

Hiralal Moolchand Doshi

Vs

Barot Raman Lal Ranchhoddas (dead) by Lrs

Civil Appeal No. 988 of 1976

(N. M. Kasliwal, Yogeshwar Dayal JJ)

18.02.1993

JUDGEMENT

-

YOGESHWAR DAYAL, J.:-

1. This appeal is directed against the judgment of the single Judge of the High Court of Gujarat dated 17th June, 1975. By the impugned judgment the learned single Judge set aside the concurrent judgments of the executing court and the lower appellate court dismissing objections to the executability of the ejectment decree passed by the trial court dated 21st March, 1968 on the basis of a Joint compromise petition filed by the parties and held the ejectment decree inexecutable being a nullity.
2. It appears that on or about 12th July, 1967 the appellant/landlord (hereinafter referred to as 'the landlord') filed a suit in the court of the Joint Civil Judge, Dahod for recovery of possession of the premises against the respondent/ tenant (hereinafter referred to as 'the tenant') inter alia on the grounds contained in Sections 12(3)(a) i.e. on the ground of non-payment of rent for a period of over six months in spite of notice of demand; 13(1)(e) i.e. on the ground of nuisance and 13(1)(e) i.e. on the ground of bona fide personal use, besides other grounds of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter called the Act').
3. The tenant filed his written statement on 29th September, 1967 inter alia pleading that the rent charged was excessive; that he was not in arrears of rent, as alleged; that the landlord did not require the suit premises reasonably and bona fide; that the tenant had a large family; that he did not cause any nuisance, as alleged, and that greater hardship would be caused to the tenant if the decree for possession is passed against him than it would be to the landlord if the decree was not passed.
4. The trial court framed the issues on 30th November, 1967. On 21st March, 1968 the parties presented consent terms before the court for passing decree in those terms. Below the consent terms the court passed an order - "parties present and admit compromise". Accordingly the compromise decree was passed. As per the consent terms the tenant was to handover possession of the suit premises on or before 31st August, 1971. A translation of the consent terms in Gujarati reads as follows:

"We, the parties make, by mutual understanding compromise as under:

I, the defendant shall hand over the actual possession of the second storey of the

house bearing City S. No.614 on dated 31-8-71. And if, I, the defendant do not hand over the If possession of the suit property to the plaintiff accordingly the plaintiff is entitled to execute the decree. The aforesaid period is granted to the defendant for his convenience and accommodation.

2. The amount of rent demanded in the suit of the suit property plus the amount of mesne profits plus the amount of house tax and education cess comes to Rs. 282/- in words rupees two hundred and eighty two plus the amount of Rs. 90/- for mesne profit from the date of suit till the date 20-3-68. Thus the total amount which comes to Rs. 372/- becomes claimable by the plaintiff from the defendants. Towards the aforesaid amount the defendant had deposited the amount of Rs. 312/- in the Court on date 2-9-67. He has deposited the amount of Rs. 10/- on date 21-4-67 Rs.30/- on date 18-1-68 and Rs.20/-on date 21-3-68. Thus total amount of Rs. 372/- has been deposited, and the said amount is to be accepted by the plaintiff. Therefore upon receiving the amount of Rs. 372/- by the plaintiff, it shall be considered that the amount of rent and that of mesne profit has been received for the period up to the date 21-3-68.

3. From date 21-3-68 the defendant shall hand over the possession of the property to the plaintiff or (otherwise) the plaintiff shall execute the decree and shall take (the possession) from the defendant. And the plaintiff shall recover from the defendant the amount of rent at a rate of Rs. 10/- per month and mesne profit at a rate of Rs. 10/- per month till the plaintiff obtains the possession from the said defendant. And the defendant shall pay to the plaintiff the mesne profit accordingly. If the defendant does not pay the mesne profit accordingly the plaintiff shall execute the decree and shall recover the amount from the plaintiff. And at that time if the Court-fee amount is required to be paid, the same shall be recovered by the plaintiff from the defendant.

4. The defendant shall pay to the plaintiff the amount of sanitation tax and education cess for the period from 1967-68 till the defendant hands over possession or the plaintiff takes possession by executing the decree, and if the defendant does not act accordingly the plaintiff shall recover the same by executing the decree. The plaintiff shall accept the amount of court-fee, refunded in this suit, and the defendant shall have no right thereon.

6. The cost of the parties shall be borne by themselves.

7. Decree may be drawn against the defendant in favour of the plaintiff in the manner stated above.

Sd/- Illegible

Advocate for the Defendant.

Dated 21-3-68.

Hiralal Mulchand Doshi

Ramanlal Ranchhodlal Barot.

Sd /-Illegible

Plaintiff's Advocate."

5. As the tenant failed to deliver possession of the premises by the due date, as agreed, the landlord filed an application for execution. On receipt of notice of filing of the execution application, the tenant filed objections to the executability of the decree. and inter alia contended that an eviction decree was not executable as it was a nullity. It was further contended that there was no material before the court which passed the decree to show the availability of the various grounds of eviction alleged against the tenant. The executing court took the view that the decree was not a nullity and was executable. The order of the executing court was affirmed by the first appellate court. However, on further revision by the tenant, a single Judge of the High Court accepted the revision petition and held that the decree was not executable as it was a nullity.

6. The High Court while accepting the revision petition noticed that the possession was sought inter alia on the grounds -- (1) that the landlord required the suit premises reasonably and bona fide for his personal use and occupation; (2) that the tenant was in arrears of rent for a period of over six months; and (3) on the ground of nuisance, besides other grounds. The High Court also noticed that the period for vacating the premises by, 31st August, 1971 was given to the tenant by way of accommodation. It also noticed that there is nothing in the consent terms or decree to indicate that there was any express satisfaction of the court regarding any of the statutory grounds on the basis of which the landlord is entitled to get possession of the premises either under Section 12 or Section 13 of the Act. But, the High Court held that, that by itself will not be sufficient to reach the conclusion that the decree is a nullity. The landlord is entitled to rely upon the implied admissions either in the decree or in the order itself or if there are any other materials on the record of the case to indicate that there were some materials for the court for its satisfaction regarding existence of any ground contained in Section 12 or 13 of the Act,

7. The High Court on analysis of the compromise took the view that the time was given on concession to the tenant to vacate the premises i.e. at the most it could be possibly said that the tenant may have agreed to handover possession as the landlord required the premises reasonably and bona fide for personal use and occupation. But on the basis of this implied admission the High Court held that the provisions of Section 13(2) of the Act were not satisfied. The High Court also found that Section 12(3)(a) of the Act was applicable and it is also correct that the arrears of rent claimed for had been admitted. The finding of the High Court regarding arrears of rent is "it is, therefore, evident that the fact that these arrears of rent were due has been admitted in this para 2 of the consent terms. It would, therefore, mean that so far as the fact that the rent was due for a period of over six months, which would entitle the landlord to file a suit for possession under Section 12 of the Act was impliedly admitted." After observing this the High Court took the view that the condition to be satisfied for attraction of Section 12(3)(a) of the Act is that the tenant had neglected to make payment of rent until the expiration of the period of one month after notice as contemplated under sub-section (2) of Section 12 of the Act. The High Court also noticed that the notice was given by the landlord to the tenant on 14th February, 1967 claiming the total arrears of rent of Rs. 372/- and the notice was served on the tenant on 22nd February, 1967. But it held that there was no material in paras 1 and 2 of the consent terms, read together, to show that the tenant had given up the contention that he had not neglected to pay. Another reason given by the High Court for holding the decree to be nullity on the ground of bona fide personal requirement is that was for the landlord to prove that greater hardship would be caused to him, rather than to the tenant, before he could get decree for possession on the ground of bona fide personal requirement. The High Court further took

the view that the landlord had not pleaded in the plaint to that effect.

8. It may be noticed that we are dealing with the question of nullity of, a decree because the executing court is bound to execute the decree and cannot go behind the same unless the decree passed by it is a nullity. It appears, there is a lot of confusion as to what is meant by "decree being null and void". In the context which we are dealing, a decree is said to be a nullity if it is passed by a court having no inherent jurisdiction. Merely because a court erroneously passes a decree or there is an error while passing the decree, the cannot be called a nullity. The decree to be called a nullity is to be understood in the sense that it is ultra vires the powers of the court passing the decree and not merely voidable decree.

9. It appears the question of validity of an eviction order based on a compromise was subject matter of numerous decisions of various High Courts of this country. A study of Indian case-law on this subject does not disclose any uniformity of opinion or elucidation of any generally applicable principle. But the decisions of this Court in *K. K. Chari v. R. M. Sheshadhri*, AIR 1973 SC 1311; *Nagindass v. Dalpatram*, AIR 1974 SC 471; *Roshan Lal v. Madan Lal*, AIR 1975 SC 2130 and *Suleman Noormohammed v. Umarbhai*, AIR 1978 SC 952 have resolved the conflict and clarified the matter.

10. Before we embark on the correct principles to be followed, while dealing with the question of a decree being nullity, relevant statutory provisions of the Act may be noticed:-

Section 12(3)(a) read thus:-

"12(3)(a) - Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the court may pass a decree for eviction in any such suit for recovery of possession."

Section 13(1)(g) of the Act read thus:

"13. When landlord may recover possession. (1) Notwithstanding anything contained in this Act but subject to the provisions of Sections 15 and 15A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(a) to (f)

(g) - that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of public charitable trust that the premises are required for occupation for the purposes of the trust; or

(h) to (k)

Section 13(2) of the Act read thus :

"13(2) - No decree for eviction shall be passed on the ground specified in clause (g) of sub-section (1) if the Court is satisfied that, having regard to all the circumstances

of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

Where the Court is satisfied that no hardship would be caused either to the tenant' or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only."

11-14. There is no doubt that if there is a contest the court can pass a decree for eviction only if the court is satisfied about the existence of grounds mentioned in two sections quoted hereinabove. But the satisfaction can also be inferred impliedly. It is clear from the reading of the plaint and the written statement that it was a common case that the agreed rate of rent was Rs. 10/-per month. It clear from the reading of the consent terms that the tenant agreed about the claim of the arrears of rent and stated inter alia that he had deposited it partly in the court on 2nd September, 1967. It is true that in the written statement the tenant had taken the plea that the landlord was avoiding to take the rent and he was not neglecting to pay. But by the admission in the compromise terms, it appears, that the tenant gave up the plea of tender of rent before the filing of the suit. There Was no material of any tender by moneyorder or otherwise on the record when the compromise was filed. All sorts of pleas are taken in the pleadings but it does not debar the parties to give up any of the pleas. On the facts of the case it is clear that the burden was on the tenant to prove the tender of rent before the suit, after service of notice of demand. The admission contained in the compromise shows complete admission of the tenant about the arrears of rent read with the allegation of the landlord in the petition about the existence of arrears of rent after service of notice of demand. In the written statement the notice of demand had been admitted but the plea was of tender of rent. Even a reply was sent to the notice of demand. Thus in the absence of any material on the record of previous tender it can safely be assumed that there was sufficient material in the light of the agreed terms that the tenant had made himself liable to be evicted on the ground contained in Section 12(3)(a) of the Act. Even on the second ground of eviction, namely - bona fide personal requirement of the landlord, the very fact that the tenant asked for accommodation of time shows that the claim of the landlord for eviction of the tenant on the ground of his bona fide personal requirement was impliedly admitted by the tenant. Again there is implied admission of comparative hardship as contemplated by Section 13(2) of the Act by the tenant. Order 23, Rule 3 of the Code of Civil Procedure was applicable to the proceedings., Rule 3 of Order 23 reads as follows:

"Compromise of suit - Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, in writing and signed by the parties or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit :

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation - An agreement or compromise which is void or voidable under the

Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule."

15. It is clear that whenever there is any lawful agreement the court is bound to record the agreement or compromise. There is no provision in the Act which made Rule 3 of Order 23 of the Code of Civil Procedure inapplicable to proceedings contemplated by the Act. Nor there is any provision in the Act which prohibits parties entering into a compromise in the suit for eviction filed under the Act.

16. In *K. K. Chari v. R. M. Sheshadri*, AIR 1973 SC 1311 (supra) this Court took the view that even if the satisfaction of the court as to the availability of the ground of eviction is not recorded in the eviction order it will not conclude the matter. That the court was so satisfied can also be considered from the point of view whether a stage had been reached in the proceedings for the court to apply its mind to the relevant question. Other materials on record can also be taken into account to find out if the court was so satisfied. Though Alagiriswamy, J. agreed with the proposed order but thought it necessary to add a few words of his own. He observed (at p. 1321 of AIR):

"The law on this subject has gone into a labyrinth and think it is time we took a hard look at it and laid down the correct position."

17. He referred to English and Indian cases and was inclined to hold that there should be no objection to a compromise eviction order in rent control proceedings provided it is in accordance with the Act, i.e., only the landlord has asked for possession of the premises on one of the grounds laid down in the Act. He agreed with the majority judgment on the grounds stated therein. He, however, thought that the matter would be considered in the light of what he has said when a proper occasion arises.

18. *Nagindass v. Dalpatram*, (AIR 1974 SC 471) was a case under Section 28 of the Bombay Act (No. 57 of 1947). The earlier cases were sought to be distinguished on the ground that they related to different Acts. That line of argument was rejected on the ground that object of all these Acts is the same and that policy element is involved in the enactments relating to rent control in general, both in England and India. There the suit for possession was brought on the ground of non-payment of rent as well as bona fide requirement of the landlord. In the memo of compromise, the tenant agreed to pay certain sums as arrears of rent. The immediate delivery of possession was postponed for sometime till the plaintiffs were able to provide lease of other premises for the tenant. It appears that no evidence had been recorded before the compromise order was passed. When the time for execution came, the tenant raised objections under Section 47 of the Code of Civil Procedure.

19. There being no evidence recorded on the merits before the compromise order was passed, the court had to consider the nature and extent of material on which the Court could be said to have satisfied itself about the existence of the grounds. The Court inferred that there was implied admission in the compromise which provided for payment of arrears of rent by the tenant in respect of the first ground and that the satisfaction of the court in the matter may be based on an admission made by the tenant. The Court observed (para 26 at pp. 476-77 of AIR):-

"From a conspectus of the cases cited at the bar, the principle that emerges is that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and

the decree for eviction apparently passed on the basis of a compromise would be valid. Such material may, take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement itself. Admissions, if true and clear, are, by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding in the party that makes them binding and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence are by themselves not conclusive. They can be shown to be wrong."

20. The Court also considered the extent to which the executing court could go into the matter. It was observed that if the decree on the face of it discloses some material, on the basis of which the Controller could be satisfied with regard to the existence of a statutory ground for eviction, it was not open to the court to go further and it must accept it and execute the decree as it stands. If, on the face of it, the decree does not show the existence of such material or jurisdictional fact, the Executing Court may look to the original record of the trial court to ascertain whether there was any material furnishing a foundation for the trial court's jurisdiction to pass the decree it did. The moment it finds that prima facie such material existed, its task is complete. It is not necessary for it to go further and question the presumed or expressed finding of the trial court on the basis of that material. All that it has to see is whether there was some material on the basis of which the Rent Court could have - as distinguished from must have - been satisfied as to the statutory ground for eviction. To allow the Executing Court to go beyond that limit would be to exalt it to the status of a super Court sitting in appeal over the decision of the Rent Court.

21. In *Roshan Lal v. Madan Lal*, (AIR 1975 SC 2130) (supra) the landlord had filed a suit against the tenant for eviction and for some other reliefs on grounds falling within Section 12(1)(f) of the M. P. Accommodation Control Act, 1961 i.e. bona fide personal requirement of non-residential premises. The tenant denied this assertion. Some evidence was adduced. Eventually a decree, on the basis of a compromise, was passed. The tenant agreed to vacate the shop by 31st December, 1970. On his failure to do so the respondent took out execution. The tenant filed objection that the decree was a nullity. Paragraph 1 of the compromise petition stated "that due to the necessity of the plaintiffs for their own business of opening grocery shop decree may be granted to them against the defendants". The plaint also mentioned that the landlord had no reasonable accommodation. The court implied an admission of that fact also, even though the compromise did not mention it. The court rejected the tenants, contention, that there was admission of the positive aspect only and not of the negative aspect. The appeal was dismissed. The court also upheld the applicability of Order 23, Rule 3 to suit governed by the special statutes. The Court observed that (para 6, at p. 2134 of AIR):

"If the agreement or compromise for eviction of the tenant is found, on the facts of a particular case, to be in violation of a particular Rent Act, the Court would refuse to record the compromise as it will not be lawful agreement. If on the other hand, the Court is satisfied on consideration of the terms of the compromise and, if necessary, by considering them in the context of the pleadings and other materials in the case, then the agreement is lawful, as in any other suit, so in an eviction suit, the Court is bound to record the compromise and pass a decree in accordance therewith."

22. *Suleman Noormohammed v. Umarbhai*, (AIR 1978 SC 952) (supra) was again a case in which suit was brought on the ground of non-payment of rent and bona fide personal necessity under the relevant provisions of the Act. The decree for possession was passed on the basis of a compromise under which the judgment-debtor was to handover possession by a future date. On his failure to do so, execution application was filed and the judgment-debtor challenged the validity of the decree. The order did not mention that the Court was satisfied about the grounds for eviction. The court read pleadings and came to the conclusion that there was no serious dispute to be tried and if a decree for possession would have been passed in invitum the tenant would not have got three years' time to vacate the premises; that he, therefore, agreed to suffer a decree by consent and gained three years' time under it. The court also relied on the presumption that every compromise under Order 23, Rule 3 of the Code of Civil Procedure shall be presumed to be lawful unless it is proved to the contrary. An admission by the tenant about the existence of a statutory ground, expressly or impliedly, will be sufficient and there need not be any evidence before the Court on the merits of the grounds before the compromise order is passed. If there is an admission of the tenant it will not be open to him to challenge its correctness as the admissions made 'in judicial proceedings are absolutely binding on the parties. At any rate decree cannot be called a nullity to enable the executing court to go behind it.

23. It is clear from the terms of the compromise in the present case that there was an implied admission by the tenant of the grounds contained in Section 12(3)(a) as well as Section 13(1)(g) of the Act.

24. We also notice that the executing court gave elaborate opportunity to the tenant while substantiating his objection to the validity of the decree by permitting him to lead documentary evidence which is not ordinarily granted. This permission to a tenant to lead evidence in execution is totally unwarranted in this case. The executing court is supposed to have examined the nullity of the decree on the basis of the record on which it is based. It cannot permit the parties to lead fresh evidence.

25. The High Court was also in error in assuming that the landlord in a suit for eviction on the ground of bona fide personal requirement is supposed to have pleaded his own comparative hardship in the plaint itself. Section 13(2) comes into play at the stage when the court is satisfied that the ground contained in clause (g) of sub-section (1) of Section 13 of the Act has been made out. It is at that stage that the court has to examine the question of comparative hardship. It was thus not necessary to plead in the plaint itself. Often the parties at the stage of recording of evidence of bona fide personal requirement also lead evidence as to the comparative hardship of the landlord or the tenant. But such averments are not required to be pleaded in the plaint itself to give cause of action to the landlord to enable him to file a suit for eviction of the tenant on the ground of his bona fide personal requirement.

26. The High Court was not right in going into the question of neglect by the tenant of the demanded arrears of rent. Once the arrears are admitted, it is implied that the tenant gave up the plea of tender. Surely the executing court could not be justified to permit the tenant to lead evidence of tender by him before the filing of the suit in compliance of the notice of demand as contemplated by Section 12(3)(a) of the Act after the decree.

27. For the aforesaid reasons the impugned judgment of the High Court is set aside and the judgments of the lower appellate Court as well as the executing court are restored. The appellant/landlord would be entitled, in the circumstances of the case, to warrants of possession forthwith.

The appellant is also entitled to the costs throughout. Appeal allowed.

</html