

Narayan Singh Vs. Arjun Das Gupta

Narayan Singh Vs. Arjun Das Gupta

SooperKanoon Citation : sooperkanoon.com/504365

Court : Madhya Pradesh

Decided On : Aug-06-1988

Reported in : 1990(0)MPLJ529

Judge : Gulab C. Gupta, J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 12(3), 13(1), 13(1)(2) and 13(2); Code of Civil Procedure (CPC) - Sections 100(4) and 100(5)

Appeal No. : S.A. No. 476 of 1983

Appellant : Narayan Singh

Respondent : Arjun Das Gupta

Advocate for Def. : C.L. Kotecha, Adv.

Advocate for Pet/Ap. : P.K. Jaiswal, Adv.

Disposition : Appeal allowed

Judgement :

Gulab C. Gupta, J.

1. This is plaintiffs appeal under section 100, Civil Procedure Code against the judgment and decree dated 6th July, 1983 passed by Shri K. S. Shrivastava, District Judge, Satna in Civil Appeal No. 38-A of 1982 reversing the judgment and

decree of eviction of the respondent/tenant from the suit house dated 6-9-1982 passed by Civil Judge, Class II, Nagod in Civil Suit No. 20-A/77.

2. It is not in dispute that the appellant is the landlord and owner of the suit house in occupation of the respondent as tenant thereof on a monthly rent of Rs. 15/- only. The appellant instituted the suit for eviction of the respondent on the ground that he was in arrears of rent, which he has not paid in spite of notice; the suit house was required bona fide for the business requirement of his son Rajendra Singh and also on the ground that the respondent has carried alterations in the suit house without his permission. The respondent resisted the suit and submitted that he has paid the rent upto May, 1977, but the appellant has not given the receipt. He also submitted that there was no need of Rajendra Singh, who was a student of law. He also denied other allegations. Learned trial Judge, on appreciation of oral and documentary evidence adduced by the parties, held that the respondent has not paid rent in accordance with section 13(1) of the M. P. Accommodation Control Act, 1961 (hereinafter referred to as the Act) and has, therefore, rendered himself liable to eviction under section 12(1)(a) thereof. The learned Judge, however, found no justification for bona fide requirement of the suit house for business of Rajendra Singh. In the opinion of the trial Court, there was neither any need of said Rajendra Singh nor the same was bona fide. Since the Court found ground under section 12(1)(a) existing, a decree for the eviction was passed by the learned trial Judge. In the appeal filed by the respondent, the learned District Judge was of the opinion that the respondent had raised a dispute within the meaning of section 13(2) of the Act, which has not been decided by the learned trial Judge. According to him, as long as the said dispute was not decided, operation of section 13(1) of the Act had remained arrested. In this view of the matter, the learned District Judge found no justification for passing a decree under section 12(1)(a) of the Act. It appears that the appellant sought to support the impugned decree on the ground of bona fide need covered under section 12(1)(e) of the Act and hence this matter was also considered by the learned District Judge. On appreciation of evidence, the learned District Judge found four circumstances which, according to him, were sufficient to negative the claim of the appellant, namely, (i) the notice terminating tenancy did not mention bona fide requirement of Rajendra Singh; (ii) change in the nature of business. Earlier the

need was for opening a cycle repairing shop, which was subsequently changed to a painting shop; (iii) Rajendra Singh being a law student, and (iv) a shop vacated by Chetan was available for satisfying the need, if the need was real. On these objective facts, the Court held that the requirements of section 12(1)(e) of the Act were not satisfied. In accordance with the aforesaid decision, the decree of eviction was set aside and the suit dismissed.

3. This Court, while admitting this appeal for final hearing on 27-10-1983, framed the following substantial question of law for its consideration: -

'Whether the first appellate Court erred in law in reversing the decree for eviction passed by the trial Court in favour of the plaintiff/appellant on ground (7), sub-section (1), section 12 of the M. P. Accommodation Control Act, 1961?'

Section 100(5), Civil Procedure Code requires this Court to decide the question framed by it and nothing else, unless the Court decides to frame any other question of law for its decision. From the narration of facts aforesaid, it would be clear that the decree passed by the trial Court was under section 12(1)(a) of the Act and not under section 12(1)(f) of the Act. There was, therefore, no occasion for the learned lower appellate Court to reverse the decree under section 12(1)(f) of the Act. Since the decree has not been reversed as aforesaid, the question framed above should not have been framed. Apparently, therefore, it appears that the Hon'ble Judge framing the question has really framed the question in relation to section 12(1)(a) of the Act, but instead of '(a)', '(f)' has been written. This apparently is a clerical mistake, which can always be corrected by this Court. The learned counsel for the respondent, however, referred to the memo of appeal to submit that the same does not contain any ground covered under section 12(1)(a) of the Act and hence, the aforesaid mistake could not be a clerical mistake. Even while pointing this out the learned counsel was not in a position to say anything whether any submission based on section 12(1) of the Act was submitted for consideration of the Court at the time of hearing or not. Under the circumstances, it appears that the question was placed for consideration of this Court and since this Court found it to be involving a substantial question of law, it framed the aforesaid question. The jurisdiction of this Court to frame a question of law, which

otherwise arises in the impugned judgment, is not dependent on any averment made in that behalf in the memo of appeal. This is also not the submission of the learned counsel for the respondent. Under the circumstances, this Court is not able to hold that the question framed as aforesaid does not arise for consideration of this Court. In the opinion of this Court, the question as framed suffers only from a clerical mistake, which can be corrected. This Court is, therefore, of the opinion that the question relates to the judgment of the Court in so far as it reverses the decree based on section 12(1)(e) of the Act. Since this was clarified to both the counsel at the time of hearing, they have addressed this Court on this question fully. There is, therefore, no impediment in this Court deciding the aforesaid question.

4. A perusal of paras 8 and 11 of the impugned judgment gives necessary facts for decision of the aforesaid question of law. The appellant had served the notice (Ex. P-1) on the respondent requiring him to pay the arrears of rent which, according to him, was to be calculated from January, 1977 within two months of the date of the notice and also hand over vacant possession thereof. There is no dispute that the notice was received and yet the rent was not paid. The reply to this notice (Ex. P-12) is that the respondent had paid the rent upto May, 1977, but the appellant has not given any receipt. He, however, expressed his willingness to pay the rent for the entire period, if he was asked to do so by sending Money Order. Since the amount was not paid, the suit was filed on 16-8-1977. The respondent appeared on 26-10-1977 and sought permission of the Court to deposit the rent from January, 1977 to October, 1977. Since the same was permitted, he deposited it on 27-10-1977. It, however, appears that this deposit was not made within one month of the receipt of summons by the respondent and, therefore, an application under section 13(6) of the Act was filed by the appellant on 28-1-1978 praying for striking off defence. The said application was decided by the learned trial Judge on 31-7-1979 by holding that the default was not of a nature justifying drastic action of striking off defence. It appears that the respondent did not deposit any rent for the period thereafter, during the pendency of the suit. The learned trial Judge, therefore, held that the respondent has made defaults from time to time and hence, he was guilty of non-compliance of both parts of section 13(1) of the Act. The learned lower appellate Court was, however, of the opinion that subsequent to

the aforesaid deposit, the respondent has raised dispute in the written statement that he had paid rent upto May, 1979 which was sufficient to arrest the application of section 13(1) of the Act. In this view of the matter, non-compliance of section 13 had no effect. In the context of these facts, it would require consideration if a dispute within the meaning of section 13(2) of the Act had been raised by the respondent so as to justify the aforesaid conclusion? The dispute contained in the written statement is that the respondent has paid rent from January, 1977 to May, 1977 for which he has not been given any receipt and, therefore, he was not in arrears of rent for that period. The question requiring consideration is whether this would be a dispute within the meaning of section 13(2) of the Act requiring decision of the trial Court? The further question as to the effect of omission to decide the dispute may also require consideration.

5. Decision of this Court in *Ramkumar v. Narayandas*, 1970 MPLJ 140 is the direct authority about the scope of section 13(2) of the Act. The view taken by the Court is that the words 'any dispute' appearing in this clause have to be read in the context of 'as to the amount of rent payable by the tenant' and, therefore, cannot include every dispute raised by the tenant. The words 'as to the amount of rent', according to this Court, does not include a dispute about the period for which the rent has not been paid. *Ganeshram Harvilas v. Ramchandra Rao*, 1970 MPLJ 902 = 1970 JLJ 782 is, however, a subsequent Division Bench decision where this Court has taken the view that words 'any dispute' appearing in section 13(2) of the Act are comprehensive enough in their import to cover every kind of dispute as to the amount of rent payable by the tenant. The dispute may relate to the rate of rent or period for which the tenant is in arrears or the landlord not adjusting any dues despite an agreement or the landlord denying a payment alleged by the tenant. The Division Bench clarified that, 'every dispute as to the amount of rent which is payable by the tenant will be a dispute within the meaning of sub-section (2).' In spite of this wider meaning, the Division Bench observed that, 'this is the force of the words 'any dispute' which is fortified by the words 'amount of rent' and again the words 'provisional rent'. If the provision of sub-section (2) had been intended to confine its application only to a dispute relating to rate of rent, the wording of the sub-section would have been altogether different'. Though the controversy, as in the instant case, was not the controversy before the Division Bench, it does

appear that the manner in which the Division Bench interpreted the provision, it included a dispute raised by the tenant regarding a payment alleged to have been made by him and denied by the landlord. This case would, therefore, be contrary to the decision in Ramkumar's case, even though, Ramkumar's case was neither quoted for consideration of the Division Bench nor considered by it. Another Division Bench of this Court in Ghanshyamdas v. Jwala Prasad, 1974 JLJ Note 31 however, noticed this difference between the two views and observed that the decision in Ramkurnar's case stands overruled. It, therefore, appears that the view of this Court is that the words 'any dispute as to the amount of rent' would include the dispute regarding payment alleged to have been made by the tenant and denied by the landlord. In this view of the matter, the dispute of the type, if raised, would also be covered, by section 13(2) of the Act casting an obligation on the trial Court to fix the provisional rent. As long as the provisional rent is not fixed, the operation of section 13(1) would be arrested. Under the circumstances, the factual question requiring consideration is whether a dispute of the type was raised and not decided by the trial Court. In this connection, the following conclusion recorded by the Division Bench in Ganeshram's case may also be kept in view: -

'If the tenant does not raise a specific dispute and pray for fixation of provisional rent and the Court also omits to fix a provisional rent, the tenant cannot, at the conclusion of the trial, claim protection of section 12(3) of. the Act on the ground that if provisional rent had been fixed, he would have complied with the provisions of section 13(1)'.

It is common ground that the respondent/tenant, on receipt of summons, did nor raise any specific dispute not did he pray for fixation of provisional rent, but made an application to deposit the rent while claiming that he had paid the rent upto May, 1977. His application dated 27-10-1977 cannot, therefore, be treated to be an application raising the dispute and requesting fixation of provisional rent. Not even the learned lower appellate Court has considered it in that manner. The appellant filed an application under section 13(6) of the Act on 28-1-1978 and prayed for striking off his defence. There is nothing on record that even in reply to this application or in defence thereof, the tenant raised any dispute. His reply dated 22-3-1978 mentions the controversy, but at the same time mentions that in

spite of it, he was prepared to pay the rent, which the appellant did not accept. Even in this application, there is no request for fixation of provisional rent or an allegation that a dispute has been raised by him. This application, as has been noticed earlier, was considered by the Court on 31-7-1979 and defence was not struck off. There is no other application specifically raising the dispute and requesting fixation of provisional rent. In the written statement dated 5-12-1977, the respondent did allege that he had paid rent upto May, 1977 and the appellant had made a false claim for the said period with a view to discover a ground for his ejection. He, however, submitted that he was prepared to pay the rent and, therefore, his tenancy could not have been terminated. Though, specific averments in this regard are made in para 21, there is nothing in the written statement to indicate that he raised a dispute regarding fixation of provisional rent and prayed the Court to decide it under section 13(2). In such a situation, the consequence mentioned in the aforesaid passage of Ganesh Ram's case, will have to be borne by the respondent and if the Court has omitted to fix a provisional rent, he cannot claim protection of section 12(3) of the Act on the ground that if the provisional rent had been fixed, he would have complied with the provisions of section 13(1) of the Act. This would, therefore, indicate that the learned lower appellate Court was not justified in setting aside the decree passed by the trial Court only because the trial Court had not decided the so-called dispute. This Court is, therefore, unable to sustain the aforesaid judgment and decree.

6. There is yet another method of considering the aforesaid controversy. The jurisdiction of the trial Court under section 13(2) is limited to fixing a reasonable provisional rent and nothing more. In *Mishri v. Gulaba*, 1970 MPLJ Note 8 and *Parasram v. Dambrilal*, 1970 MPLJ 956, this Court has taken the view that the jurisdiction of the Court under this provision is to determine provisional rent and not the correctness of claim of either party. Under the circumstances, the claim of the respondent that he has paid rent could not have been decided by the trial Court exercising powers under section 13(2) of the Act. This is, however, not to say that this claim could not have been decided even at the subsequent stage of the suit or while deciding the suit on merits, if required. The submission of the learned counsel for the respondent, however, is that the claim would have got

automatically decided while deciding the amount of rent payable by the tenant. It is difficult to say how this could have been done. In fact, a decision under this provision is only a provisional decision and could have been only about the amount of rent, which could have been determined even without deciding the controversy. On the other hand, if the controversy is decided, nothing else remains to be decided. It is, therefore, apparent that the real dispute between the parties was not about the rate of rent or the total amount of rent, but was about the claim of the respondent that he has paid the rent. Such a claim could not have been decided by the trial Court under this provision. A claim which is not capable of being decided by the trial Court under section 13(2) of the Act cannot be treated to be relevant for purposes of section 13(1) thereof.

7. From the aforesaid, it is apparent that the respondent did not intend to raise any dispute under section 13(2) of the Act nor the dispute contained in the written statement was capable of being decided by the trial Court at any interim stage. In this view of the matter, the respondent could not have claimed benefit of section 12(3) of the Act nor could he have avoided the effect of non-compliance of section 13(1) of the Act. The impugned judgment and decree, therefore, deserve to be set aside.

8. This Court is otherwise of the opinion that even if the appellant was to be denied the benefit of Ganeshram's case, the suit of the appellant could not have been dismissed even if the dispute raised by the respondent in the written statement was a dispute requiring decision under section 13(2) of the Act. It is well established that a party to the Us cannot be permitted to suffer because of an inaction of the Court. If the dispute had been raised in accordance with law, it was obligatory on the part of the trial Court to decide the same. Simply because the Court had failed to discharge its legal obligation, the appellant's suit could not be dismissed. In such a situation, the proper course to be adopted by the learned District Judge was to remand the matter to the trial Court for deciding the dispute first and thereafter to proceed to decide the suit on merits. In this view of the matter, the impugned judgment of dismissal of the suit is treated to be wholly unjust and unfair and cannot for that reason also be confirmed.

9. Though on the aforesaid conclusion, this Court would set aside the impugned judgment and decree and restore the judgment and decree passed by the trial Judge, this Court must also consider submissions made by the learned counsel for the appellant regarding his bona fide requirements. The submission of the learned counsel in this behalf is that the finding, though concurrent, is based on irrelevant considerations and is, therefore, not binding upon this Court. Before the appellant can seek consideration of this matter in this Court, he must show that it involves a substantial question of law. Question whether the need of the landlord of the suit house is bona fide or not is a pure question of fact. A concurrent finding of fact arrived at on the basis of proper appreciation of evidence is binding upon this Court. In *Mottulal v. Radhelal*, AIR 1974 SC 1596, the Supreme Court has held that in order to decide this question, the statement of the landlord by itself is not enough. The decision has to be based on objective facts, which must appear from the evidence on record. The finding recorded by the Courts below follows this reasoning and must, therefore, be held to be a good finding of fact. Here the Courts have found objective facts which, according to them, are sufficient to not place reliance on the statement of the appellant. The four objective facts noticed in the earlier part of the judgment, are in the opinion of this Court, relevant to the question in issue. Under the circumstances, the concurrent finding reached by the Courts below is a good finding of fact binding upon this Court. In this view of the matter, this Court has no hesitation in rejecting the submission of the learned counsel for the appellant based on bona fide need of his son Rajendra Singh.

10. In view of the discussion aforesaid, the appeal succeeds and is allowed. The impugned judgment and decree passed by the lower appellate Court are set aside and the judgment and decree passed by the Civil Judge, Class II, Nagod are restored. Considering the fact that the respondent is carrying on his business in the suit house since long and also because of the onset of rainy season, it is directed that in case the respondent gives a written undertaking to the satisfaction of the trial Court that he will hand over vacant and peaceful possession of the suit house by 31st December, 1988 and shall also pay rent upto the date of handing over possession, he would not be evicted from the suit house in pursuance to the execution of decree till then. Let this undertaking be given and arrears of rent upto date paid within two months from the date of this judgment. Considering the

fact and circumstances, of the case, the parties will bear their own costs of this appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com