

BOMBAY HIGH COURT

Khanderao Malkarjun Dhotre

Vs.

Anandrao Laxmanrao Mashalkar

Civil Revn. Appln. No. 1077 of 1957, in Civil Appeal No. 50 of 1956

(Tendolkar, J.)

02.05.1958

ORDER

Tendolkar, J.

This is a civil revision application arising out of an order of the Dist. Court, Sholapur and the point that arises for determination is as to what is the meaning of the words "on the first day of hearing of the suit" in Section 12, Sub-Section (3), Clause (b) of the Bombay Rent Act, which provides that if the tenant pays on or before such date the rent to arrears and continues to pay subsequent rent regularly, he will not be liable to face eviction.

2. Now, a few facts are that in the suit for ejectment the date mentioned in the summons as the returnable date was 2-2-1955. Nothing was done on that date and the matter was adjourned to 16-3-1955. On that date it was adjourned for the defendant's written statement, which appears to have been filed on 23-4-1955. On 4-10-1955 - ignoring an interlude of an ex parte order being passed and set aside - the issues were settled. The rent had been paid by the defendant before the 4th of October 1955.

3. Now, the words "the first day of hearing of the suit" do not appear in any other local or Central Act. They do appear in a Punjab Act in the Delhi and Ajmer-Merwara Rent Control Act, 1947, Section 9(1)(a), proviso, which is also a Rent Act and, therefore, may be said to be comparable to the words in Section 12(3)(b) of the Bombay Rent Act; but that by itself will give little assistance to the determination of the true meaning of the words unless we follow the decision, of the Punjab High Court in *Hiralal v. Gian Singh and Co^l*, in which that High Court held that the "first day of hearing" is the day on which you answer the summons. I will consider that case later for in the first instance I think it is important for the Court to apply its mind to the words used and to see what legitimate meaning can be given to the words as used and not some similar words.

4. For the purpose of hearing of Rent Act suits, the Civil Procedure Code has been made applicable; but it does not follow therefrom that for the purpose of interpretation of any provisions of sections in the Act the Civil Procedure Code is necessarily relevant. Nonetheless, perhaps that Code is the only repository of phrases which contain the word "hearing" with or without other words preceding or following it and it may throw light of

¹ AIR 1951 Punj 441

the true meaning of the words which I have to interpret. I propose, therefore, to consider various Orders of the Civil Procedure Code in which these words appear. Order IV provides that a suit shall be instituted by presenting a plaint to the Court Order V, Rule 1 of the Code provides that after a suit is duly filed a summons is to be issued to the defendant to appear and answer the claim. Rule 5 then says that the Court shall determine, at the time of issuing the summons, whether it, shall be for the settlement of issues only, or for the final disposal of the suit and the summons shall contain a direction accordingly. Obviously, therefore, the first summons to appear and answer may, at the discretion of the Court, be for the settlement of issues only or it may be for the final disposal of the suit. Then Rule 7 says that the summons to appear and answer shall order the defendant to produce all documents which he intends to rely upon in support of his case. Rule 8 then provides that where the summons is for final disposal of the suit, it shall direct the defendant to produce "on the day fixed for his appearance" all witnesses upon whose evidence he wishes to rely. Then Order VIII, Rule 1, provides that the defendant may file a written statement at or before the "first hearing" or within such time as the Court may permit. Then Order 9, Rule 1, provides what is to happen on the day fixed in the summons to appear and answer and that is "and the suit shall then be heard unless the hearing is adjourned to a future day". Then under Order XII, Rule 4, it is provided that any party may call upon any other party to admit facts by notice in writing at any time not later than nine days before "the day fixed for the hearing". Then Order 14, Rule 1(5), provides as follows :

"At the first hearing of the suit the Court shall after reading the plaint and the written statements, if any and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend."

So in this sub-rule the "hearing" is when issues are to be settled. A look at these provisions in the Civil Procedure Code establishes one fact that the word "hearing" has not been used in the same sense throughout in the Code. It also discloses the fact that the Legislature for some peculiar reason, has used in the Rent Act not the familiar phrases of the Civil Procedure Code such as "the day fixed for hearing", but they have used a new phrase, namely, "the first day of hearing of the suit." Keeping this in mind, I now turn to the authorities, which have no direct bearing on the issues before me, but which do have something to do with "hearing" in some form or the other.

5. In *Kaloo v. Mt. Imaman*², Mushtaq Ahmad, J., held that "the first hearing in a suit" commences when the Court looks into the pleadings in order to formulate the points in controversy between the parties. I may mention here that the two rival contentions before me are that Mr. Rege for the tenant contends for the view taken by Mushtaq Ahmed, J., that the hearing commences when the Court looks into the pleadings in order to formulate the points in controversy between the parties. He further proceeds to say that, in cases where issues are settled, it is on that day that the hearing commences. But the Court in this case was considering the question of what "hearing" is in connection with a Muslim husband's power to retract charges of adultery made against his wife. We are really, therefore, not concerned with this case in deciding what is meant by "the first day of

² AIR 1949 All 445

hearing" in the Rent Act.

6. Then we come to *Taran Mandal v. Raj Chandra Mandal*³, Here the Calcutta High Court took the view that the hearing commences as provided in Order XIII, Rule 1, but the Court did in terms hold that "first hearing" means the hearing at which the case is gone into. Then we come to the decision in *National Insurance Co. Ltd. v. Dhirendra Nath Banerji*⁴, where McNair J., held that the words "at the first hearing" or "at the first hearing of the suit" appearing in the different Orders of the Code of Civil Procedure do not, in every case, refer to the stage when the issues are framed or the suit is called on for hearing. This is only reaffirming the principle that the word "hearing" itself is used in different meanings in different contexts in the Civil Procedure Code. Then there is the decision of the Patna High Court in *Abdul Rahman v. Shib Lal Sahu*⁵, in which Jvvala Prasad, Ag. C.J.s observe at page 254 (right) that "The word 'hearing' has not been defined in the Code but it is obvious that it is used in different rules with a view to state the different purposes for which a date for hearing of the suit is fixed".

7. Now, these and the Punjab case to which I am going to refer later are all the authorities that have been cited at the Bar. Having had a look at them, I must now turn to the question of actually considering the words used in the Rent Act.

8. There are two clear-cut interpretations, different from one another, that are canvassed for by both the parties; and I will deal first with the view that "the first day of hearing" in Section 12(3)(b) means nothing more or less than "the first day fixed for hearing". There are several difficulties in accepting this interpretation. First of all, the day referred to is not the day "fixed for hearing", but it is the day of hearing. In other words, actual hearing must take place on that day and a mere day fixed for hearing appears to me not to fit in, in the expression "day of hearing of the suit". If the phrase had been "day fixed for hearing of the suit" the position might have been different. Secondly, if by "the first day of hearing" was to be meant the returnable date that comes only once in the course of a given suit, that is, the hearing that cannot repeat itself, then what was more easy for the Legislature than to say "on the day fixed for hearing" ? "On the first day of hearing" imports also the idea that there will be other hearings of the type which we refer

to here, but it is only the first of them that is to be taken into account. In other words, the quality of hearing referred to is such that it is capable of being repeated from time to time in that suit and it is not a mere fixed point, like giving a notice which will never occur again in the same suit, that could accurately be described as "the first day of hearing of the suit". There is then no first day and no last day : the day fixed for hearing would both be the first and the last because that day cannot repeat itself.

9. Then we proceed to the other possible construction. If it does not mean merely the first day fixed for the return of the summons, what else does it mean ? Here the decisions on which Mr. Rege has relied upon interpret that the day on which some actual work is done in relation to the suit by the Judge applying his mind to the merits of the suit is "the first day of hearing". There will be many such days and it is the first of such days that is contemplated and not any other. It is urged against this view that this gives a great deal of elasticity to the point before me, that is, when the deposit is to be made. That no doubt is

³ AIR 1919 Cal 70

⁵ AIR 1922 Pat 252

⁴ ILR (1938) 1 Cal 53 : (AIR 1938 Cal 287)

true, because one cannot say in advance on what particular day the first hearing may be; but the parties know what is happening to the progress of the suit and if the tenant is in a mood to pay the rent, he will certainly know when he has to pay.

10. Then there remains the argument which has mainly the basis of the decision of the Punjab case to which I have not yet referred. That depends upon Order IX which I have quoted above, it says that on the day fixed the parties shall appear. So far it is quite easy. Then the Order says "the suit shall then be heard" and the concluding portion provides that it may be adjourned. I do not see how this Order can support the plea that the day of hearing referred to in the Rent Act is the returnable day. Nothing may happen on this returnable day except an adjournment, which is within the power of the Court; and if the Judge did proceed to any hearing as such in the sense that I have indicated, undoubtedly that would be the first day of hearing actually, although it was a day on which the defendant was called upon to attend and to show cause.

11. I now turn to the case of AIR 1951 Punjab 441. What Mr. Justice Kapur held in that case is : "The words 'first day of hearing' in Section 9(1)(a), proviso of the Act must mean the day when the defendant appears in answer to the summons and the Court takes up the case in accordance with Order 9, Rule 1 of the Civil Procedure Code" Now, in the first instance, this decision does not say that the first day of hearing is the returnable day, but it says that it is so if at the returnable day there is a further hearing as provided by Order 9, Rule 1. Whether a further adjournment would or would not be, a hearing does not appear to be clear from this judgment. As I have indicated above I myself am also of the view that the first day of hearing, if it happens to be also a day on which the hearing has taken place in the sense in which I have indicated, would lie the day of such hearing. Then the learned Judge has considered some decision which I have cited in my judgment, but he has either taken the view, in the case of some, that it is not clear what the points for determination were or in others that those cases were distinguishable of facts. In view

of the opinions that I have so far expressed, I disagree with respect with this judgment of the Punjab High Court and I am of opinion that "the first day of hearing" in Section 12(3)(h) means, not the day fixed for return of the summons or what is sometimes called the returnable day, but the day on which the learned Judge applies his mind to the case, which ordinarily he would do at the time when the issues are determined, is the day mentioned and that is the day before which the rent should have been paid.

12. There was an appeal on the basis on which the standard rent was determined. I do not think that there are any merits in the appeal. I confirm the standard rent.

13. The result, therefore, is that this revision application succeeds and the rule is made absolute with costs.

Rule made absolute.