

SUPREME COURT OF INDIA

Manik Lal Majumdar
Vs

Gouranga Chandra Dey

Appeal (Civil) 7253 of 2002

(R.C.Lahoti (CJI) and G.P.Mathur)

12/01/2005

JUDGMENT

G. P. MATHUR, J.

1. In view of difference of opinion between two learned Judges, the present appeal was placed for hearing before this larger Bench and the issue involved is whether an appeal preferred under Section 20 of the Tripura Buildings (Lease and Rent Control) Act, 1975 (hereinafter referred to as 'the Act') without payment to the landlord or deposit with the appellate court all arrears of rent admitted by the tenant to be due is not maintainable and is liable to be rejected on that ground alone.

2. Respondent No. 1-Gouranga Chandra Dey filed an eviction petition under Section 12 of the Act on the ground of bona fide requirement and also default in payment of rent. The appellant-tenant contested the petition taking various pleas. The Rent Control Court, after appraisal of evidence on record, recorded a finding that the plea raised by the landlord regarding bona fide requirement of the premises was not established, but the appellants were defaulters in payment of rent and accordingly passed an order directing their eviction and for handing over possession of the premises in question to respondent No. 1. The appellants preferred an appeal against the decision of the Rent Control Court, but the same was dismissed by Civil Judge (Senior Division), West Tripura, on the ground that as the appellants had failed to deposit the arrears of rent as directed by the Rent Control Court, the appeal preferred by them was not maintainable in view of Section 13(1) of the Act.

Thereafter the appellants preferred a Revision Petition before the District Judge which was allowed

and the order of Civil Judge (Senior Division) was set aside and the appeal was remanded for consideration on merits. Feeling aggrieved, respondent No.1 filed a petition under Article 226 of the Constitution before the Gauhati High Court. The learned Single Judge who heard the petition was of the opinion that in view of the decision of the Supreme Court in Chinnamma vs. Gopalan and others 1995 (6) SCC 491 an earlier Division Bench decision of Gauhati High Court in Binapani Roy & Ors vs. State of Tripura and others 1994 (1) GLR 98 required reconsideration by a larger Bench. Thereafter the petition was heard by a Division Bench which came to the conclusion that the decision of this Court in Channamma vs. Gopalan and others (supra) did not touch the controversy in dispute and accordingly the earlier decision rendered by the said High Court in Binapani Roy's case (supra) did not require reconsideration.

It was further held that an appeal against an order under Section 12 of the Act was not competent unless the provisions of Section 13(1) of the Act were complied with and, accordingly, the reference to the larger Bench made by the learned Single Judge was declined leaving the matter to be heard on merits by the learned Single Judge.

3. The appellants filed a Special Leave Petition against the decision of the High Court which, after grant of leave, was heard by a bench of two learned Judges. Shivaraj V. Patil, J held that in view of Section 13(1) of the Act, before a tenant prefers an appeal under Section 20 against an order of eviction made against him under Section 12 of the Act, he must either pay to the landlord or deposit with the Rent Control Court all arrears of rent in view of explicit language used in Section 13(1) of the Act. However, D.M. Dharmadhikari, J. held that a tenant can file or present a memorandum of appeal in accordance with sub-section (1) of Section 20 of the Act, but until and unless he seeks an order from the appellate authority in accordance with sub-section (2) of Section 13 and makes deposit of all arrears of rent and continues to pay future rent in the manner and within the time directed by the appellate authority, he would not be entitled to prosecute the appeal and obtain any interim or final relief against the order of the Rent Control Court as is contemplated in sub-sections (2) & (3) respectively of the said Section.

4. In order to appreciate the contentions raised by learned counsel for the parties, it will be convenient to set out Sections 13 and 20 of the Act which are relevant for the decision of the controversy.

"Section 13(1) : No tenant against whom an application for eviction has been made by a landlord under section 12 shall be entitled to contest the application before the Rent Control Court under that section, or to prefer an appeal under section 20 against any order made by the Rent Control Court on the application, unless he has paid or pays to the landlord, or deposits with the Rent Control Court or the appellate authority, as the case may be, all arrears of rent admitted by the tenant to be due, in respect of the building up to the date of payment or deposit, and continues to pay or to deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Rent Control Court or the appellate authority, as the case may be.

(2)The deposit under sub-section (1) shall be made within such time as the Rent Control Court may fix and in such manner as may be prescribed and shall be accompanied by the fee prescribed for the

service of notice referred to in sub-section (4).

Provided that the time fixed by the Rent Control Court for the deposit of the arrears of rent shall not be less than forty five days from the date of the order and the time fixed for the deposit of rent which subsequently accrues due shall not be less than two weeks from the date on which the rent becomes due.

(3) If any tenant fails to pay or to deposit the rent as aforesaid, the Rent Control Court or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

(4) When any deposit is made under sub-section(1), the Rent Control Court or the appellate authority, as the case may be, shall cause notice of the deposit to be served on the landlord in the prescribed manner; and the amount deposited may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him to the Rent Control Court or the appellate authority in that behalf.

Section 20(1)(a) : The State Government may, by general or special order notified in the Official Gazette, confer on such officers and authorities not below the rank of a subordinate judge the powers of appellate authorities for the purposes of this Act in such areas or in such classes as may be specified in the order.

(b) Any person aggrieved by an order passed by the Rent Control Court may, within thirty days from the date of such order, prefer an appeal in writing to the appellate authority having jurisdiction.

Note: In computing the thirty days in this clause, the time taken to obtain a certified copy of the order appealed against shall be excluded.

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) the appellate authority shall call for the records of the case from Rent Control Court and after giving the parties an opportunity of being heard, and if necessary, after making such further inquiry as it thinks fit, either directly or through the Rent Control Court, shall decide the appeal.

Explanation : The appellate authority may, while confirming the order of eviction passed by the Rent Control Court, grant an extension of time to the tenant for putting the landlord in possession of the building.

(4) The appellate authority shall have all the powers of the Rent Control Court including the fixing

of arrears of rent.

*(5) the decision of the appellate authority, and subject to such decision, an order of the Rent Control Court shall be final and shall not be liable to be called in question in any court of law, except as provided in Section 22." **

5. Shri A.K. Ganguli, learned senior counsel for the appellants has submitted that Section 20 of the Act which is a provision for preferring an appeal against the order of the Rent Control Court does not lay down that payment or deposit of all admitted arrears of rent is a condition precedent for preferring an appeal. In view of the clear mandate of sub-section (4) of Section 20 that the appellate court shall have all the power of Rent Control Court including fixing of arrears of rent, and having regard to the scheme contained in sub-sections (2) & (3) of Section 13 of the Act, the appellate authority can not only quantify the arrears of rent, but also the time limit for depositing the same.

The appellate authority has been expressly conferred power under sub-section (3) of Section 13 to grant further time or to condone the default in making the deposit on sufficient cause being shown and, therefore, an appeal preferred without making the requisite deposit cannot be held to be not maintainable and is not liable to be rejected straightaway on that ground alone. Learned counsel has also submitted that the mere filing of the appeal without payment or making the deposit by itself does not cause any prejudice to the landlord inasmuch as it will always be open to the appellate authority not to proceed with the hearing of the appeal or to pass any interim order in favour of the tenant-appellant until the requisite payment or deposit has been made. Learned counsel for the respondent(landlord) has, on the other hand, submitted that no litigant has any inherent right of appeal in any cause.

The right of appeal is a creature of the statute and it is always open to the legislature to provide or lay down the condition subject to which alone an appeal may be preferred. In this connection learned counsel has drawn analogy from some taxing statutes which require deposit of admitted amount of tax and also Section 173 of Motor Vehicles Act for entertaining the appeal. He has further submitted that the language of the statute is clear and unambiguous and on a plain language thereof, the payment or deposit of admitted amount of rent by the tenant is a condition precedent for preferring an appeal and in absence of such payment or deposit, the appeal would be incompetent and is liable to be rejected.

6. Clause (b) of sub-section (1) of Section 20 provides that any person aggrieved by an order passed by the Rent Control Court may, within thirty days from the date of such order, prefer an appeal in writing to the appellate authority having jurisdiction. Sub-section (4) of Section 20 specifically provides that the appellate authority shall have all the powers of the Rent Control Court including the fixing of arrears of rent. Section 13 is a general provision which applies both during the pendency of eviction proceedings under Section 12 of the Act before the Rent Control Court and also to proceedings before an appellate authority in an appeal under Section 20 of the Act. Sub-section (1) of Section 13 lays down that any tenant against whom an application for eviction has been made by a landlord shall not be entitled to contest the application before the Rent Control Court or to prefer an appeal under Section 20 against any order made by the said Court unless he

has paid or pays to the landlord or deposits with the Rent Control Court or the appellate authority, as the case may be, all arrears of rent, admitted by the tenant to be due and continues to pay or deposit any rent which may subsequently become due in respect of the building in question until the termination of the proceedings before the Rent Control Court or the appellate authority, as the case may be.

The expression "all arrears of rent admitted by the tenant to be due", if interpreted literally, would mean that unless the tenant specifically admits any arrears of rent to be due to the landlord, the condition to make the payment of arrears of rent in order to contest the original proceedings before the Rent Control Court or to prefer an appeal as provided under Section 13 of the Act would not arise. The High Court in Binapani Roy's case (supra) has held that giving literal meaning to the words "admitted by the tenant to be due" would frustrate the provisions of Section 13 of the Act and make the same nugatory or otiose.

The object of sub-section (1) of Section 13 of the Act is to avoid litigation for realization of arrears of rent which is likely to accumulate during the course of litigation, which may be a long period and also to deter the tenant from resorting to an unfair practice to use and occupy the tenanted premises without payment of any rent so long as the litigation continues. The High Court was of the opinion that the reasonable meaning of the words "admitted by the tenant to be due" is the inference of admission from the material on record. If the material on record prima facie discloses the admission of relationship of landlord and tenant and the rate of monthly rent payable, the tenant would be required to pay or deposit arrears of rent and continue payment of current rent during the pendency of the litigation, as enjoined under Section 13 of the Act. Dharmadhikari, J. has expressed his concurrence with the aforesaid view taken by the Division Bench of the Gauhati High Court in the case of Binapani Roy (supra). We are also of the opinion that the view taken by the Division Bench of the High Court on this point is perfectly sound as giving a literal meaning to the expression "all arrears of rent admitted by the tenant to be due" may defeat the very object of enacting Section 13 of the Act and an unscrupulous tenant may continue to enjoy the premises without payment of any rent to the landlord by protracting the litigation and the landlord may have to wait till the final decision of the case to recover his dues by taking execution proceedings.

7. Sub-section (2) of Section 13 provides that a deposit under sub-section (1) shall be made within such time as the Rent Control Court may fix. The proviso appended to this sub-section shows that the time fixed by the Rent Control Court for the deposit of arrears of rent shall be within forty five days from the date of the order and the time fixed for the deposit of rent which subsequently accrues due shall not be less than two weeks from the date on which the rent becomes due. Sub-section (3) of Section 13 lays down that if any tenant fails to pay or to deposit the rent as provided in sub-section (1), the Rent Control Court or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

The effect of sub-section (3) therefore, is that if the tenant does not comply with the requirement of sub-section (1) the Rent Control Court or the appellate authority as the case may be, shall stop further proceedings and direct the tenant to put the landlord in possession of the building. However, a discretion has been conferred upon the Rent Control Court or the appellate authority not to pass

such an order i.e. of stopping further proceedings and directing the tenant to put the landlord in possession of the building, if the tenant shows sufficient cause for not having complied with the requirement of sub-section (1) of Section 13 of the Act. It may be noticed that the legislature has made a specific provision by enacting sub-section (4) of Section 20 of the Act, namely, that the appellate authority shall have all the powers of the Rent Control Court including fixing of arrears of rent. Though the sub-section is couched in wide language conferring all the powers of Rent Control Court upon the appellate authority, still the legislature consciously and deliberately has added the words "including the fixing of arrears of rent".

The expression "arrears of rent" finds place in sub-section (1) of Section 13 of the Act and is clearly referable to the said provision.

8. It is a well-settled principle that the intention of the legislature must be found by reading the statute as a whole and in order to ascertain the meaning of a clause in a statute, the court must look at the whole statute, at what precedes and what succeeds and not merely the clause itself. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed, but to the entire statute; it must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs (see *State of West Bengal vs. Union of India* and *R.S. Raghunath vs. State of Karnataka*).

Therefore, it is necessary to give full meaning and effect to the provisions of sub-sections (2) and (3) of Section 13 of the Act. The full play and effect cannot be given to sub-sections (2) and (3) of Section 13 of the Act if the expression "prefer an appeal" is interpreted to mean that the payment to the landlord or deposit with the Rent Control Court of all arrears of rent admitted by the tenant to be due is a pre-condition for filing a memorandum of appeal. However, if such payment or deposit of arrears of admitted rent is not held to be a pre-condition for mere filing or presentation of memorandum of appeal, it will be possible for the appellate authority to give full effect to sub-sections (2) & (3) of Section 13 of the Act.

9. The dictionary meaning of the word 'prefer' is as under: To bring forward for consideration; to place in advance; to bear before; put before; to move ahead or set forward. According to Black's Law Dictionary, the word 'prefer' means as under:

To bring before; to prosecute to try to proceed with. Thus preferring an indictment signifies prosecuting or trying an indictment.

10. In *Commissioner of Income Tax vs. B.N. Bhattacharjee* while interpreting the proviso appended to sub-section (1) of Section 245 of the Income Tax Act which said that " no such assessee shall be entitled to make an application in a case where the Income Tax Officer has preferred an appeal under sub-section (2) of Section 253 against the order to which the assessee's appeal relates", it was observed that there is good ground to think that an appeals means an effective appeal.

The Court went on to observe that it may mean 'prosecute' or 'effectively pursue a proceeding' or 'merely institute' it. Purposefully interpreted, preferring an appeal means more than formally filing it but effectively pursuing it.

11. If the expression "prefer an appeal" occurring in sub-section (1) of Section 13 of the Act is interpreted to mean the mere filing of a memorandum of appeal, it may also result in extreme hardship to the tenant or even make the provisions of Section 20 regarding an appeal against the order of Rent Control Court nugatory in some cases. It may be noticed under clause (b) of sub-section (1) of Section 20, the limitation for preferring an appeal against the order passed by the Rent Control Court is only thirty days. Therefore, if the appeal is not preferred within the said period of thirty days (excluding the period spent in obtaining the certified copy of the order appealed against), the same shall become barred by limitation and would be liable to be rejected on that ground alone.

The tenant, on account of some personal difficulty or problem may not be in a position to deposit all arrears of rent admitted by him to be due within the period of thirty days. In such an event, he may be precluded from challenging the order of Rent Control Court as the memorandum of appeal filed by him without making payment or deposit of arrears of rent would be liable to be rejected straightaway. We are, therefore, of the opinion that on a conjoint reading of all the provisions of the Act and giving a fair and reasonable interpretation thereto an appeal under Section 20 of the Act may be filed or presented without payment to the landlord or deposit with the appellate authority all arrears of rent admitted by the tenant to be due and it cannot be held to be incompetent. #

However, it will be open to the appellate authority not to proceed with the hearing of the appeal or to pass any interim order in favour of the appellant- tenant until he has paid or deposited all arrears of rent admitted by him to be due, and for such purposes the appellate authority shall have all the powers under sub-sections (2) and (3) of Section 13 of the Act.

12. The view taken by the appellate authority that as the appellant(tenant) had not paid or deposited all arrears of rent admitted by him to be due the appeal filed by him was incompetent is, therefore, clearly unsustainable in law and the revisional authority rightly set aside the said order and remanded the matter for fresh consideration by the appellate authority. #

The Division Bench of the High Court, under the impugned order, has held that the reference to larger bench made by the learned Single Judge was not called for and directed the writ petition to be placed for hearing on merits before the learned Single Judge. Since we have held that the appeal filed by the appellant against the decision of the Rent Control Court could not be rejected only on the ground that the admitted arrears of rent had not been paid or deposited, the hearing of the writ petition now by the learned Single Judge would entail waste of public time. We, therefore, direct that the appeal preferred by the appellant be heard and decided in accordance with the direction issued by the learned District Judge, West Tripura, by the judgment and order dated 26.4.1997 in Civil RCC Revision No. 2 of 1996 and in accordance with law. The appeal is disposed of in terms of these directions.

13. The parties shall bear their own costs.