

Prahlad Singh

Vs

Col. Sukhdev Singh

Criminal Appeal No. 261 of 1985

(O. Chinnappa Reddy, S. Natarajan JJ)

24.02.1987

JUDGMENT

CHINNAPPA REDDY, J. -

In this appeal by special leave, the tenant, against whom an order of eviction has been made under section 13 of the East Punjab Rent Restriction Act, is the appellant. The petition for eviction was based on the ground of default in payment of rent for the period April 1, 1976 to October 31, 1977. The petition was filed on October 6, 1977 and on that date the appellant could not be said to be in default for the months of September and October 1977. On the first hearing day the tenant deposited a sum of Rs. 3600 said to represent the arrears of rent due from him. In the written statement the tenant also took the stand that the rent for the month of April and May 1976 had already been paid. After some hearings, the tenant absented himself and the petition for eviction was ordered ex parte. Thereupon he filed a petition to set aside the ex parte order contending that the landlord had met him on the last Saturday of July 1978 and after some discussion he told him that he would withdraw the eviction case. The landlord also received cheques from him towards rent. The tenant did not appear again in court as the landlord had promised to withdraw the case and he believed him in good faith. The landlord denied the allegation that he had agreed to withdraw the case. The tenant examined himself on his side but the landlord refrained from entering the witness box. The court accepted the case of the tenant and set aside the ex parte decree. The court observed :

He testified that on the last Saturday of July 1978, the respondent-landlord came to him and settled the rent and, thereupon, the respondent promised to withdraw the petition. He also testified that the respondent promised to come and collect the rent on August 10, 1978, and deposed that the respondent came on August 10, 1978 and collected the rent through draft the copy of which is Ex. A-1. He also deposed the respondent having told him that he has withdrawn the case. The applicant testified that the respondent again came in the month of November 1978 and collected the rent for three months vide cheques and copy of the bank certificate is Ex. A-2. He has deposed that he stopped attending the court and instructed his counsel accordingly as he was mistaken by the misrepresentation of the respondent. This statement made by the applicant has gone unrebutted. The respondent has not appeared in the witness box to rebut the allegations made by the applicant in his statement. The fact that the respondent received the rent from the applicant twice during the pendency of the petition lends plausibility to the version of the applicant. Had there been no misrepresentation on the part of the respondent, the applicant would not have paid him the rent for the subsequent period as is clear from Ex. A-1 and Ex. A-2. There is evidence of the applicant during cross-examination that after November

1978, the rent was received by the respondent through filing the eviction petition in the court. The fact that the rent was accepted directly by the respondent for the applicant during this period, shows that there was some settlement between the parties. The statement of the applicant that the respondent told him that he will withdraw the petition and further that he had withdrawn the petition has gone unrebutted. According to the applicant he did not appear in the court on account of certain representation by the respondent-landlord. The respondent has been able to substantiate those allegations..... The applicant acted on the misrepresentation of the respondent-landlord and did not attend the court. There are, therefore, sufficient grounds for setting aside the ex parte decree.

After the decree was set aside the petition for eviction was once again ordered on the ground of default of payment of rent for the months of April and May 1976. The order of eviction was confirmed by the appellate authority and the High Court. The tenant's submission that the eviction petition could not be allowed to continue and should be dismissed on the finding of the court in the proceeding for setting aside the ex parte order was negated by the High Court on the ground that those findings were made in the context of setting aside the ex parte order and not in the context of deciding the main petition for eviction. We think that the High Court was not right in brushing aside in this fashion the findings arrived at in the proceedings to set aside the ex parte order. That the decision given by a court at an earlier stage of a case is binding at a later stage is well settled, though interlocutory judgments are open for adjudication by an appellate authority in an appeal against the final judgment. In *Satyadhyan Ghosal v. Deorajin Debi* ((1960) 3 SCR 590 : AIR 1960 SC 941), this Court said :

The principle of *res judicata* applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re agitate the matter again at a subsequent stage of the same proceedings.

It was however clarified that it did not mean that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again. We are not also concerned here with orders of an interlocutory nature such as orders granting temporary injunction, appointing receiver etc. which do not purport to decide the rights of the parties finally. In the present case, in the proceeding to set aside an ex parte order, the court recorded an express finding that the landlord had agreed to withdraw the suit and receive the rent from the tenant. That was a finding which was binding on the landlord at later stages of the proceeding. He could have questioned the finding before the appellate authority and the High Court in the appeals preferred by the tenant. He did not choose to do so. In fact he could not do so as he had earlier thought it prudent not to enter the witness box though he put the question in issue in the proceeding to set aside the ex parte order by contesting the statement of the tenant. In the circumstances we allow the appeal, set aside the judgments of the High Court and subordinate tribunals and dismiss the petition for eviction.

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