

Rashik Lal and Others

Vs

Shah Gokuldas

Civil Appeal No. 1953 of 1980

Shah Gokuldas Waghajibhai Gujrathi

Vs

Standard Trading Company By Its Proprietors

Civil Appeal No.1954 of 1980

Civil Appeals Nos. 1953 And 1954 of 1980

(L. M. Sharma, S. R. Pandian JJ)

02.02.1989

JUDGMENT

SHARMA, J. –

1. These appeals arise out of a proceeding under the C.P. and Berar Letting of Houses and Rent Control Order, 1949 (hereinafter referred to as 'the Rent Control Order') initiated by Shah Gokuldas, appellant in C.A. No. 1954 of 1980 (respondent in the other appeal) for permission to determine the lease of Bhagwanji, the original tenant. After the death of Bhagwanji during the pendency of the case, Rashik Lal and others, the appellants in C.A. No. 1953 of 1980 were substituted as his legal representatives.

2. The landlord's prayer was based on alleged wilful default in payment of rent and bona fide requirement under sub-clauses (ii) and (vi) respectively of Clause 13(3) of the Rent Control Order. The allegations were denied by the tenant and the Rent Controller dismissed the application. The landlord's appeal was also rejected by the appellate authority, the Resident Deputy Collector. The landlord thereafter approached the High Court which confirmed the impugned orders so far as the ground of bona fide necessity was concerned, but allowed the application under Article 227 of the Constitution of India holding that the tenant was a habitual defaulter in payment of rent and, therefore, liable to eviction. The appellants in C.A. No. 1953 of 1980 have challenged the order of their eviction and the landlord Shah Gokuldas has appealed against the finding of the courts below negating his case of bona fide requirement.

3. So far as C.A. No. 1954 of 1980 is concerned, both the Rent Controller and the Resident Deputy Collector have on a careful consideration of all the relevant circumstances held that the landlord-applicant has failed to prove his case of bona fide requirement. The High Court while confirming the finding has again considered the materials on the record. The learned counsel for the landlord has not been able to point out any acceptable ground for interfering with the concurrent findings of

the three courts and C.A. No. 1954 of 1980 is, therefore, dismissed.

4. So far as the other appeal is concerned, the High Court has disagreed with the view of the Rent Controller which was affirmed by the appellate court. It has been contended on behalf of the appellants Rashik Lal and others that having regard to the conduct of the parties in payment and receipt of rent of several months at a time, it should be held that there was an implied agreement between them to do so and the landlord is now not entitled to insist on the rent to be paid every month. Reliance was placed on the decision of this Court in *S. P. Deshmukh v. Shah Nihal Chand Waghajibai Gujarati* ((1977) 3 SCC 515).

5. The case of the landlord has been that rent was payable on the expiry of each month, and since this was not done the tenant was liable to eviction. The landlord filed a schedule in the trial court showing the intervals at which rents had been paid by the tenant during the period of 2 years immediately preceding the filing of the case. The schedule indicates that the rent was paid, according to the alleged stipulation, only for a brief period, and the rent for the rest of the period was paid in lump sums representing the rent of several months together. Admittedly the accumulated rents were accepted by the landlord without any objection at any point of time and the tenant had no occasion to assume that the landlord was aggrieved by the manner in which rents were being paid. The question arises as to whether in these circumstances the High Court was entitled to reverse the concurrent finding of the two courts below.

6. The tenant denied in express terms the arrangement pleaded by the landlord as mentioned above and asserted that rent was payable at his convenience. Mr. Kanta Rao, the learned counsel for the landlord contended that a plea about an alleged agreement to pay rent at the convenience of the tenant has to be rejected as untenable in law. According to the learned counsel an inference of implied agreement is possible by the conduct of the parties only if it is shown that the rent was being paid and accepted on a fixed interval, as for example, if it could be shown that the rent was always paid after every 3 months (or for that matter every 2 months or every 4 months) then a clearcut pattern emerges on the basis of which an implied agreement can be assumed to have come in existence. No such inference is permissible from mere irregular and erratic payment. Reliance was placed on the decisions of *Pandurang Tukaram Rajkondawar v. Balaram Madhaorao Chavan* (1985 Mah LJ 109); *Shishir Hari Mahajan v. Banarasibai Rodmal Sharma* (1982 Mah LJ 908) and *Nathuji Narayanrao Udapure v. Narendra Vasanjibhai Thakkar* (1981 Mah LJ 446).

7. The relevant provisions of the Rent Control Order require a tenant to be "habitually in arrears with the rent" as a condition for the grant of the permission by the authority to the landlord to determine the lease. It is significant to note that the condition mentioned in the Rent Control Order is different from the condition in several other statutes where mere non-payment of rent for a particular period, has been provided as adequate ground for eviction of the tenant. The question whether the tenant was a "habitual defaulter" arose before the Supreme Court in *S. P. Deshmukh case* ((1977) 3 SCC 515) and was answered in the negative in the following words : (SCC p. 515, para 1)

Normally, a monthly tenant is under an obligation to pay rent from month to month but this obligation is subject to a contract to the contrary. Such a contract need not be reflected in a formal document and can be spelt out from the conduct of the parties, spread over a fairly long period of time. The evidence in the case, which was believed by the two tribunals of fact, shows that the tenant has been paying rent at an interval of 3 or 4 months, which the landlord has been willingly accepting and always without even so much as a murmur.

8. We do not see any reason for holding that unless the rent was paid and accepted at a fixed period or interval, no such implied agreement can be inferred. In the S. P. Deshmukh case ((1977) 3 SCC 515) the rent had been paid at the varying interval of 3 or 4 months. The crucial test appears to be the conduct of the landlord in receiving the rent offered belatedly. If he receives the same under a protest and warns the tenant to be regular in payment in the future, he cannot be assumed to have agreed to a modified agreement in this regard. But if he, without any objection and without letting the tenant know his thought process, continues to receive rent at intervals of several months, he cannot be allowed to spring a surprise on the tenant by suddenly starting a proceeding for eviction. Having lulled the tenant in the belief that things were all right, the landlord was under a duty to serve him with a notice demanding regular payment, if he wished to insist upon it. In the case before us there was no objection whatsoever, raised on behalf of the landlord against the delayed payments. We, therefore, hold that the High Court was not right in reversing the concurrent finding of the two courts below. Accordingly the impugned judgment is set aside that of Resident Deputy Collector is restored and the appeal is allowed with costs throughout. Before closing, however, we would like to observe that in view of the attitude of the parties disclosed in the present case the appellant should hereafter pay the rent regularly in the succeeding month failing which he may be liable to be adjudged a habitual defaulter.

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