

JAMMU AND KASHMIR HIGH COURT

Benarsi Das

Vs.

Jagdish Raj Kohli

Second Appeal No. 107 of 1958

(J.N. Wazir, C.J. and K.V. Gopalakrishnan Nair, J.)

20.04.1959

JUDGMENT

K.V. Gopalakrishnan Nair, J.

1. This second appeal raises a short point regarding the true meaning of the word 'income' occurring in clause (iii) of sub-section (3-A) of Section 1 of the Jammu and Kashmir Houses and Shops Rent Control Act, 2009.

2. The appellant-plaintiff leased certain shop premises to the respondent-defendant. After the expiry of the specified terms of the lease, the plaintiff issued a valid notice calling upon the defendant tenant to quit. The defendant, however, did not vacate the premises, with the result that a suit for eviction was instituted against him in the court of Sub-Judge at Jammu. The plaintiff took the stand that the provisions of the Houses and Shops Rent Control Act did not apply to the defendant whose annual income exceeded ₹ 20,000 within the meaning of clause (iii) of sub-section (3-A) of Section 1 of that Act. The defendant on the other hand contended that he did not fall within the mischief of the exception embodied in clause (iii) of sub-section (3-A) of Section 1 of the Act because his annual income did not exceed ₹ 20,000/-. The trial court found against the defendant and decreed the suit for eviction. On appeal, the Addl. District Judge at Jammu did not agree with the trial court's construction of the word 'income' occurring in Section 1 (3-A) (iii) of the Act. He took the view that the amount on which income-tax was assessed by the Income-tax authorities should be taken to be decisive of the question as to what the annual income of the defendant is. He came to the conclusion that for the purpose of the payment of income-tax, the defendant's annual income did not exceed ₹ 20,000/- and that consequently he was not hit by the provisions of Section 1 (3-A) (iii) of the Houses and Shops Rent Control Act, 2009. On this reasoning, the learned Addl. District Judge dismissed the suit for eviction. The plaintiff lessor has, therefore, come up in second appeal to this court.

3. The only question that falls for determination relates to the true meaning of the word 'income' in Section 1 (3-A) (iii) of the Shops and Houses Rent Control Act. The relevant provision runs as follows :-

"Nothing in this Act shall apply to.....any tenancy in respect of any house or shop where the income of the tenant, whether accruing within or outside the State exceeds ₹ 20,000/-per annum."

The contention of the learned counsel for the appellant is that all that the defendant received in the course of one year will constitute his annual income. On the other hand, the respondent's learned counsel urges that only that amount which is actually saved by the defendant during a year after meeting all his costs and expenses can be considered to be his income. We are of the view that both these are extreme contentions. Every sum of money received by a person on whatever account and from whichever, source cannot reasonably be taken to form part of his income. A landholder may sell a parcel of his land and receive the price thereof in cash. This sum of money cannot be construed to be part of his income. A trader may purchase goods from the manufacturer and sell them to his customers; the price he charges his customers will include his cost price and a margin of profit. The entire sale price received by him cannot reasonably be taken to be his income, for it includes his cost price also. And the cost price is in the nature of his capital.

4. At the same time it does not appear to us to be reasonable to contend that even the profit which the trader makes in his business will not constitute his income. The contention that all the expenses of the trader must be further deducted from the amount of profits received by him and that the net saving so arrived at should alone be taken to be his income does not appear to us to be tenable. We consider that the meaning of the word 'income' occurring in Section 1 (3-A) (iii) of the Houses and Shops Rent Control Act is what comes in, not being capital. We may accept in the present context that the term 'income' means, as applied to a commercial business, the profits made in that business; in other words, the total sale price minus the total cost price.

5. We are not able to accept the argument advanced on behalf of the respondent that the expression "income" in Section 1 (3-A) (iii) of the Houses and Shops Rent Control Act must be construed as meaning nothing more and nothing less than the amount in respect of which income-tax is assessed under the provisions of the Income-tax Act. There appears to be no justification to import the provisions of the Income-tax Act for construing the provisions of a totally different Act such as the Houses and Shops Rent Control Act, 2009. The provisions of the Income-tax Act are intended exclusively for the purpose of assessing and collecting income-tax. It has adopted its own standards and principles for the purpose of arriving at the amount on which the tax should be assessed. That Act does not and cannot be understood as laying down general principles for computing the income of a person for other purposes or with reference to other enactments. It is also well to remember that Section 1(3-A) (iii) of the Shops and Houses

Rent Control Act applies not only to persons who are liable to pay income-tax but also to others who are not liable to pay income-tax but who nevertheless receive considerable agricultural income. This shows that we have to interpret the word 'income' in the Section under consideration without reference to the provisions of the Income-tax Act. We do not therefore consider that the special provisions of the Income-tax Act can properly be invoked in this case for ascertaining the true meaning of the term 'income'.

6. We have to give the word 'income' occurring in Section 1 (3-A) (iii) of the Houses and Shops Rent Control Act its natural and ordinary meaning. And such meaning in our view is what we already stated, namely, 'what comes in, not being capital.' In the case of a commercial business it would mean the amount by which the total sale price exceeds the total cost price, which comes essentially to same thing as profits made in the business. While we agree that 'income' does not mean the entire volume of business Or the turn-over as it may be called, we cannot agree that it means only what ultimately goes into the pocket of the businessman as his net saving out of which he has ordinarily to meet no expense whatsoever.

7. Coming to the facts of the present case, we have the defendants' Balance Sheets Exs. P.W. 4, P.W. 5 and P.W. 6. Ex. PW 4 shows the amount of profits from the defendant's cloth business to be ₹ 29000/ and odd and from his soap business is Rs 735 odd. Ex. PW 5 shows that the profit from the cloth business was ₹ 30,000 and odd and that from the soap business ₹ 400 odd. Ex. PW 6 is important in that it appears to have been prepared after the defendant received the suit notice. Even that shows that his profits from the cloth business amounted to ₹ 21000 odd. It is, therefore, clear that the annual profits of the defendant exceeded ₹ 20,000/-. This fact is sufficient to dispose of this appeal. We hold that the defendant-respondent is hit by the provisions of Clause (iii) of sub-section (3-A) of Section 1 of the Houses and Shops Rent Control Act. It follows he is not entitled to the benefit of the Houses and Shops Rent Control Act, 2009.

8. In the result the plaintiff-appellant is entitled to succeed in this appeal which is accordingly allowed with costs restoring the decree of the trial court.

J. N. Wazir, C. J.

8. I agree.

Appeal allowed.