SUPREME COURT OF INDIA

Leela Soni

Vs.

Rajesh Goyal

C.A.No.6116 of 2000

(S.S.M.Quadri J.)

03.09.2001

JUDGMENT

Syed Shah Mohammed Quadri, J.

1. Leave is granted. This appeal is from the judgment and order of the High Court of Judicature of Madhya Pradesh, Jabalpur Bench at Gwalior, decreeing the suit of the landlord against the tenant, by allowing the Second Appeal No. 18 of 1993 on May 4, 2000. The appellants are the legal representatives of the original tenant, late Kanwar Lal Soni (referred to in this judgment as, 'the tenant') and the respondents are the successors-in-interest of the landlord, late Madho Lal Basant Lal (hereinafter referred to as, 'the landlord'). The tenant obtained premises No. 83 situated at Agra- Mumbai Road, Shivpuri, (M.P.) (hereinafter referred to as, 'the suit accommodation') from the landlord on rent of Rs.30/- p.m. which was later enhanced to Rs.40/- p.m. The landlord filed the suit (Civil Suit No.63-A/86) in the court of Second Civil Judge, Class II, Shivpuri, against the tenant for eviction of the suit accommodation on two grounds: (i) default in payment of rent of Rs.1080/- and claiming total sum of Rs.1210/-, said to be due, from the tenant - under Section 12(1)(a) and (ii) encroachment on a portion of land not let to him and raising construction thereon (referred to as, 'the disputed portion') - under Section 12(1)(o) of the *Madhya Pradesh Accommodation Control Act, 1961* (for short, 'the Act'). The tenant pleaded that the rent due was deposited after the service of notice of the suit and that the alleged unauthorised construction was made with due permission of the landlord. The trial court gave the benefit of sub-section (5) of Section 13 of the Act to the tenant on the first ground and passed a decree directing the tenant to vacate the disputed portion and to pay to the landlord damages at the rate of Rs.10/- P.M. for the said portion within two months from the date of the judgment on the second ground and, thus, decreed the suit on August 24, 1987. Dissatisfied by the judgment and decree of the trial court, the landlord filed First Appeal No.30-A of 1992 in the Court of the Second Additional Judge to District Judge, Shivpuri. The landlord contended before the first appellate court that during the pendency of the appeal the tenant did not pay/deposit the rent of the suit accommodation and that he did not vacate the disputed portion of the house within the time granted by the trial court. The learned first appellate Judge held that it was not essential that rent should be deposited during the pendency of the appeal and that in any

event that fact was not proved by the landlord. On the question of handing over of possession of the disputed portion, it was held that the landlord failed to prove that the nature of the construction on the disputed portion was of permanent nature and caused prejudice to him, the cost of the suit accommodation was reduced or deteriorated as a result of such construction. In that view of the matter, the appeal of the landlord was dismissed on November 16, 1992. Challenging the validity of the judgment and decree of the first appellate court, the landlord filed Second Appeal No.18 of 1993 in the High Court of Madhya Pradesh. The High Court modified the judgment of the first appellate court confirming the judgment and decree of the trial court and decreed the suit of the landlord for eviction of the tenant from the suit accommodation by judgment and decree, impugned in this appeal. Mr. Shiv Sagar Tiwari, learned counsel appearing for the tenant, contended that the High Court interfered with the findings of fact recorded by the first appellate court and that the tenant had paid/deposited all the rent due to the landlord before the first appellate court as well as the High Court on various dates; the first appellate court's findings that the disputed construction did not diminish the value of the suit accommodation or caused any prejudice to the landlord, ought not to have been interfered with and decree for eviction of tenant ought not to have been passed by the High Court. Mr. Sushil Kumar Jain, learned counsel appearing for the landlord, argued that the findings recorded by the first appellate court were wholly erroneous and that the High Court committed no error of law in recording findings on the points which were not determined by the first appellate court. The judgment of the High Court, it was submitted, did not warrant any interference. To appreciate the contentions of the learned counsel, it would be useful to refer to the provisions of clause (a) and (o) of sub-section (1) of Section 12 of the Act, which are relevant for our purpose. They are set out hereunder:

> "12. Restriction on eviction of tenants. –
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> (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only namely: -
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> (a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner;
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> (b) to (n) *** *** ***
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> (o) that the tenant has without the written permission of the landlord also taken possession of such portion or portions of accommodation which is not included in the accommodation let to him and which the tenant has not vacated in spite of a written notice of the landlord in that behalf."

2. A perusal of the provisions, extracted above, shows that sub- section (1) of Section 12 of the Act which commences with a non- obstante clause gives an overriding effect to it over

any other law or contract and creates an embargo on filing a suit in any Civil Court against a tenant for his eviction from any accommodation on any ground except those specified in clauses (a) to (p) thereof. Clause (a) of sub-section (1) of section 12 of the Act embodies one of the permissible grounds on which a suit for eviction of a tenant can be filed. It says that if the tenant had neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord, in the prescribed manner, the landlord can seek eviction of the tenant. It may be noticed that the rigour of clause (a) of sub-section (1) is softened by sub-section (3) of Section 12 of the Act which forbids the court from making an order of eviction against the tenant on the said ground if the tenant complies with Section 13 of the Act. Sub-section (1) of Section 13 of the Act enables a tenant to deposit in the Court or pay to the landlord the arrears of rent within one month of service of writ of summons or notice of appeal or other proceeding, or within such further time as the court may allow, and thereafter continue to deposit or pay the rent month by month by the 15th of each succeeding month, till the decision of the suit, appeal or proceedings, as the case may be. Sub- section (2) of Section 13 deals with payment of rent in case of dispute as to the amount of rent payable by the tenant and is not relevant for our purpose. Sub-section (5) of Section 13 directs that if a tenant makes deposit or payment under sub-sections (1) and (2) of that section, no decree or order shall be made by the Court for the recovery of possession of the accommodation on the ground of default in payment of rent by the tenant. In such a case, the Court is enabled to allow such cost to the landlord, as it may deem fit. Sub-section (6) which is supplement to sub-section (5) of Section 13, says that if a tenant fails to deposit or pay any amount as required by that section, the Court may order the defence against eviction to be struck out and shall proceed with the hearing of the suit, appeal or proceedings, as the case may be. Clause (o) of sub-section (1) of Section 12 contains yet another ground for eviction of a tenant. It provides that if the tenant has also taken possession of such portion of accommodation which is not included in the accommodation let to him, without the written permission of the landlord, and which the tenant has not evicted in spite of a written notice of the landlord in that behalf, he may seek eviction of the tenant from the suit accommodation. It may be apt to notice here that the said clause is controlled by sub-section (11) of Section 12 of the Act which forbids the court from making an order of eviction of the tenant on the said ground if the tenant within such time as may be specified in this behalf by the court, vacates the portion of the accommodation not let to him and pays to the landlord such amount by way of compensation as it may direct. A combined reading of clause (o) of sub-section (1) and sub-section (11) of Section 12 of the Act shows that it's the failure of a tenant to comply with the decree/direction of the Court to vacate the portion of accommodation unauthorisedly occupied by him and to pay the damages which will entail the order of eviction on the ground contained in clause (o). It needs to be emphasised here that the grounds mentioned in clauses (m) and (o) of sub-section (1) of Section 12 are two distinct grounds. They are mutually exclusive. Clause (m) reads as under: "(m) that the tenant has, without the written permission of the landlord, or permitted to be made, any such construction as has materially altered the accommodation to the detriment of the landlord's interest or is likely to diminish its value substantially."

3. A perusal of this clause shows that it embodies a further ground to seek eviction of the tenant who has without the written permission of the landlord made construction or materially altered the accommodation to the detriment of the landlord's interest or such construction is likely to diminish its value substantially. Whereas clause (m) speaks of unauthorised construction within the accommodation let out to the tenant, which has materially altered the accommodation to the detriment of the landlord's interest or is likely to diminish its value substantially, clause (o) talks of unauthorisedly occupying a portion or portions of the accommodation not forming part of the tenanted accommodation and not vacating the same in spite of written notice of the landlord to the tenant. In the latter case, there is no need for the landlord to prove that the unauthorised occupation of a portion or portions of the accommodation not let out to the tenant, is to the detriment of landlord's interest or that it diminishes the value of his accommodation substantially. Within the parameters of the provisions discussed above, the trial court gave the benefit of clause (5) of Section 13 of the Act to the tenant in regard to default in payment of rent and in regard to unauthorised occupation of the accommodation not let out to the tenant, it passed the decree in terms of sub-section (11) of Section 12 of the Act against the tenant without making any order of eviction against the tenant. It appears that in his appeal before the Second Additional Judge to Distt. Judge, Shivpuri, against the judgment and decree of the trial court, the landlord filed an application under Section 13 (6) of the Act alleging that the tenant defaulted in depositing the rent during the pendency of the appeal but the tenant did not refute the allegation by putting forth any acceptable explanation. The first appellate court on misconception of law wrongly placed the burden on the landlord to prove that the rent was not paid during the pendency of the appeal and erroneously dismissed that ground. On the question of non- compliance of the decree of the trial court in regard to vacating the portion unauthorisedly occupied by him (tenant) and paying the compensation, the first appellate court held that the landlord had not shown that by constructing a temporary shed and converting it into a room, the value of the suit accommodation had been reduced or its nature had been changed or in any way the interest of the landlord had been prejudiced. The first appellate court not only failed to notice the distinction between clauses (m) and (o), pointed out above, but also read the requirements of clause (m) into clause (o) of sub-section (1) of Section 12 of the Act and misdirected itself. To say the least both the conclusions of the first appellate court are erroneous and unsustainable. The High Court, on the basis of record before it, held that the averments made in the application made by the landlord under Section 13(6) of the Act remained unrebutted and uncontroverted and recorded the finding that the rent remained unpaid during the pendency of the appeal and as such the defence of the tenant ought to have been struck out and the appeal should have been allowed by the first appellate court. It further held that in execution of the decree of the trial court, some of the legal representatives of the original tenant filed an undertaking that they would comply with the decree of the trial court in regard to vacating the disputed portion which was recorded by the executing court. But that undertaking was not fulfilled. Consequently, there was no option left for the first appellate court except to pass an appropriate order under clause (o) of sub-section (1) of Section 12 of the Act. The question that arises here is: has the High Court exceeded its jurisdiction in recording the findings noted above? There can be no doubt that the jurisdiction of the High Court under Section 100 of the Code of Civil Procedure (C.P.C.) is confined to the framing of substantial questions of law involved in the second appeal and

to decide the same. Section 101 of C.P.C. provides that no second appeal shall lie except on the grounds mentioned in Section 100 of C.P.C. Thus it is clear that no second appeal can be entertained by the High Court on questions of fact much less can it interfere in the findings of fact recorded by the Lower Appellate Court. This is so, not only when it is possible for the High Court to take a different view of the matter but also when the High Court finds that conclusions on questions of fact recorded by the first appellate court are erroneous [see : *Afsar Sheikh & Anr. vs. Soeman Bibi & Ors.*[1]]. It will be apt to refer to Section 103 of C.P.C. which enables the High Court to determine the issues of fact:

> "103. Power of High Court to determine issue of fact.- In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal, -
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> (a) which has not been determined by the Lower Appellate Court or both by the Court of first instance and the Lower Appellate Court, or
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> (b) which has been wrongly determined by such court or courts by reason of a decision on such question of law as is referred to in section 100."

4. The section, noted above, authorises the High Court to determine any issue which is necessary for the disposal of the second appeal provided the evidence on record is sufficient, in any of the following two situations : (1) when that issue has not been determined both by the trial court as well as the Lower Appellate Court or by the Lower Appellate Court; or (2) when both the trial court as well as the Appellate Court or the Lower Appellate Court has wrongly determined any issue on a substantial question of law which can properly be the subject matter of second appeal under Section 100 of C.P.C. [see : *Jadu Gopal Chakravarty (D) by his L.Rs. vs. Pannalal Bhowmick & Ors.*[2]]. Inasmuch as in the instant case on both the issues relating to clauses (a) and (o), referred to above, on account of its erroneous approach the first appellate court did not determine the relevant issues, in our view, the High Court was well within its jurisdiction in recording the afore-mentioned findings of fact for which the evidence was on record as Section 103 of the C.P.C. empowers the High Court to determine such issues of fact. In the result, we find no illegality in the judgment and order of the High Court, under challenge. The appeal is devoid of any merit. It is dismissed with costs.

[1]*(1976 (2) SCC 141)*
[2]*(1978 (3) SCC 215)*