, limitation for making an application for fixing standard rent has to be made within six months from the date of first letting. Fixing of standard rent is, it was said, co-related to premises and not the landlord or the tenant. Accordingly it was held that any subsequent letting would not enable such subsequent tenant to move the petition for determining the standard rent. The expression "within 6 months from the date on which it is so let" has been construed to mean letting or leasing the premises for the first time to anyone after the commencement of the Act. If the construction which found favour with the learned District Judge is to be accepted it would lead to a starting result. The landlord can induct a man or his choice at a fabulous rent as a tenant and such a protege can vacate at any time after 6 months and any subsequent tenant would according to the learned District Judge be wholly disabled from filing the petition for determining the standard rent. Such a construction would defeat the very laudable purpose of the socially beneficial legislation. Therefore the expression : "within 6 months from the date on which it is so let" can mean only, let to that tenant who disputes or desires to dispute the standard rent and move the court for determination of standard rent. The words 'so let' can only mean so let to that tenant after the commencement of the Rent Act. This obvious construction did not find favour with the learned District Judge because according to him if such a construction were to be accepted it would amount to giving the fresh period of limitation to a tenant of the premises of the change of the landlord of the premises. Conversely any subsequent tenant would not be able to move the Court for determination of standard rent. Therefore the approach of the learned District Judge with regard to the construction of clause (b) does to commend to us. The language of clause (b) is simple and unambiguous. It only means that the tenant to whom the premises have been so let and where the tenancy has commenced after the commencement of the Act, such a tenant can move the petition for determination of standard rent within period of 6 months from the date of commencement of his tenancy. Discernible purpose prescribing the period of limitation is not thwarted by this construction because if the tenant of the premises let out to him wants to question the standard rent he must do it expeditiously within a period of 6 months from commencement of this tenancy failing which he will be debarred from questioning the same.

14. We have dealt with the view taken by the learned District Judge a little more in detail because the learned Single Judge of the High Court has practically adopted the construction which commended to the learned District Judge. We are therefore unable to accept the construction put by the learned Judge of the High Court on clause (b) of Section 11. In our opinion on a proper construction, the petition for determination of standard rent filed by the appellant was within time and the learned District Judge was in error in rejecting the petition on the short ground that it was barred by limitation.

15. It may be mentioned that the learned trial Judge had determined the standard rent but as neither appellant court nor the High Court dealt with the point we are constrained to remand the matter to

the learned District Judge to decide the second point as to what is the standard rent of the suit premises.

16. In this view of the matter Civil Appeal No. 464 of 1971 must succeed and will have to be allowed an the order of the learned District judge as well as learned Single Judge of the High Court will have to be set aside.

17. Question Nos. 2 and 3 may be dealt with together. There were two revision petitions before the High Court. They arose in the circumstances which have already been set out.

18. In the suit filed by the landlord for recovery of rent and possession the tenant while contesting the suit had deposited the rent which was alleged to be in arrears under protest pointing out simultaneously that as he has already moved a petition under Section 8 of the Act for determination of the standard rent, the same may be decided before the landlord is allowed to withdraw the amount deposited by him. In the mean time the landlord moved an application requesting the Court to direct the tenant to deposit the future rent from month to month. While contesting this application, the tenant pointed out that his petition for determination of standard rent is awaiting disposal and in order to enable him to comply with the order that may be made for depositing the future rent the Court should either determine the standard rent under Section 8 or the interim rent under Section 9 at which he should deposit the future rent.

19. Now before we deal with these two aspects on merits, a reference to a very unsavoury incident that occurred in the course of proceedings in the trial court which necessitated transfer of the proceedings at the instance of the tenant from one court to another court will have to be made.

20. It appears that on August 1, 1956 landlord applied to the trial court for withdrawal of the amount of rent deposited by the appellant. That application was contested for the reasons hereinbefore pointed out. On August 27, 1956 the landlord made an application requesting the Court to direct the tenant to deposit the future rent from months to months. In respect of the second application, the finding of the High Court is that the tenant was directed to deposit the rent at the agreed rate from month and month, and as he failed to comply with the direction, is defence has been rightly struck off and he is not entitled to any relief at the hands of the Court. The allegation of the tenant was that no order was made on his application dated August 27, 1956 and that whatever order appears thereon was subsequently interpolated by the learned Judge. A transfer application alleging interpolation by the learned trial Judge was moved by the tenant and it is an admitted position that by his order date August 20, 1957 Falshaw, J. directed that the suit be withdrawn from the court before which it was pending and transferred it to another court competent to try the suit and the petition for determination of standard rent. Falshaw, J. in this connection observed as under :

> These allegations are supported by affidavits of the petitioner and his counsel Mr B. S. Sethi, Advocate, and it cannot be denied that on the fact of it the orders passed on the application for withdrawal of the sum deposited and the application under Section 13(5) have a highly suspicious appearance in spite of the denial by the Sub-Judge himself of any improper conduct. The order on the application for the withdrawal of the amount deposited by the defendant appears to have read in its original form "Present Counsel of the parties. Arguments heard. For orders in the afternoon" followed by the initials of the Sub-Judge and the date "1-10-56". It is quite evident that the words "The Naib Nazir to report about deposit by 5-10-56" were added and

> then alongside the original date "For orders on 6-10-56" have been written, the word "orders" being apparently written over the figure "1" in the date and underneath the original date where appear the initials of the Sub-Judge and the fresh date "5-10-56".

Similarly in the order on the respondent's application under Section 13(5) of the order originally read

> "Present-Counsel for the parties. Arguments heard. For orders in the afternoon."
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> followed by the initial and date "1-10-56", and subsequently the word "on 6-10-56" have been added together with "The Naib Nazir to report about deposit by 5-10-56".

Nobody has appeared on behalf of the respondent, and in my opinion the circumstances are sufficiently suspicious to justify the apprehensions of the petitioner. I accordingly accept the application and order that the pending proceedings between the parties be transferred to the court of some other Sub-Judge.

Two things emerge from this order; one that the landlord did not contest the application for transfer and could not controvert the allegations made by the tenant about interpolation in the record, and secondly the allegations made by the tenant that the order was inter-polated subsequently was accepted by the learned Judge of the High Court. When the matter reached the High Court on second occasion, Tek Chand J. re-examined the allegation of interpolation and agreed with the observations of Falshaw, J. The pertinent observation is as under :

> After having carefully seen original record, the suspicion which was aroused in the mind of Falshaw, J. is further confirmed in my own mind. I am not at all satisfied that the order had not been subsequently interpolated and that the addition has been to the distinct advantage of the landlord.

21. Is it possible to overlook the injudicious act of the trial court and the disconcerting situation flowing from interpolation of court's record so as to reach the conclusion that the tenant failed to comply with the interpolated directions given by the learned trial Judge so as to deny him the protection of the Act.

22. At this stage it is better to turn to the scheme of the Act. Section 13 protects a tenant against eviction. It starts with a non obstante clause and provides that notwithstanding anything to the contrary contained in any other law or any contract, no decree or order for the recovery of possession of any premises shall be passed by any court in favour of the landlord against the tenant unless the case is brought within one of the enabling provisions set out in the section. One such situation is that the tenant has neither paid nor tendered whole of the arrears of rent within one month of the date on which notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in Section 106 of the Transfer of Property Act, 1882. Section 8 provides for determination of standard rent. Section 4 clearly places an embargo on the right of the landlord to recover as and by way of rent anything in excess of the standard rent, or any lawful increase that may be claimed in it. Section 4 provides that no tenant shall notwithstanding any agreement to the country be liable to pay to his landlord for the occupation of any premises any amount in excess of the standard rent of the premises unless such amount is a lawful increase of the standard rent in accordance with the provisions of the Act. Sub-section (2) provides that any agreement for any payment of rent in excess of the standard rent shall be null and void and shall be

constructed as if it was an agreement for payment of the standard rent only. Therefore it is indisputable that the tenant is under an obligations to pay standard rent or lawful increase that may be made to it. Now where the landlord demands rent at the contractual rate and the tenant has moved a petition for fixation of standard rent how is the tenant to be relived from the obligation to deposit the agreed rent till the petition for standard rent is decided. To make the scheme of the law effective where the tenant has moved a petition for determination of standard rent, the court must decide in as and by way of a preliminary issue. Assuming it is not possible to determine the standard rent as any by way of preliminary issue, the Legislature has taken care to provide for interim arrangement. Section 9 provides that if an application for fixing the standard rent or for determining lawful increase to standard rent is made under Section 8, the court shall as expeditiously as possible make an order specifying the amount or the lawful increase to be paid by the tenant to the landlord pending the final decision of the application and shall appoint a date from which the rent or lawful increase so specified shall be deemed to have effect. In this case, the tenant did make an application for fixing the interim rent on October 5, 1956 pending the determination of the standard rent in the petition moved by him. The order found to be interpolated and hence illegal directed the tenant with effect from October 6, 1959 pay interim rent at the agreed rate of rent. This order specifying interim rent is found to be interpolated and hence a nullity not binding on the tenant. And it is the failure of the tenant to comply with this nullity which has resulted in him defence being struck off. The learned Judge declined to interfere with such an order.

23. Where the law enables the tenant to move a petition for determination of standard rent and further confers power on the court to determine interim rent so as to enable the tenant to deposit the future rent, the failure of the court to give appropriate directions in this behalf would work serious hardship to the tenant more so where the landlord has already filed a suit for eviction on the ground of default in payment of rent. In such a situation to give effect to the purpose and object of the Act, the appropriate thing to do would be either to take up the petition for determining the standard rent as a preliminary issue or if it is not possible the court should determine the interim rent, fixing a date by which the tenant should deposit the rent in arrears and a direction to be given to deposit the future rent at the rate at which interim rent is determined. Till these steps are taken and non-compliance alleged it would not be open to the court to pass a decree for eviction on the short ground of default in payment of rent. This legislative scheme clearly emerges from the provisions of the act and no precedent is necessary to substantiate it. However this Court in Vora Abbasbhai Alimahomed v. Haji Gulam-nabi Haji Safibhai ((1964) 5 SCR 157 : AIR 1964 SC 1341) after examining the scheme of Section 12 of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 which is in pari material with the scheme of the Act held that where a dispute as to the standard rent is raised and a petition has been field for determination of the standard rent, and the landlord initiates action for eviction on the ground of non-payment of rent, the court should on the application of the tenant take up the dispute as to standard rent call upon the tenant to pay or tender such standard rent so fixed, on or before a date fixed. If the tenant pays the standard rent fixed, on or before the date specified, and continues to pay to tender it regularly till the suit is finally decide, he qualifies for the protection of the Act.

24. Now reverting to the facts of this case, the landlord applied under Section 13 for withdrawal of the rent deposited by the tenant. The landlord made another application requesting the Court to direct the tenant to pay the future rent at the agreed rate. The landlord then made an application under sub-section (5) of Section 13 to strike off the defence of the tenant on the short ground that the tenant committed default in complying with the direction made by the Court. Once it was found that the direction with regard to the payment of future rent at the agreed rate of rent was an interpolated order, there was no question of complying with such an order, which was legally non-

existent. The provisions of sub-section (5) of Section 13 could never have been invoked in the facts and circumstance of this case. Therefore the Court was wholly in error in striking off the defence of the tenant. The High Court was clearly in error in upholding such an unjust, injudicious and legally non-existent order.

25. That takes us to the third question. The High Court however experienced one difficulty in granting any relief to the tenant. The tenant had preferred an appeal being Miscellaneous Civil Appeal No. 1 of 1958 against two orders one about the granting permission to withdraw the amount deposited by him and the second against the interpolated order directing him to pay rent at the rate of Rs. 277.50 p. per month in future by tenth of every succeeding month. When the appeal came up for hearing, it was contended before the learned District Judge, that the appeal was barred by limitation. The tenant had also made an application for condoning the delay. The learned District Judge first examined application for condoning the delay in preferring the appeal and after rejecting the same dismissed the appeal as barred by limitation. Two revision petitions were preferred by the tenant in the High Court one against the order refusing to condone the delay and the second against interpolated order and the consequences of its non-compliance.

26. The High Court first dealing with the view of the learned District Judge that the appeal against the order dated October 6, 1956 was barred by limitation agreed that the appeal was barred by limitation and the learned Judge felt constrained in upsetting the finding of the learned District Judge refusing to condone the delay. The learned Judge also therefore declined to give any relief against the order striking off the defence of the tenant.

27. The history of litigation and the facts set out hereinbefore and the injudicious treatment of the case by the learned trial Judge necessitating the transfer was sufficient to interfere with any interim order passed during the proceedings which has a tendency to deny justice. The trial court failed to follow the procedure prescribed by law. On the application for fixing interim relief there is no specific order but there is an interpolated writing. Failure to comply with such a non est order had the consequential outcome of striking off the defence. The appeal was not entertained as being barred by limitation. Now if the order dated October 6, 1956 was found to be interpolated how can anyone say with confidence when the record was tampered with by the learned trial Judge. The appeal was preferred on January 2, 1958. In the application under Section 5 of the Limitation Act praying for condoning the delay in preferring the appeal it was specifically stated that the orders under appeal were made in the absence of the appellant and at his back and without communicating the same to him. Further the suit of the respondent landlord was dismissed for default on December 12, 1956 and it was restored to file on December 30, 1957 and within three days thereafter the appeal was preferred. Now ordinarily the view of the court dealing with facts in an application under Section 5 of the Limitation Act would not be interfered unless the failure to exercise jurisdiction would lead to miscarriage of justice. Viewed from this angle the appellant had made out a very convincing and just cause for condoning the delay in preferring the appeal. The order under appeal was the very interpolated order. When was it interpolated ? There is no definite answer. Within a month and half of the interpolated order, the suit of the landlord was dismissed. Once the suit was dismissed the appellant tenant could not prefer an appeal against an interim order. The suit of the landlord was restored to file on December 30, 1957. Promptly within three days on January 2, 1958 the appeal was prefer with an application for condoning the delay. A just and convincing cause wholly sufficient to condone the delay was thus made out. More so because failure of the learned District Judge and the learned Single Judge of the High Court to condone delay resulted in the gross miscarriage of justice inasmuch as the tenant lost protection of the Act for his failure to comply with a non est injudicious order, which was nullity in the eye of law. In this background, we find it

difficult to uphold the view of the learned District Judge and the High Court.

28. Justice demands that the order dated October 6, 1956 must be set aside as it is an interpolated and therefore legally non-existent order. It must accordingly be held that the application for fixing interim rent still remains undecided and the trial court will have to decide it as expeditiously as possible. If the application for interim rent is not disposed of by an appropriate order there was no question of non-compliance with the same and therefore no occasion would arise for striking off the defence of the tenant. Accordingly the order dated October 6, 1956 and the order striking off the defence dated March 4, 1958 are set aside. The order of the learned District Judge declining to condone the delay in preferring the appeal against the order dated October 6, 1956 is set aside and the order of the High Court disposing of the two revision petitions is also set aside.

29. Accordingly both these appeals will have to be allowed and the matter will have to be remitted to the trial court for first deciding the application for fixing the interim rent and calling upon the tenant to deposit the interim rent in arrears at the rate of interim rent so fixed. Learned District Judge should take up the appeal against the order determining the standard rent as early as possible and call upon the tenant to make good the deposit in accordance with the standard rent so determined. The order striking off the defence is set aside and the tenant will be entitled to defend the suit on merits.

30. Before we conclude the judgment, one aspect to which our attention was drawn may be noticed. Original landlord Lakhmir Singh died on April 9, 1978 during the pendency of these appeals in this Court. Civil Miscellaneous Petitions No. 17962-69 of 1984 were moved on March 21, 1983 for substitution of his heirs and legal representative and for condoning delay, if any, in moving the petitions. The ground on which condonation of delay is sought has been set out in the petition and affidavit in support. Appellant has stated in the petition that learned counsel for respondents 2 and 3 handed over a letter to the Registry on March 2, 1984 intimating about the death of first respondent, the original landlord. Thereafter the petition for substitution was moved on March 21, 1984 that is within three weeks from the date of the knowledge conveyed by the letter of the learned counsel for respondents 2 and 3. The date of death of respondent 1 is not disputed but it is said that appellant came to know about it for the first time from the aforementioned letter. This is countered by the respondents. In our opinion there is good and sufficient reason for condoning delay and granting substitution in the facts of this case. First respondent who is dead was the original landlord and he conveyed and transferred the whole property including the suit premises to respondents 2 and 3 way back on December 21, 1959 and since then respondents 2 and 3 are the real contesting respondents. Respondent 1 has lost all interest in the property and the litigation concerning the property sold and conveyed by him a quarter of a century back. Coupled with this is the fact that under Rule 10-A of Order 22 a duty is cast on the pleader appearing for the deceased party to give intimation of the same to the opposite party. This duty in this case was discharged on March 2, 1984 that is six years after the death and promptly within three weeks the petition for substitution is filed. Having regard to the cumulative effect of all these facts we are satisfied that the appellant has made out a sufficient case for condoning the delay in seeking substitution. We accordingly set aside abatement of appeal and grant substitution.

31. In view of the discussion, C.A. No. 464 of 1971 is allowed and the orders of the District Judge and the High Court are set aside and the matter is remitted to the District Judge for hearing the appeal of the landlord against the decision of the trial court fixing standard rent at Rs. 855 per annum.

32. C.A. Nos. 465-466 of 1971 are allowed. The matter is remitted to the trial court to dispose of the proceedings on merits in the light of the observations made in the judgment.

33. In the circumstances of the case parties are left to bear their own costs throughout.

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