

Shiv Kumar

Vs

Jawahar Lal Verma and Others

Civil Appeal No. 2199 of 1988

(A. P. Sen, S. Natarajan JJ)

14.09.1988

JUDGMENT

NATARAJAN, J.-

1. Leave granted

2. This appeal by special leave has been preferred by a landlord and is directed against the judgment and order of the Allahabad High Court in Civil in Miscellaneous Writ Petition No. 7343 of 1982. The appellant succeeded in obtaining a decree for eviction against the respondents before the trial court and the revisional court but the decree was quashed by the High Court in the writ petition filed by the respondents herein and hence the present appeal by the landlord-appellant

3. The suit for eviction on the ground of arrears of rent was filed by the appellant on June 11, 1973 after the coming into force of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short 'the Act'). In the plaint it was averred that the Act would not apply to the lease of the demised premises viz. a shop because the shop had been constructed only in the year 1966, and as such, the shop was exempted from the purview of the Act for a period of ten years as provided for in Section 2 (2) of the Act. The respondents raised various defences to the action but we are now concerned only with the tenability of one of those defences viz. that the shop was covered by the Act and as such the respondents were entitled to claim the benefit conferred by Section 39 of the Act on tenants who were in arrears of rent.

4. During the pendency of the suit, in the month of February 1976, the respondents made an application to the trial court to direct the appellant to disclose the date and it only contained a general averment that the shop had been constructed in the year 1966. As no information was forthcoming, the respondents filed another application on March 12, 1976 for the selfsame purpose. After waiting for some time, the respondents deposited the arrears of rent together with interest etc. as provided for in Section 39 of the Act in April 1976 and after they made the deposit, the appellant furnished information to the effect that though the shop had been constructed in 1965, it was assessed to house tax for the first time on January 1, 1966 and therefore the date of construction for purposes of Section 2 (2) would be January 1, 1966. The trial court accepted the statement of the appellant regarding the date of construction of the shop being January 1 1966 and took the view that since the respondents had failed to deposit the arrears of rent etc. within one month from that date but had deposited the arrears only in the month of April 1976, the respondents were not entitled to claim the benefit under Section 39.

5. The respondents preferred a revision to the District Court under Section 25 of the Provincial

Small Cause Courts Act. The Third Additional District Judge, Meerut who heard the revision held that irrespective of the date of deposit of the arrears of rent, the respondents were not entitled to claim benefits under Section 39 because the Act itself did not apply to the demised premises inasmuch as the suit for eviction was not pending on the date the Act came into force viz. July 15, 1972 and had been filed only on July 11, 1973. In taking such a view, the revisional court followed the ratio laid down by this Court in *Om Prakash v. Dig Vijendrapal*. Accordingly, the revisional court dismissed the revision petition

6. The respondents thereafter preferred a writ petition to the High Court of Allahabad under Article 226 of the Constitution of India. A learned Single Judge of the High Court held that the observation in *Om Prakash* case to the effect that in order to attract Section 39 the suit must be pending on the date of the commencement of the Act viz. July 15, 1972 had been held to be obiter dicta by this Court in a later case *Vineet Kumar v. Mangal Sain Wadhwa* and therefore the respondents would not stand disentitled to seek the benefit of Section 39 of the Act merely on the ground the suit for eviction was not pending on the date the Act came into force. Proceeding further the High Court held that since the appellant had failed to disclose in the plaint the date of construction of the building and had further failed to give the particulars thereof in spite of the being specifically called upon to do so by the respondents by means of two applications filed in the months of February and March deposited the arrears of rent, interest etc. within a period of one month from January 1, 1976 and since they had deposited the arrears of rent in April 1976 itself they must be held to have deposited the arrears of rent within time so as to enable them to claim benefits under Section 39 of the Act. The High Court has rendered its finding on this aspect of the matter in the following manner :

Commencement of the Act, therefore, depends on first assessment. A tenant could avail of benefit under Section 39 only if he is aware of the first assessment. In the plaint opposite party did not disclose any date except that building was completed in 1966

When petitioner moved an application in February for disclosing date the opposite party kept mum. Even if it is assumed that this application as claimed by opposite party is not on record the petitioner moved another application in March to which reply was filed in April and it was stated that first assessment of the building had been done on January 1, 1966. Petitioner therefore, could know about the date of completion in April 1976 only. In absence of any disclosure in the plain or by any other manner the petitioner cannot be deprived of benefit under Section 39, even though he deposited by opposite party. On the finding recorded by trial court Act no doubt became applicable on January 1, 1976 but for purposes of Section 39 the one month period could be calculated from the date the petitioner acquired knowledge or shall be deemed to have acquired knowledge about commencement of the Act. As petitioner came to know in April only it could not be said that he did not comply with mandatory requirements of Section 39.

In accordance with such conclusion the High Court allowed the writ petition and quashed the decree for eviction passed against the respondents. The correctness of the view taken by the High Court is the subject matter of challenge in this appeal.

7. Learned counsel for the appellant contended before us that even though the view taken in *Om Prakash* case' that the Act would apply only to those suits which were pending on the date of the commencement of the Act was declared to be obiter dicta in *Vineet Kumar* case, another Bench of this Court has subsequently held in *Nand Kishore Marwah v. Samundari Devi* that the view taken in

Om Prakash case a Bench of Three Judges was binding on them and that the correct view to be taken is that Section 39 of the Act would apply only to those suits which were pending on the date of the commencement of the Act i. e. July 15, 1972 and likewise Section 40 would apply only to those appeals which pertained to suits pending when the Act came into force and as such the revisional court had acted correctly holding that the respondents cannot claim benefits under the Act and that the High Court had erred in quashing the decree for eviction passed against the respondents.

8. Arguing to the contrary, the learned counsel for the respondents stated that the decision in Nand Kishore Marwah case would not affect the respondents in any manner because of two factors viz. the view taken in Om Prakash case regarding the Act being applicable only to suits pending on the date of commencement of the Act being admittedly obiter dicta and secondly the Bench which decided Nand Kishore Marwah case had wrongly construed the decision in Vineet Kumar case because of the mistaken assumption that the attention of the court was not drawn to Om Prakash case.

9. Having regard to the facts of the case we do not think it necessary for us to go into the question whether the respondents would or would not be entitled to claim the benefit of Section 39 of the Act by reason of the suit for eviction not being a pending action on the date the Act came into force. We may, however, say that we find ourselves in agreement with the pronouncement in Vineet Kumar case that the view taken in Om Prakash case was obiter dicta because as observed in the judgment (SCC p. 359, para 14) "it was not at all necessary in that case to deal with the question whether the appellant would be entitled to the benefit of Section 39 as the building had not become then years old on the date when the revision petition was heard". Be that as it may, even accepting the respondent's case that the Act would govern the suit, we find that the respondents cannot claim benefit under Section 39 because of their belated deposit of the arrears of rent and interest. It has to be noted that the suit for eviction was filed as early as on June 11, 1973. By then the Act had come into force and the beneficial provision under Section 39 was fully known to the respondents. If they had wanted to avail of the benefits conferred by Section 39 and deposit the arrears of rent together with interest, costs etc. the respondents should have deposited the amount within one month from the date of their knowledge of the filing of the suit. Section 39 reads as under :

39. Pending suits for eviction relating to buildings brought under regulation for the first time - In any suit for eviction of a tenant from any building to which the old Act did not apply, pending on the date of commencement of this Act, where the tenant within one month from such date of commencement or from the date of his knowledge of the pendency of the suit, whichever be later deposits in the court before which the suit is pending the entire amount of rent and damages for use and occupation (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's full costs of the suit, no decree for eviction shall be passed except on any of the grounds mentioned in the proviso the sub-section (1) or in clauses (b) to (g) of sub-section (2) of Section 20 and the parties shall be entitled to make necessary amendment in their pleadings and to adduce additional evidence where necessary. Provided that a tenant the rent payable by whom does not exceed twenty--five rupees per month need not deposit any interest as aforesaid.

From the terms of Section 39 it may be seen that if any tenant wants to avail of the benefit conferred by the section he should deposit in the court before which the suit is pending the entire amount of

rent and damages for use of occupation together with interest at nine per cent per annum etc. within one month from such date of commencement (of the Act) or from the date of his knowledge of the pendency of the suit, whichever be later. Obviously the first prescription would not apply because the Act had come into force long before the suit was filed and as such there was no question of the respondents depositing the rent arrears "within one month from the date of the commencement of the Act". However, the second prescription would squarely apply viz. the deposit being made "within one month from the date of knowledge of the pendency of the suit". Looking at the facts we find that even though the respondents had contested the suit and taken a plea in the written statement that the lease of the shop granted to them would be governed by the terms of the Act, they had failed to deposit the arrears of rent within one month from the date of their coming to know of the pendency of the suit. On the other hand, they had waited till February and March 1976 to call upon the appellant to furnish the date of construction of the building and then of their own accord had deposited the arrears of rent in April 1976. No explanation was offered by the respondents as to why they failed to deposit the arrears of rent within one month from the date of their knowledge of the pendency of the suit even though they claimed the benefit of Section 39 or as to why they had waited till February/March 1976 to call upon the appellant to furnish information regarding the date of construction of the shop. The section does not provide for a tenant depositing the arrears of rent within one month from the date of his coming to know the date of construction of the building. The section envisages only two situations viz. deposit of the arrears of rent within one month from the date of the commencement of the Act or within one month from the date of knowledge of the pendency of the suit. The High Court was therefore not correct in taking the view that since the respondents came to know only in April 1976 about the date of construction of the building then deposit of the arrears of rent in the month of April 1976 should be considered a valid deposit made under Section 39 and that the deposit complied with the mandatory requirements of Section 39.

10. In this view of the matter we are of the opinion that the order of the High Court should be set aside and the decree for eviction passed by the trial court and confirmed by the revisional court should be restored. Accordingly the appeal will stand allowed and the order of the High Court is set aside and the decree of eviction passed in favour of the appellant by the lower court will stand restored. However, in order to enable the respondents to find alternate accommodation to shift their shop, we direct that in execution of the decree, the respondents will not be dispossessed till December 31, 1988 subject to the condition the respondents file an undertaking before this Court in the usual terms within a period of four weeks from today failing which the appellant will be at liberty to recover possession of the leased premises even before December 31, 1988. In the facts and circumstances of the case, there will be no order as to costs.

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