

Ram Narayan Vs. Benji

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Court : Madhya Pradesh

Decided On : Jul-24-1958

Reported in : AIR1959MP36

Judge : V.R. Newaskar, J.

Acts : Madhya Bharat Sthan Niyantaran Vidhan 2006, 1950 - Sections 4

Appeal No. : Second Appeal No. 362 of 1952

Appellant : Ram Narayan

Respondent : Benji

Advocate for Def. : G.M. Chaphekar, Adv.

Advocate for Pet/Ap. : S.L. Dubey, Adv.

Disposition : Appeal dismissed

Judgement :

V.R. Newaskar, J.

1. This second appeal arises out of a suit for ejection.

2. Plaintiff Ram Narayan sued the defendant Benji for ejection and arrears of rent. The claim for ejection was based on two grounds, (1) that he needed the

premises for his own use within the meaning of Section 4(g) of the Madhya Bharat Sthan Niyamtran Vidhan and (2) that the defendant failed to pay the arrears of rent in spite of service of notice making a demand for the arrears.

3. The defence taken by the defendant was that the plaintiff himself lived in a house in Malharganj and so far as plaintiff's children are concerned they occupy two blocks in the house in question. The plaintiff therefore was not in genuine need of the house for his own use. As regards the defendant's failure to pay the arrears in spite of notice it was contended that the rent agreed to between the parties was Rs. 15/- P. M. and not Rs. 20/- P. M. as demanded by the plaintiff in his notice. He further contended that even before the receipt of this notice the defendant had offered to pay the arrears at the rate of Rs. 15/- P. M. after deducting the money order charges but the plaintiff refused to accept the same. Even after the receipt of the notice dated 14-1-1950 he offered to pay the arrears but the plaintiff did not accept the same.

4. The trial court found that the plaintiff has failed to prove that he was in genuine need of the premises in question for his own use within the meaning of Section 4(g) of the Act. He further found that the rent agreed to between the parties was not Rs. 20/- P. M. but it was only Rs. 15/- P. M. The arrears therefore, according to him, were not Rs. 380/- as demanded by the plaintiff but they amounted only to Rs. 285/-. He held that the plaintiff had given a notice to the defendant making a demand of arrears of rent and that the defendant had failed to pay the arrears. He therefore granted a decree for arrears of rent amounting to Rs. 285/- and also for ejection.

5. The defendant alone preferred appeal against that decision and as far as I can see that no cross-objection or cross-appeal was filed by the plaintiff. The learned District Judge considered the propriety of the decree for ejection. According to him the plaintiff had demanded arrears at the rate of Rs. 20/- P. M. In the past similar demand had been made. The defendant had sent the arrears by money order computing the rent at the rate of Rs. 15/- P. M. and this money order was refused by the plaintiff.

Reference in this connection was made by the learned District Judge to money order coupon Exs, D/2 and D/3. He held that inasmuch as the plaintiff was not prepared to accept the arrears at the rate of Rs. 15/- P. M. as was evident from his conduct and had made a demand of arrears in the notice dated 14-1-1950 at the rate of Rs. 207- P. M., the defendant cannot be said to have committed any mistake in not making the payment in pursuance of that notice. The decree for ejectment for non-compliance with such a notice cannot, according to that Court, lead to the consequences of his being ejected. He, therefore, allowed the defendant's appeal and set aside the decree in so far as defendant's ejectment was concerned.

6. This is a second appeal by the plaintiff.

7. Mr. Dubey for the plaintiff contended that the learned district judge has committed an error of law in refusing to grant the decree for ejectment when he comes to a definite conclusion that the defendant was in arrears to the tune of Rs. 2857-, the plaintiff had served a notice upon the defendant calling upon him to make the payment of the arrears though the amount that he claimed was in excess of this amount found by the court and according to the terms of Section 4(a) the defendant was bound to pay whatever be the arrears after the receipt of a written notice demanding the arrears.

According to the learned counsel the word meaning 'demand' has been used advisedly without reference to whether the demand be in respect of the correct or incorrect amount and it is made incumbent upon the tenant by the use of the words 'any arrears' to pay what according to him were the arrears. If there is default on the part of the tenant to pay the arrears of rent then he cannot claim protection on the ground that the amount claimed in the notice was incorrect or excessive. In this case although the plaintiff, according to the learned counsel, had made a demand in respect of Rs. 380/- the defendant ought to have paid Rs. 285/- on receipt of the notice of demand. He having not done so has forfeited the protection given to him by the terms of Section 4(a) of the Act.

8. Mr, Chaphekar who appears for the other side on the other hand contended that the terms of Clause (a) as also the other clauses contained in Section 4 of the

Sthan Niyamtran Vidhan lay down the specific conditions on which a decree for ejectment can be claimed by the landlord against the tenant. It is clearly laid down in the beginning of the section that apart from these grounds ejectment cannot be claimed on any other grounds. The conditions laid down in the various clauses of Section 4 which ought to exist before a landlord could claim ejectment are conditions intended for the protection of the tenant and those conditions therefore have got to be interpreted with that thing in view.

The word 'demand' in Clause (a), according to the learned counsel, cannot mean any demand, right or wrong. It is the demand which has a reference to the rights existing between the parties. If a landlord makes a false demand of excessive rent the tenant is not bound to comply with the same and if he was not lawfully bound to comply with that demand there is no justification for the result that for his rightful non-compliance he should suffer the penalty of being ejected. Reference in this connection was made by the learned counsel to the words 'any arrears' upon which the learned counsel for the appellant laid stress in support of his argument.

He contended that the words 'any arrears' have not been introduced with the object that the tenant ought to pay whatever may be the nature of the demand right or wrong made by the landlord. Those words are used in this clause, according to him, for meeting the situation which would arise in case no payment is made in between the date of issue of notice and the expiry of one month from the date of service of the notice. Even if any payment were made which was not the payment of full amount of the arrears the balance of amount that would remain due, according to the correct demand, ought to be paid before the expiry of the month. The learned counsel relied upon the decision of Samvatsar J., in Wasudeo v. Narayan, Civil Second Appeal No. 104 of 1952, decided on 18-9-1954 as a Judge of the Madhya Bharat High Court. The learned Judge said:

'The notice contemplated by Section 4(a) of the Sthan Niyamtran Vidhan is a notice wherein there is a demand for arrears, and if the notice contains an exaggerated demand or a false claim which the defendant is under no obligation to meet, it cannot be treated as a notice complying with the requirements of Section 4.'

9. In my opinion the contention raised by the learned counsel for the appellant ought not to prevail.

10. It is clear by reference to the preamble as also the general scheme of the Act that the Act is designed to afford a certain measure of protection to a tenant who is prepared to pay rent. It is also designed to control the action of the landlord in charging unduly high rent. At the same time while thus affording protection and relief to a tenant the Act also secures to the landlord fair rent and its payment to him. Ejectment of a tenant by means of a suit is permitted only under conditions laid down by Section 4 of the Act and unless one or more of such conditions are shown to exist the courts cannot permit ejectment.

Therefore apart from the grounds which afford cause of action to a landlord under the general law one or more of such conditions as laid down in Section 4 of the Act ought to exist before a claim for ejectment could succeed. In other words existence of a condition therein mentioned constitutes a necessary part of the cause of action for the suit. In clause (a) of Section 4 one such condition is to the following effect:

'The tenant has committed default in paying any portion of the arrears as also the postal charges in respect of the notice of demand in writing within one month from the date of service of that notice upon him.'

10a Thus the default in payment of arrears within one month from the date of service of notice of demand takes away the protection otherwise available to a tenant from being ejected.

11. Now in order to afford the landlord the cause of action for ejectment on this ground and to deprive the tenant of the protection granted to him, what should be the nature of the demand? Can it be said with reason that the demand contemplated under this provision is any demand right or wrong, false, incorrect or true?

12. I think the condition in Section 4 (a) is to afford plaintiff cause of action by reason of his having given notice of demand. That demand could not be false,

excessive or inflated. The demand ought to be confined to what the landlord is entitled to claim. If he asks for more the tenant ought to be within his right to ignore such false, excessive, or inflated demand. But is it necessary for him then to pay what he is liable for? That he may do by way of caution, desirability, convenience or any such consideration. But if he does not do so it cannot be said that he ought to lose the protection available to him under the Act.

13. It is not necessary for the purpose of the present case to decide whether the notice of demand asking the tenant to pay arrears without mentioning definite amount will amount to proper demand or not. In the present case there is a finding by both the courts below that the amount demanded was at a rate higher than what the defendant was liable for. The defendant cannot be penalised by the loss of protection available to him under the Act if he fails to comply with such a demand.

14. The observations of Samvatsar J., quoted above are also to the same effect and I respectfully agree with them.

15. After the arguments were closed, Mr. Dubey brought to my notice the decision reported in *Manoharlal v. Bimal Kumar* 1955 All W R (HC) 395 wherein a Division Bench of the Allahabad High Court has taken the view that in order to enable the plaintiff-landlord to claim ejection on the ground of failure on the part of the tenant to pay arrears of rent within one month of plaintiff's notice of demand it is not necessary that the demand should contain the correct figure and that even if the notice of demand were to contain incorrect amount the tenant is bound to pay the arrears whatever they be in order to escape the consequences of the default on his part.

Their Lordships took the view that there seemed to be no good reason why the simple expression 'notice of demand' whose main purpose must be to warn the tenant that he has over-looked paying rent and should pay it, should be interpreted so strictly as the term 'notice of demand' is interpreted under the common Law of England as being one for precise amount claimable by the landlord at the time the notice is given. The reason given by their Lordships for not interpreting the term in Section 3(l)(a) of the U. P. (Temporary) Control of Rent and Eviction Act, 1947,

was stated to be that had the legislature intended the notice of demand to be so precise it could have used a clearer language,

16. With great respect I am unable to agree with the view that even if the plaintiff in making a demand calls for the payment of excessive amount it ought to be construed as sufficient demand for the purpose of Section 3(l)(a) of that Act. That section is as follows:

'Subject to any order passed under sub-section (3) no suit shall, without the permission of the District Magistrate, be filed in any civil court against a tenant for his eviction from any accommodation, except on one or more of the following grounds: (2) that the tenant is in arrears of rent for more than three months and has failed to pay the same to the landlord within one month of the service upon him of a notice of demand.'

17. I could have appreciated if their Lordships had taken the view that with the frame of the section as it is worded mention of any figure is not necessary and that where the arrears exceed three months mere demand by notice to pay the arrears without mentioning the figure may well be taken to be sufficient compliance with the condition, breach of which would entail the consequences of tenant's ejection. If the figure is not mentioned the tenant is required to calculate and pay whatever be due. But if the landlord goes further and calls for an excessive amount he does not claim what he is entitled to. The notice of demand need not be broken up by the tenant in that event as the notice of demand for correct amount plus for the excess and to comply with the first and ignore the second.

The tenant's default with respect to notice of demand confers upon the landlord statutory right under the Act to claim ejection and when that right is claimed it ought to be open for the tenant to show why he has not complied with the demand. He should be allowed to show that the demand was excessive and therefore he did not comply. Why should that not be considered to be the proper defence? What is there in the Act which requires Mm to ignore the figure of arrears demanded and to only pay regard to the fact that there is demand all the same and that he ought to pay whatever he is liable for.

18. The learned Judges sought to distinguish English cases cited before them by observing that these cases did not interpret the expression 'notice of demand' but that they considered the expression 'demand' as condition precedent for re-entry on the happening of a default in the payment of rent.

19. I am unable to see the distinction. In either case default in complying with the demand brings into existence the right of the landlord to claim ejectment of the tenant and if in one case the law looks with strictness the nature of the demand and thereby protects the tenant there is no reason why it should not do so in the others.

20. But even if we do not have to go to the length of holding that demand under Section 4(a) ought to mention the precise amount claimable by the plaintiff in pursuance of his right still no principle or reason impells me to hold that the tenant ought to lose the protection for non-compliance with a false or excessive demand merely because there are arrears against him which he is under an obligation to pay. We cannot lose sight of the fact that mere existence of arrears does not give landlord right to eject. Notice of demand and tenant's default in complying with it for a month are necessary.

21. The decisions reported in *Sri Kishen v. Sri Narain*, AIR 1950 Ajmer 16; *Jamna Lal v. Ram Bilas*, AIR 1950 Ajmer 17(1) and *Ramdhan v. Jag-dish Pershad*, AIR 1951 Ajmer 54(1) to which the learned Judges of the Allahabad High Court refer, and in which the view taken is that notice of demand must not contain incorrect figure, must not be vague as not to mention the amount due as also the period for which the arrears are claimed and must not be for enhanced rate, appear to proceed on reasoning similar to one adopted by me although there is not much of discussion therein. It has to be mentioned that the relevant terms of the Ajmer Act are similar to those of the Act under consideration.

22. Mr, Dubey has also referred to me the recent decision of the Allahabad High Court reported in *Ram Pratap v. Sri Panna Lal*, 1956 All LJ 787, taking practically the same view as is taken in the aforesaid Allahabad case although there is not much of discussion therein and it seems to have been assumed that it was a settled view of that Court.

23. I have already given my reasons for disagreeing with the view of the first of the two Allahabad cases and it is not necessary to deal with this case separately.

24. I am therefore of the view that the notice of demand in this case is not lawful and cannot afford to the plaintiff sufficient cause of action.

25. The appeal therefore ought to fail.

26. It is dismissed with costs.

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