

Rati Ram Vs. Niader Mal

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Court : Allahabad

Decided On : Jan-21-1941

Reported in : AIR1941All215

Appellant : Rati Ram

Respondent : Niader Mal

Judgement :

ORDER

Braund, J.

1. This is an application in revision arising out of a second Appeal No. 610 of 1938, in which I made an order on 10th April 1940. The facts are very simple. It seems that a decree was obtained against the applicant by the opposite party for arrears of rent. On 23rd July 1937 a notice, purporting to be a notice under Section 80, Sub-section (2), Agra Tenancy Act, 1926, was served upon the applicant. The Act requires that notice to be a 15 days' notice. The Assistant Collector, however, on 7th August 1937, treating the matter as if there had been a default in complying with the notice, made an ejectment order against the applicant. It must be admitted that technically that order was irregular. The fifteen days had not expired at 4 P.M. on 7th August when the Assistant Collector made his order. On that ground in January 1938 the applicant went before the Additional District Judge of Meerut in appeal to complain of the ejectment order.

2. The Additional District Judge appears to have appreciated that the order of 7th August was technically improper and he realized that it had to be set aside on that account. But he also equally appreciated - and I entirely agree with him - that by that time the applicant had had a considerable period in which he could have paid the arrears of rent if he had been minded to do so. It is really no answer to say that there was certain legislation introduced in September 1937 under which he need not have paid. On this revision application what I am considering in the merits, that is to say the real merits of the matter, is whether any injustice has been done. The learned Additional District Judge in the end gave the applicant three months time in which to pay. He put it in a rather careless form by saying that he set aside the Assistant Collector's order 'on the condition that' the whole amount was paid within three months. I do not think it is possible to make a conditional order of that, kind. What he really meant was that he set aside the Assistant Collector's order and substituted another order that, in the event of the whole amount not being paid within three months, the applicant should then be ejected.

3. There was then a second appeal to this Court which came before me in April last year and in which I passed the order to which I have already referred. It was conceded that no appeal lay and, by what appears to me now to have been a great concession to the applicant, I refrained from dismissing the second appeal then and there and gave him time to launch the present revision application. This revision application was, accordingly, set on foot on 7th May. Two preliminary objections were first taken by Mr. Mukerji on behalf of the respondent. He says first that even this revision application is entitled under Section 115, Civil P.C., and, inasmuch as that section is wholly inapplicable to a proceeding under the Agra Tenancy Act, this revision is already 'out of; Court.' I see the force of that, but I feel that; so to hold would be taking a rather technical view, because, even if Section 115, Civil P.C., does not apply, Section 253, Agra Tenancy Act, itself clearly does. Mr. Mukerji then says that, if this is to be considered as a revision application under Section 253, Agra Tenancy Act, it still is defective, because what is being sought to be revised is not the judgment of the Assistant Collector but the judgment of the Additional District Judge. I do not think that there is any real force in that, because once the High Court is seized of the revision, then, in my view, it becomes its duty to cast its eye not merely on one part of the proceedings but the

whole of them. What come under the review of the High Court are the proceedings as a whole from start to finish and the object of the scrutiny of the High Court is that so far as possible justice may be done in the proceedings as a whole. Again, I feel that the point is a technical one.

4. I should not be prepared to accede to either of these preliminary objections as I take a somewhat broad view upon the revisional function of the Court. But that has two edges to it and, if I take a broad view in the matter of the preliminary objections, I have also to take a broad view of my functions in examining the merits of the matter. What I feel I have to do is primarily to see 'whether, in the events which have happened, there has been an injustice. In my view, there certainly has not and I think that, if I were now to interfere with the decree, I should be doing a far greater injustice to the respondent or the opposite party than any injustice to the applicant which at present exists. It may be that there were certain technical irregularities but the substance of the matter seems to me to be this. The applicant was in arrears with his rent and a decree was passed against him for it. He did not pay, but on the contrary he continued to accumulate arrears of rent in respect even of a subsequent year. Then the applicant sought to enforce his rights under Section 80, Agra Tenancy Act, by getting possession of the property. This he undoubtedly would have succeeded in doing but for a technical slip on the part of the Judge in relation to the length of the notice.

5. Then a further substantial period until January 1938 elapsed while the appeal proceedings were pending and during the whole of that time no effort was made by the applicant to pay what was due from him. In considering the merits of the matter, it seems to be immaterial to say that there was in force a certain statute which prevented him from being sued for it. But that is not the end of the matter. Two years later, it comes here, and still the applicant has made no effort to pay. Meanwhile the decree-holder has gone into possession. There has been a long period of time during which the applicant, had he been an honest man, could have paid this money and the matter is made no better by the offer, which when pressed he seems willing now to give, that if allowed a short further period he will pay. He had a very long time in which he could have paid this money and, for one reason or another, has failed to do so. Looking at it broadly, as I think I must, it

seems to me that I shall be working an injustice on the opposite party by allowing the applicant to take advantage of some technical irregularity upon a revision application of this kind. In the result therefore the Second Appeal No. 610 of 1938 and the Civil Revision No. 304 of 1940 will both be dismissed with costs.

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