Manmohan Kaur

Vs

Surya Kant Bhagwandi

Civil Appeal No. 3740 of 1988

(S. Ranganathan, Sabyasachi Mukharji JJ)

04.10.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. Special leave granted. The appeal is disposed of by the judgment herein.

2. This is an appeal from the judgment and order of the high Court of Patna (Ranchi Bench) dated July 7, 1988. By the aforesaid order the High Court confirmed the striking off of the defence of the appellant in a suit for eviction under the Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (hereinafter called 'the Act') on the ground of personal necessity and change of the nature of the business by the appellant etc. The plaintiff - respondent filed a suit for eviction against the defendant - appellant from the shop room under Section 11 of the said Act on the aforesaid grounds. The appellant filed the written statement contesting the said suit. The case of the appellant was that the respondent - landlord's case was false and a pretext for re-letting the premises for much higher rent after his attempt to increase rent did not succeed. It was further alleged that the landlord had sufficient alternative accommodation which would not entitle him to get a decree. It was denied that there was no change of business carried on apart from those businesses permitted by the contract of tenancy. There was, however, no such bar in this case. On February 4, 1983, the respondent asked for an order under Section 15 of the said Act against the appellant for deposit of arrears and current rent. The trial court by its order on that date directed the appellant to deposit the arrears, if any, and continue to deposit rent month by month in future by 15th day of the month next following. It was stated that the appellant accordingly got challans passed for two months together each time and deposited the amount in time in the court treasury throughout. However, through some inadvertence, rent for the months of November and December 1986 could not be deposited. It was alleged that the appellant had genuine belief that her son had deposited the same. It was further the case of the appellant that neither the landlord nor any court of law ever pointed out this non-deposit to the appellant. The appellant further asserted that the challans for subsequent period having been passed without any objection, the appellant got the impression which was bona fide that he had complied with the earlier order of the court and continued to be in bona fide occupation of the premises in question. In the premises, the respondent filed a petition under Section 15 of the Act in the trial court for a direction to strike out the defence on the ground that the appellant failed to deposit rent for the months of November and December 1986. The appellant contested the application, inter alia, contending that the rent for said period had been duly deposited and asked for a report from the Accounts Branch of the court. This, according to the appellant, was because the challan for that period was found missing from the record of the appellant as asserted by the appellant. It later transpired on the challans being produced that the rent for the months of November and December 1986 had not been actually deposited. The appellant's case was and throughout has been that this

was a mistake. The appellant, therefore, got a fresh challan passed on or about March 9, 1988 and deposited the amount. It is further the case of the appellant that all subsequent amounts have been duly deposited for all subsequent periods. The respondent made his application, as mentioned hereinbefore, under Section 15 of the Act for striking out the defence. On March 27, 1988, the learned Subordinate Judge III, Jamshedpur found that the rent for the months of November and December 1986 had not been deposited. The defence against the ejectment, therefore, was struck off. It was contended before the learned Subordinate Judge that the time to deposit the rent from time to time, though originally granted for two months had expired, could be extended. On the other hand, on behalf of the respondent, it was urged that the defence was bound to be struck off since it was apparent that the amount had not been deposited. It was asserted that the defence of the appellant that the amount had been deposited, and the assertion to which the appellant stuck was obstinate and wrong and, therefore, not bona fide. Taking view of these evidence, the learned Subordinate Judge came to the conclusion that the excuse for non-deposit was not bona fide and there was unexplained delay to deposit the rent for the months of November and December 1986 as enjoined by the order of the court, and, therefore, under Section 15 of the Act, it was obligatory for the court to strike off the defence. The High Court was moved in revision. The High Court dismissed the application on July 7, 1988 in limine, Hence, this appeal.

3. Section 13 (sic 15) of the Act enjoins making of an application for deposit by a tenant in suits for ejectment. The said section provides as follows :

> 15. Deposit of rent by tenants in suits for ejectment. - (1) If, in a suit for recovery of possession of any building, the tenant contests the suit as regards claim for ejectment, landlord may move an application at any stage of the suit for order on the tenant to deposit rent month by month at a rate at which it was last paid and also, subject to the law of limitation, the arrears of rent, if any, and the Court after giving opportunity to the parties to be heard, may make any order for deposit of rent month by month at such rate as may be determined and the arrears of rent, both of before and after the institution of the suit, if any, and on failure of the tenant to deposit the arrears of rent within fifteen days of the date of the order or the rent at such rate for any month by the fifteenth day of the next following month, the Court shall order the defence against ejectment to be struck off and the tenant to be placed in the same position as if he had not defended the claim to ejectment and further the Court shall not allow the tenant to cross-examine the landlords witnesses.

4. In case an order of a deposit is made, the court may pass an order to deposit the rent on a particular date and/or on 15th day of the following month and if such a deposit is not made then the court shall order the defence against the ejectment to be struck out and the tenant be placed in the same position as if he had not defended the claim for ejectment. The question is if the deposit is not made, does the provision of the section mandate the court to strike out the defence. The question, therefore, arises whether there is any discretion for the court in case the deposit is not made within the stipulated time. Indisputably, in this case the deposit had not been made. The section is clear in its terms. The Act, as the preamble states, is inter alia 'to prevent unreasonable eviction of tenants'. Therefore, though it is for protection of tenants, the Act is enjoined to regulate the rights and the duties of the landlords and the tenants. In the facts of this case, as found by the court, there was failure to deposit the rent within the stipulated time. The actual problem in the instant case is whether in a case of a genuine mistake, which, we must hold - there was in this case - does the court have jurisdiction to extent the time and treat the deposit subsequently made as properly made.

5. In Ganesh Prasad Sah Kesari v. Lakshmi Narayan Gupta this Court was concerned with the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 and Section 11-A thereof as it stood at the relevant time. The said section, like the present Section 13, enjoins that 'the court shall order the defence against ejectment to be struck out and the tenant be placed in the same position as if he had not defended the claim to ejectment'. This Court held that failure to comply with an earlier direction should not necessarily visit the tenant with the consequences of his defence being struck off because there might be myriad situation in which the ends of justice demand relief being granted. It was found in that case that the tenant had deposited all arrears of rent though there were some irregularities in making the deposit, but it was not of such a nature as to visit the tenant with the consequence of striking off his defence. In that case, it was held that the defence should not be struck off and the court should also not consider the word 'shall' in the context of the section as mandatory but directory.

6. In the case of Mrs. Manju Choudhary v. Dulal Kumar Chandra it was held that if there was 'unexplained delay' then the curt is bound to strike off the defence. There was observation that there is a duty cast on the court to strike off the defence if there is failure to deposit the rent in terms of the order of Section 13 of the Act. The said observations would apply to the facts of this case and, therefore, the court must from a proper perspective judge the question whether the delay or failure to deposit the rent in terms of order under Section 13 of the Act has been properly explained and if that delay has been properly explained, then the court has a discretion to excuse the delay, but if the delay has not been properly explained then the court has no discretion. In our opinion, such a construction would be a harmonious rendering of the language of Section 13 to the claim for justice in each particular case. Therefore, the court should consider whether the delay has been reasonably explained or not. In construing that question the court in the scheme of the administration of justice must take a constructive and purpose - oriented approach. If it does, then the element of discretion comes into play though not in the form of directory or mandatory provision but in considering whether the delay was properly explained or not. In the facts of this case, we find that there is good deal of justification for the delay and the delay has been properly explained in the background of the facts and the circumstances of the case. If that is the position, the court should consider the question in that light. The trial court did not look at it from that perspective. The court, therefore, committed an error resulting in miscarriage of justice. The High Court in not interfering with this miscarriage of justice too committed an error of jurisdiction.

7. In this connection, reference may be made to the observations of this Court in M/s B. P. Khemka Pvt. Ltd. v. Birendra Kumar Bhowmick. There, the court was concerned with the default in payment under the West Bengal Premises Tenancy Act, 1956 (as introduced by Ordinance 6 of 1967). There, the court had to consider the expression 'shall' in Section 17 (3) of the West Bengal Act. It was held that the court's power was discretionary and in that case the High Court was of the opinion that the delay of two months in payment of rent being of technical nature, the court should have exercised discretion and refused to strike off the defence. It was the view of the court that the words "shall order the defence against delivery of Possession to be struck out" occurring in Section 17 (3) of the West Bengal Act have to be construed as directory provision and not mandatory provision as the word 'shall' should be read as 'may'. The court expressed the view that such a construction was warranted because otherwise the intendment of the legislation as judged from the whole scheme in the preamble would be defeated and the class of tenants for whom the beneficial provisions were made by the Ordinance in question in that case and the amending Act will stand deprived of them. This Court observed that the court is vested with the discretion either to order the defence to be struck out or not, depending upon the circumstances of the case in the interest of justice. There, the court found that the delay was technical in nature.

8. Therefore, the interest of justice which is the paramount justification of the administration of justice with the purpose of the Act, compels us to hold that if the delay is explained then there is no delay and the court in such a case cannot strike of the defence. If, on the other hand, the delay is not explained or the explanation is one which is not acceptable to the curt, then the court must strike out the defence and there is no discretion. Read in that light, in our opinion, the learned trial Judge of the High Court committed an error in exercising his jurisdiction. The orders of the High Court and the trial court are set aside. The defence of the appellant is restored since all the rents have been deposited. In view of the delay due to interruption in the prosecution of the case, it is desirable, if possible, to dispose of the trial within six months from today, particularly since the case has been pending since 1975. The appeal is, therefore, disposed of accordingly. In the facts and the circumstances of the case and the conduct of the appellant in taking an incorrect defence leading to subsequent proceedings, the appellant is directed to pay all costs of this appeal which are assessed as Rs. 1500.

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