M/S. Rubber House

Vs

M/S. Excelsior Needle Industries Pvt. Ltd.

Civil Appeal No. 2789 of 1980

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

10.03.1989

JUDGMENT

S. RATNAVEL PANDIAN, J. –

1. This appeal by special leave under Article 136 of the Constitutions against the judgment and order dated May 29, 1980 in Civil Revision No. 216 of 1980 passed by the High Court of Punjab and Haryana at Chandigarh.

2. The respondent herein being the owner of the tenanted premises (i.e. two sheds) filed a petition for ejectment before the Rent Controller against the tenant, the appellant herein on the ground that the tenant had not paid the rent from May 1, 1974. The monthly rent for the premises was originally Rs. 950. According to the landlord under the provision of Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the Act') the rent of the demised premises was liable to be increased from Rs. 950 to Rs. 1142 per mensem. The landlord gave notice to the tenant to pay the rent at the enhanced rate of Rs. 1142 per mensem with effect from June 26, 1974 but the tenant defaulted in making the payment of rent and as such he was liable to be ejected from the premises on the ground of non-payment of rent. The tenant resisted the application stating that the landlord was not entitled to claim enhanced rent at the rate mentioned in the ejection application under the provisions of the Act and no legal notice was served on him claiming the arrears of rent and he had already paid the rent up to March 1975 by means of cheques and he had tendered the arrears of rent together with interest and cost as assessed by the Rent Controller on December 5, 1977 and hence the sole ground of his ejectment from the demised premises was no longer available to the landlord. In the replication the landlord denied that the tenant had paid the rent to him for the period from May 1974 to November 30, 1977 @ Rs. 1142 per mensem. In the alternative, he claimed that the rent to the extent of Rs. 36,100 was due to him from the tenant @ Rs. 950 per mensem for the period May 1, 1974 to June 30, 1977 and that the tenant having defaulted in making the payment was liable to be ejected. It may be stated that the application for eviction was filed on June 7, 1977.

3. The Rent Controller held that the landlord was not entitled to recover the rent @ Rs. 1142 p.m. but only @ Rs. 950 p. m. as agreed between the parties and the tenant had failed to pay the rent from April 1, 1975. On the basis of the above finding the Rent Controller directed the ejectment of the tenant from the premises by granting two months' time.

4. This order of the Rent Controller, on appeal, was confirmed by the Appellate Authority. On being aggrieved with the order of the Appellate Authority, the tenant preferred a civil revision petition before the High Court under sub-section (6) of Section 15 of the Act. On behalf of the tenant, it was urged before the High Court on the strength of clause (c) of Rule 4 and clause (1) of Rule 5 of the

Haryana Urban (Control of Rent and Eviction) Rules, 1976 Framed under Section 23 of the Act that since in the application for ejectment no specific amount of arrears due was mentioned, the application was not maintainable. The High Court rejected this plea observing thus :

> Admittedly, no such objection as to the non-compliance of the said rules was taken either in the written statement or before the Rent Controller, inasmuch as it was not raised even before the Appellate Authority. Moreover, it has not been shown that any prejudice was caused to the tenant on account of this non-compliance on the part of the landlord. Under these circumstances, no such plea can be available to the tenant in this revision petition for the first time particularly when it does not affect the merits of the case nor has it caused any prejudice to him.

5. Thereafter, coming to the question of arrears of rent, the High Court found thus :

> Moreover, the tenant clearly stated on December 5, 1977 that according to him, the total amount, due from him at the rate of Rs. 950 p.m. from April 1, 1975 to May 31, 1977 was to the landlord, which he subsequently failed to prove by leading evidence. Under these circumstances, since the tenant failed to prove the payment of the arrears of rent as claimed by him in his statement recorded on December 5, 1977 he was liable to ejectment on the ground of non-payment of rent as provided under Section 13 (2)(i) of the Act.

6. On the above finding, the revision petition was dismissed. Hence this present appeal.

7. We shall point out at this juncture that the amount of Rs. 21,696 which the tenant claims to have paid includes a sum of Rs. 18,844.14 which was found by the Rent Controller and the Appellate Authority as arrears of rent.

8. Mr. R. F. Nariman, learned counsel appearing on behalf of the appellant/tenant assails the impugned judgment of the High Court on two legal grounds : firstly, that the High Court has ignored to note that the statutory obligation cast on the Rent Controller as per the proviso attached to Section 13(2) (i) of the Act requiring him to calculate and determine the quantum of arrears of rent even at the first instance has not been complied with and secondly that the application for ejectment was not in accordance with the mandatory provisions of Rule 4(c), 5(1) and 6 of the Rules framed under the Act and as such the impugned judgment is liable to be set aside on both the grounds.

9. We shall now take the first ground of attack. Before dealing with the point of law involved, it may be necessary to extract the relevant portion of Section 13(2)(i) of the Act with its first proviso with which we are concerned :

> 13(2) A landlord who seeks to evict his tenant shall apply to the Controller, for direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied -
>
> (i) that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable.

Provided that if the tenant, within a period of fifteen days of the first hearing of the application for ejectment after due service, pays or tenders the arrears of rent and interest, to be calculated by the Controller, at eight percentum per annum, on such arrears together with such costs of the application, if any, as may be allowed by the Controller, the tenant shall be deemed to have dully paid or tendered the rent within the time aforesaid.

10. The answer to the first legal question mainly turns on the interpretation of the proviso to Section 13 which refers to the following essential conditions namely :

> (1) There must be an application for ejectment before the court;
>
> (2) The tenant, within a period of fifteen days of the first hearing of the application after due service, pays or tenders :
>
> (a) the arrears of rent; and
>
> (b) the interest to be calculated by the Controller at eight per cent annum on such arrears together with such costs of the application, if any as may be allowed by the Controller.

11. If the abovesaid two conditions are satisfied, then the tenant shall be deemed to have duly paid or tendered the rent within the time required by law.

12. The last paragraph of Section 13(2) enjoins that where the above second condition of the proviso is not fulfilled the Controller shall make an order directing the tenant to put the landlord in possession of the building and where he is satisfied that the rent has been paid the application of the landlord must be rejected.

13. Therefore, the sole question which has to be determined in the case on hand is whether or not the deposit made by the appellant was legally valid. On facts, the Rent Controller, the Appellate Authority and the High Court found that the appellant/tenant has not deposited the actual rent due payable by him except a part of it namely Rs. 290296 along with the interest of Rs. 261.27 and the cost of Rs. 35 totalling to Rs. 3199.23 which deposits was less by Rs. 18,844.14 even calculated at the rate of Rs. 950 per mensem. In fact, the learned counsel who appeared for the appellant/tenant before the Appellate Authority has conceded the arrears of rent which fact is found in paragraph 6 of the order of the Appellate Authority reading thus :

> The learned counsel for the appellant frankly conceded before me that he did not challenge the finding of the court below that the respondent was in arrears of rent in the amount of Rs. 18,844 on the date he tendered the arrears of rent together with interest and costs assessed by the Rent Controller.

14. An attempt on the part of the tenant that he had paid that amount has been totally rejected by all the courts. Only on the above finding, the courts below held that the tenant had not deposited the full and valid rent actually due but only a small part of it and as such it is manifest that the second condition enjoined by the proviso was not fulfilled at all and on that ground alone it could be held that the deposit was not valid one.

15. The learned counsel Mr. R. F. Nariman drew our attention to two judgments of this Court in Sheo Narain v. Sher Singh and Sham Lal v. Atme Nand Jain Sabha. In our considered view both

these decisions cannot be of any assistance to the appellant in the present case because the points for determination that arose in those two cases were different.

16. Mr. R. F. Nariman then advanced an argument that a statutory duty is cast under Section 13(2)(i) of the Act on the Rent Controller to calculate and determine the arrears of rent as well as the interest to be paid by the tenant within a period of 15 days of the first hearing of the application for ejectment after due service, but since the Controller has failed to discharge that obligation eviction can be ordered particularly when there is a dispute with regard to the quantum of arrears or rent. From the judgment on appeal, it seems that a contention substantially identical to the one presently made was advanced before the High Court which repelled the same holding thus :

> Going through the whole scheme of the Act, there is no provision that the Rent Controller should decide at the first date of hearing the amount due as arrears of rent ... If this argument of the learned counsel for the petitioner is accepted, in that situation the tenant will have another opportunity for making the payment of the arrears due from him, which, as stated earlier, is neither the scheme of the Act nor is in consonance with the language used in the proviso to Section 13(2)(i). On the first date of hearing, it is the duty of the tenant to calculate the arrears of rent, which according to him are due from him and which he intends to tender on the first date of hearing .... Since payment of rent is obligatory on the tenant and that too within the time prescribed in Section 13(2)(i) of the Act, it is for him to calculate the rent which is in arrears and pay the same as provided by the statute.

17. After a careful security of Section 13(2)(i) and the first proviso annexed thereto, we see no force in the submissions of the learned counsel that there is any statutory duty cast on the Rent Controller even in the first instance to determine and calculate requires arrears of rent and the interest but on the contrary the proviso requires the tenant to pay or tender the actual arrears of rent within 15 days of the hearing of the application for ejectment after due service along with the interest to be calculated by the Controller at 8 per cent per annum on such arrears together with such costs of the application if any, as much be allowed by the Controller. What the proviso requires is that the Controller has to calculate the interest at 8 per cent per annum on such arrears of rent and determine the costs of the application, if any. If the argument of the learned counsel is took be accepted then in every case the Rent Controller has to hold an enquiry at the first instance and determine the arrears of rent even on the first date of hearing which is in the nature of things not possible without any evidence, nor is it contemplated under the scheme of the Act. When there is a statutory obligation on the tenant either to pay or tender the arrears of rent within a period of 15 days of the first hearing of the application for ejectment after due notice it is for him to calculate the exact arrears of rent due and to pay or tender the same and if the tenant fails to do so he is deemed to have not paid or made the valid tender of the rent. Hence we hold that this argument advanced on behalf of the appellant is misconceived and fallacious.

18. For the reasons aforementioned, we hold that there is no merit in the first contention.

19. We shall now examine the second legal contention with reference to Rules 4(c), 5(1) and 6 of the Rules under the Act which rules reads as follows :

> 4. Application for eviction. Section 13. - Application under Section 13 of the Act, shall besides the particulars mentioned in Rules 5 and 6 contain the following particulars namely :

#(a) * * *(b) * * *##

(c) The amount of arrears due and the period of default.

5 (1) Applications Section 4 and 13. - (1) In addition to the particulars mentioned in Rules 3, 4 and 6 as far as these may be applicable, every application made under this Act shall contain simple and concise narrative of the facts which the party be whom or on whose behalf the statement of pleading is made, believes to be material to the case and which he either admits or believes that he will be able to prove.

6. Particulars to be furnished to the Controller Section 21. -

(1) Every landlord and every tenant of a building or rented hand shall furnish to the Controller, or any person authorised by him in that behalf, the following particulars namely :

(a) name and number of the building or rented land, if any, or its description and boundaries sufficient to identify it;

(b) street and municipal ward or division in which the buildings or rented land is situated;

(c) name and address of the landlord, if the particulars are furnished by the tenant and name of the tenant, if the particulars are furnished by the landlord;

(d) whether the buildings is a residential, non-residential or a scheduled building; and

(e) nature of amenities provided by the landlord to the tenant.

20. Mr. R. F. Nariman laid stress on the word "shall" occurring in the above rules particularly Rule 4(c) and contended that these rules are mandatory in character and so the non-compliance would amount to violation of the imperative (i.e. mandatory) provisions of these rules. According to him the respondent/landlord has not specified the 'amount of arrears due' in strict substantial compliance of Rule 4(c) and as such the present application for ejectment has to be thrown out. The answer to the above contention depends upon whether these rules are mandatory or directory which question has to be adjudged in the light of the intention of the legislature as disclosed by the object, purpose and scope of the statute. No doubt, if the statute is mandatory the things done not in the manner or form prescribed have no effect or validity, but if it is directory, the non-compliance may not lead to any serious and adverse consequence. A valuable guide for ascertaining the intention of the legislature is found in Maxwell "The Interpretation of Statutes", 12th edn., chapter 13 at page 314 under the captain "Intentions attributed to the legislature when it expresses none" which reads thus :

Passing from the interpretation of the language of statutes, it remains to consider what intentions are to be attributed to the legislature on questions necessary arising out of its enactments and on which it has remained silent .... It is impossible to law down any general rule for determining whether a provision is imperative or directory.

21. Lord Cambell in Liverpool Borough Bank v. Turner ((1860) 2 De GF & J 502, 507-08 (CC) observed :

> No universal rule can be laid down for the construction of statutes as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed.

22. Lord Penzance in Howard v. Bodington ((1877) 2 PD 203, 211 : 42 JP 6) said :

> I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject matter; consider the importance of the provisions that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decided whether the matter is what is called imperative or only directory.

23. In Craies Statute Law, 6th edn. at page 63, the following quotation is found :

> When a statute is passed for the purpose of enabling something to be done, and prescribes the formalities which are to attend its performance, those formalities which are essential to the validity of the thing when done are called imperative or absolute; but those which are not essential and may be disregarded without invalidating the thing to be done, are called directory (See Monreal Street Rly. Co. v. Normandian, 1917 AC 170 : 116 LT 162 : 33 TLR 174)

24. With reference to non-compliance of the directory enactment in Craies Statute Law it is said at page 261 :

> But on the other hand, if a statute is merely directory, it is immaterial, so far as relates to the validity of the thing to be done, whether the provisions of the statute are accurately followed out or not (See also 'On the Constitution of Status' by Crawford. (1875) LR 10 CP 733).

25. In Woodward v. Sarsons (1875 LR 10 CP 733, 746) it is explained as to what is called an absolute enactment or mandatory enactment as follows :

> An absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially.

26. In Seth Bikhraj Jaipuria v. Union of India ((1962) 2 SCR 880 : AIR 1962 SC 113) a question arose whether Section 175(3) of the Government of India Act, 1935 which requires that contracts on behalf of the Government of India shall be executed in the form prescribed is mandatory or directory. The Supreme Court at pages 983-94 expressed its view as follows :

> Where a statute requires that a thing shall be done in the prescribed manner or form but does not set out the consequences of non-compliance, the question whether the provisions was mandatory or directory has to be adjudged in the light of the intention of the legislature as disclosed by the object, purpose and scope of the statute. If the statute is mandatory, the thing done not in the manner of form prescribed can have no effect or validity; if it is directory, penalty may be incurred for non-compliance, but the act or thing done is regarded as good.

27. In Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur ((1965) 1 SCR 970), certain questions arose for consideration whether the whole of Section 131(3) of U.P. Municipalities Act was mandatory or the part of it requiring publication in the manner laid down in Section 94(3) of the said Act i.e. in a Hindi newspaper was merely directory. Wanchoo, J. as he then was speaking for the majority said : (SCR p. 975)

The question whether a particular provision of a statute which on the face of it appears mandatory, inasmuch as it uses the word "shall" - as in the present case - is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provisions has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.

28. See also K. Kamaraja Nadar v. Kunju Thevar (1959 SCR 583 : AI 1958 SC 687 : 14 ELR 270), Subbarao v. Member, Election Tribunal, Hyderabad ((1964) 6 SCR 213 : AIR 1964 SC 1027 : 26 ELR 1)

29. It is apposite to refer to the observations of this Court in Hari Vishnu Kamath v. Syed Ahmed Ishaque ((1955) 1 SCR 1104 : AIR 1955 SC 233 : 10 ELR 216) dealing with this problem : (SCR p. 1125)

It is well established that an enactment in form mandatory might in substance be directory, and that the use of the word "shall" does not conclude the matter.

30. Reference may be held to (1) State of U. P. v. Babu Ram Upadhya ((1961) 2 SCR 679 : AIR 1961 SC 751 : (1961) 1 Cri lJ 773) and (2) Ajit Singh v. State of Punjab ((1983) 2 SCC 217 : 1983 SCC (L&S) 303).

31. The word "shall" in its ordinary import is obligator. Nevertheless, the word "shall" need not be given that connotation in each and every case and the provisions can be interpreted as directory instead of mandatory depending upon the purpose which the legislature intended to achieve as disclosed by the object, design, purpose and scope of the statute. While interpreting the concerned provisions, regard must be had to the context, subject matter and object of the statute in question.

32. On a close scrutiny of the relevant rules referred supra in the light of the above principles of statutory interpretation, we are of the view that the non-compliance of Rule 4(c) i.e. the non-mentioning of the quantum of arrears of rent, does involve no invalidating consequence and also does not visit any penalty.

33. From the above discussion we hold that the Rules 4(c), 5(1) and 6 are not mandatory but only directory. In that view, we see no force in the contention of the learned counsel that the non-mentioning of the amount of arrears of rent due in the application for ejectment has adversely affected the proceedings of this case and as such the application for ejectment is liable to be dismissed on that score. Accordingly, we reject this contention also.

34. In the present case, the tenant himself was well aware of the amount of arrears of rent due about

which we have already mentioned in the earlier portion of the judgment. The present objection as to the non-compliance of the rules admittedly was not taken either in the written statement or before the Rent Controller or before the Appellate Authority. For the first time such a contention was raised before the High Court which has rightly rejected the same, observing thus :

> It has not been shown that any prejudice was caused to the tenant on account of this non-compliance on the part of the landlord.

35. We are in full agreement with the above view of the High Court as no prejudice is writ large in the present case because proof of prejudice is also one of the necessary criteria besides non-compliance of the provision to invalidate the act complained of as held by Chinnappa Reddy, J. in Dalchand v. Municipal Corporation, Bhopal ((1984) 2 SCC 486 : 1984 SCC (Cri) 311).

36. In the result, both the contentions raised by the appellant fails for the reasons hereinbefore mentioned, the appeal is dismissed with costs.

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