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Court : Mumbai Nagpur

Decided On : Jul-07-2016

Judge : A.S. Chandurkar

Appeal No. : Writ Petition No. 3788 of 2015

Appellant : Jitendra

Respondent : Mohanlal

Judgement :

Oral Judgment :

1. Rule. Heard finally with consent of learned counsel for the parties.

The petitioner who is a tenant in the premises owned by the respondent is aggrieved by the judgment of the Appellate Court dated 27/01/2015 in R.C.A. No.41 of 2011 whereby the said appeal preferred by the petitioner challenging the decree for eviction has been dismissed.

2. It is the case of the respondent that the petitioner is a tenant of the house property owned by him paying rent of Rs.37.88 ps per month. According to the respondent as the petitioner was in arrears of rent, he had issued a notice under provisions of Section 15(2) of the Maharashtra Rent Control Act, 1999 (for short, the said Act) dated 11/02/2008. This notice was received by the petitioner on 19/02/2008, but the arrears of rent were not paid. On 01/03/2008 suit for eviction

on the ground of the tenant being in arrears of rent as well as on the ground of the landlord's bonafide need came to be filed.

Written statement was filed by the petitioner stating therein that he was not in arrears of rent. The ground of bonafide need was also denied.

3. The trial Court recorded a finding that the petitioner was in arrears of rent since July 2008 and only part amount of arrears of Rs.1213/- had been deposited on 31/07/2008. It was further held that the respondent was in bonafide need of the suit premises. The suit was accordingly decreed.

In the appeal preferred by the petitioner, the Appellate Court reversed the finding as regards bonafide need of the landlord. However, the finding that the tenant was in arrears of rent came to be confirmed. Being aggrieved, the tenant has filed this writ petition.

4. Shri R. Joshi, the learned counsel for the petitioner submits that the suit in question was admittedly filed before the expiry of ninety days after service of the demand notice on the tenant. According to him, the suit could not have been filed before the expiry of the period of ninety days as stipulated under Section 15(2) of the said Act. The Court in fact did not get any jurisdiction to entertain such a premature suit and hence the decree for eviction as passed was without jurisdiction. He further submitted that the objection in this regard was not raised by the tenant either in the written statement nor was the same urged before the Court. The learned counsel relied upon the judgment of the Honourable Supreme Court in **(2005) 4 Supreme Court Cases 315 Vithalbai (P) Ltd. vs. Union Bank of India** and submitted that the defect of presenting the suit prior to expiry of ninety days was not curable and it was a case of jurisdiction being exercised in a manner contrary to law. He also placed reliance on the judgment of learned Single Judge in **1994 (1) Mh.L.J. 290 Digambar Hari Sonpatki vs. Kishnichand Nerumal Parwani** to submit that a legal plea could be raised for the first time even at this stage though such plea was not raised earlier.

5. Shri S. K. Bhoyar, the learned counsel for the respondent supported the impugned judgment. According to him, the plea as raised by the petitioner had not

been raised either before the trial Court or before the Appellate Court. The same could not be permitted to be raised for the first time in writ jurisdiction. He however did not dispute the factual aspect of the matter that the suit was indeed filed prior to expiry of ninety days from the service of the demand notice. He submitted that as the tenant was in arrears of rent, the decree for eviction was rightly passed.

6. I have given due consideration to the respective submissions. The facts on record indicate that the respondent who is the landlord had issued a notice to the tenant on 11/02/2008 demanding arrears of rent. This notice was served on the tenant on 19/02/2008 but the same was not complied. The suit was filed on 01/03/2008. In this factual background, the aspect whether the petitioner can be permitted to raise the plea that the suit as filed was before expiry of the statutory period of ninety days from service of the demand notice deserves to be considered.

The provisions of Section 15(2) of the said Act read thus : Sec. 15(2) : No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

What has been prohibited is the institution of a suit for recovery of possession against the tenant on the ground of non-payment of standard rent or permitted increases. Unless the period of ninety days has expired after service of the notice of demand on the tenant, such suit cannot be instituted. Hence there would be no jurisdiction with the Court to entertain a suit that has been instituted prior to the expiry of the statutory period of ninety days. In **Vitthalbhai (P) Ltd.** (supra) the Honourable Supreme Court considered the fate of a premature suit. In paragraph 22 thereof it was observed thus:

However, the court shall not exercise its discretion in favour of decreeing a premature suit in the following cases (i) when there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event: (ii) when the institution of the suit

before the lapse of a particular time or occurrence of a particular event would have the effect of defeating a public policy or public purpose; (iii) if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the court's jurisdiction; and (iv) where the lis is not confined to parties alone and affects and involves persons other than those arrayed as parties, such as in an election petition which affects and involves the entire constituency.

The case in hand pertains to contingency no.(i) as contemplated by the Honourable Supreme Court. The said defect of premature institution also renders the presentation of the suit void thereby affecting the court's jurisdiction.

7. From the facts noted herein above, it is crystal clear that the suit was filed by the respondent prior to expiry of ninety days from the service of the demand notice. The presentation of the suit itself being void and going to the court's jurisdiction, the aforesaid plea would have to be permitted to be raised though it was not raised earlier. The aforesaid defect being incurable as the landlord could not have cured the said defect after filing the suit is without any doubt. Even if such plea was raised in the written statement, the defect in question was incurable. On the other hand if it is found that the Court has entertained the suit on the basis of presentation of the plaint which was patently void and affecting the jurisdiction of the Court, said legal plea would have to be permitted to be raised. This plea does not call for any factual adjudication as the date of service of the notice on the tenant and the date of presentation of the plaint are not in dispute. Moreover, the decree for eviction has been passed only on the ground of arrears of rent. The observations of learned Single Judge in paragraph 6 of the decision in **Digambar Hari Sonpatki** (supra) can be relied upon.

8. In view of aforesaid, the only conclusion that can be drawn from the aforesaid facts is that the suit for eviction was filed in a manner contrary to provisions of Section 15(2) of the said Act. The trial Court had no jurisdiction to entertain such a prematurely instituted suit. The Appellate Court by dismissing the appeal also exercised jurisdiction thereby confirming the decree passed in the suit of which the trial Court could not have taken cognizance. The only inevitable result is that the

decree passed by the trial Court as maintained by the Appellate Court is without jurisdiction.

9. In view of aforesaid, the judgment of the Appellate Court dated 27/01/2015 in R.C.A. No.41/2011 as well the judgment of the trial Court dated 15/01/2011 in R.C.S. No.16/08 are quashed and set aside. It is held that the suit is liable to be dismissed as having been filed prior to the statutory period prescribed under Section 15(2) of the said Act. This adjudication however, shall not preclude the respondent from initiating fresh proceedings for eviction of the petitioner in case any fresh cause of action arises.

Rule is made absolute in aforesaid terms with no order as to costs.

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