

Mohd. Salimuddin

Vs

Misri Lal and Another

Civil Appeal No. 917 of 1986

(E. S. Venkataramiah, M. P. Thakkar JJ)

12.03.1986

JUDGMENT

THAKKAR, J. -

1. One cannot conceive of a greater judicial sin than the sin of treating the 'oppressor' and the 'oppressed' on a par. Or that of rewarding the oppressor and punishing the oppressed whilst administering the law designed to protect the oppressed. We would be guilty of committing this sin if we upheld the view that the tenant who advances a loan to the landlord in order to secure the tenancy (in violation of the prohibition to do so embodied in the statute enacted for his benefit) is in pari delicto. And that the court will not assist the tenant in claiming adjustment of the loan amount against the landlord's claim for rent.

2. The lower Appellate Court dismissed the respondent-landlord's suit for eviction against the appellant-tenant holding that the tenant was not in arrears of rent. The following facts are not in dispute :

(1) The tenant had advanced a sum of Rs 2000 under an agreement which inter alia contained a stipulation that the loan amount was to be adjusted against the rent which accrued.

(2) The amount so advanced by the tenant was sufficient to cover the landlord's claim of arrears.

(3) If the loan amount was accordingly adjusted towards the rent which accrued, the tenant was not in arrears of rent.

3. The High Court has taken the view that since the loan advanced by the tenant was in violation of the prohibition contained in the Rent Act, the tenant was not entitled to claim adjustment of the loan amount against the rent which accrued subsequently. The tenant was therefore in arrears of rent and liable to be evicted according to the High Court.

4. The view taken by the High Court is unsustainable inasmuch as the High Court has lost sight of the fact that the parties to the contract were unequal. The tenant was acting under compulsion of circumstances and was obliged to succumb to the will of the landlord, who was in a dominating position. If the tenant had not agreed to advance the loan he would not have been able to secure the tenancy. It was the landlord who was in the position of an oppressor who wanted to exploit the situation obtaining in the context of the acute housing shortage which prevailed. The tenant had

either to yield to the unlawful demand of the landlord or go without a roof, for, otherwise, the landlord would not have granted the lease. The relevant provision prohibiting the payment of rent in advance embodied in the Rent Act was enacted precisely to protect the tenant from such exploitation. Obviously, he had to succumb to such exploitation, the protective law notwithstanding, as he would have been obliged to remain roofless. The law extended the protection but did not guarantee the roof. To deny access to justice to a tenant who is obliged to yield to the unlawful demands of the landlord in this scenario by invoking the doctrine of *pari delicto* is to add insult to injury, and to negate the very purpose of the provision designed for his protection. The doctrine of *pari delicto* is not designed to reward the 'wrongdoer' or to penalize the 'wronged', by denying to the victim of exploitation access to justice. The doctrine is attracted only when none of the parties is a victim of such exploitation and both parties have voluntarily and by their free will joined hands to flout the law for their mutual gain. Such being the position the said doctrine embodying the rule that a party to a transaction prohibited by law cannot enforce his claim in a court of law is not attracted in a situation like the present. The law enunciated by this Court in *V.S. Rahi v. Smt. Ram Chambeli* ((1984) 2 SCR 290 : (1984) 1 SCC 612) to which one of us (Venkataramiah, J.) was a party fully buttresses this proposition. Says the court speaking through Venkataramiah, J. : (SCC p. 618, para 11)

The above view is fully in consonance with the spirit behind the rule of oppression which is recognised as an exception to the doctrine that a party cannot recover what he has given to the other party under an illegal contract. 'It can never be predicated as *pari delicto* where one holds the rod and the other bows to it' (Per Lord Ellenborough in *Smith v. Cuff* ((1917) 6 M & S 160, 165)). Cases which call for appropriate relief to be given to an innocent party where 'one has the power to dictate, the other has no alternative but to submit' are not uncommon. Cheshire and Fifoot's Law of Contract (10th Edn.) refers to another type of case belonging to this category. At page 338 of that treatise is the following passage :

Another type of case where the parties are not regarded as equally delictual is where the contract is rendered illegal by a statute, the object of which is to protect one class of persons from the machinations of another class, as for example where it forbids a landlord to take a premium from a prospective tenant. Here, the duty of observing the law is placed squarely upon the shoulders of the landlord, and the protected person, the tenant, may recover an illegal premium in an action for money had and received, even if the statute omits to afford him this remedy either expressly or by implication. In the words of Lord Mansfield :

Where contracts or transactions are prohibited by positive statutes, for the sake of protecting one set of men from another set of men : the one from their situation and condition being liable to be oppressed and imposed upon by the other; there the parties are not in *pari delicto*; and in furtherance of these statutes, person injured after the transaction is finished and completed, may bring his action and defeat the contract.

5. The lower Appellate Court was therefore right, and the High Court wrong. The tenant was not in arrears of rent.

6. The appeal succeeds. The judgment and decree passed by the High Court are set aside and the judgment and decree of the lower Appellate Court are restored. The suit for eviction stands dismissed. No costs.

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