Ram Parshad Vs. Onkar Nath

Ram Parshad Vs. Onkar Nath

SooperKanoon Citation : sooperkanoon.com/687209

Court : Delhi

Decided On : Oct-06-1969

Reported in : 6(1970)DLT245

Judge : H.R. Khanna and; S.N. Shankar, JJ.

Acts : Delhi and Ajmer Rent Control Act, 1952 - Sections 50(2)

Appeal No. : Election Second Appeal No. 157D of 1961

Appellant : Ram Parshad

Respondent : Onkar Nath

Advocate for Pet/Ap. : D.K. Kapur and; H.R. Dhawan, Advs

Judgement :

S.N. Shankar, J.

(1) This second appeal is directed against the order of Shri Des Raj Dhameja, Additional District Judge, Delhi, setting aside the order of the executing Court and accepting the appeal of the respondent-tenant. The learned Judge has held that in respect of the premises covered by the Delhi Rent Control Act, 1958 (hereafter called 'the 1958 Act') but exempted from the operation of Delhi and Ajmer Rent Control Act, 1952 (hereafter called 'the 1952 Act') the tenant was nto liable to be evicted in execution of a decree for eviction passed against him by the civil court before the 1958 Act came ed after the 1st of June, 1951, but before 9th of June, 1955, and the case was, thereforee, covered by section 50 of the 1958 Act and the proceedings for his eviction stood abated and the decree was inexecutable. The landlord contested this application and the parties went on trial. On the basis of evidence produced, the executing court held that the construction of the premises had been completed between dates referred to in the application and that the 1958 Act also applied to it, but because the judgment-debtor had ceased to be a tenant after the decree of ejectment had been passed against him and no proceedings for his eviction were actually pending in court when the 1958 Act came into force, sub-section (2) of section 50 of the Act was nto attracted. With these findings the application was dismissed.

(2) Aggrieved from this the tenant went up in appeal. The Additional District Judge, while affirming the finding of the trial court that the premises had been completed after the 1st of June, 1951, but before 9th of June, 1955, held that the word 'pending' in section 50(2) was susceptible to a wider interpretation and included cases where a decree for eviction had been passed but was nto fully satisfied and that the appellant before him still continued to be a tenant within the meaning of sub-section (2) of section 50 of the 1958 Act and, thereforee, the execution proceedings against him stood abated. Against this order the landlord filed this second appeal in the High Court. The matter came up before a learned Single Judge. By order dated 14th of August, 1967, having regard to the importance of the question involved, the case was directed to be placed

before a larger Bench. This is how this appeal is now before us.

(3) The decision of the controversy turns on the interpretation of the relevant parts of section 50 of the 1958 Act. This section reads as under :-

50.Jurisdiction of civil courts barred in respect of certain matters-(1) Save as otherwise expressly provided in this Act, no civil court shall entertain any suit or proceeding in so far as it relates to the fixation of standard rent in relation to any premises to which this Act applies or to eviction of any tenant there from or to any matter which Controller is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Controller under this Act shall be granted by any civil court or other authority.

(2)If, immediately before the commencement of this Act, there is any suit or proceeding pending in any civil court for the eviction of any tenant from any premises to which this Act applies and the construction of which has been completed after the 1st day of June, 1951, but before the 9th day of June, 1955, such suit or proceeding shall, on such commencement, abate.

(3)If, in pursuance of any decree or order made by a court, tenant has been evicted after the 16th day of August, 1958, from any premises to which this Act applies and the construction of which has been completed after the 1st day of June, 1951, but before the 9th day ofJune,1955, then notwithstanding anything contained in any other law the Controller may, on an application made to him in this behalf by such evicted tenant within six months from the date of eviction direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit.

(4)Nothing in sub-section (1), shall be construed as preventing a civil court from entertaining any silk or proceeding for the decision of any question of title to any premises to which this Act applies or any question as to the person or persons who are entitled to receive the rent of such premises.

(4) Shri D. K. Kapur, the learned counsel appearing on behalf of the landlord, argued that sub-section (2) of this section envisaged only pending suits or proceedings and the word 'pending' could nto be given a wider interpretation to include within its ambit a suit which had already been decreed but the claim laid therein by the plaintiff had nto been satisfied. Placing reliance on Lakhmi Chand Khemani v. Kauran Devi, he contended that the word 'tenant' in sub-section (l)of section 50 did nto include a tenant who had suffered a decree of ejectment against himself and that the same meaning should be given to this word in subsection (2) of this section. The respondent in the present case, urged, he against whom a decree of eviction had admittedly been passed, had ceased to be a tenant and was, thereforee, nto entitled to invoke this provision. The scheme of this section, he further submitted, also showed that sub-section (2) envisaged only cases that had been filed but were yet pending in court. While subsection (1) of this section, he said, referred to suits that were to be filed after the Act came into force; sub-section (2) dealt with suits that had already been filed but were still pending on this date and sub-section (3) provided for suits which had already been decreed on this date and where in execution of the decrees the tenants had also been evicted before the specified date. The learned counsel submitted that this was the only rational way of looking at these provisions and because the case of the respondent-tenant did nto fall in any of these sub-sections, the provisions of this section were nto attracted and the tenant's application deserved to be dismissed.

(5) Shri H. R. Dhawan, appearing on behalf of the tenant, maintained that the provisions of sub-section (2) of section 50 were fully applicable to this case and that the respondent was a tenant and the proceedings against him were also 'pending' on the date when the 1958 Act came into force, within the meaning of this sub-section, and the order of the learned court below was, thereforee, perfectly legal and correct.

(6) We have heard the learned counsel for the parties. It is undoubtedly true that the provisions of sub-section (2) of section 50 are nto happily worded. It cannot, however, be denied that the 1958 Act as well as the 1952 Act were both enacted, amongst others, to prevent unreasonable evictions of tenants from the premises

covered by the two Acts. While section 13 of the 1952 Act afforded protection to the tenants against eviction in respect of all premises covered by it, section 39 of this Act made a specific exemption in respect of a certain class of premises referred to in section 30 which exempted them from the operation of the Act, though situated within the areas where the Act otherwise applied. Section 39 read as under :-

''39.Exemption of certain premises from the operation of the Act.-all premises, the construction of which is completed after the 1st day of June, 1951, but before the expiry of three years from the commencement of this Act, shall be exempted from the operation of all the provisions of this Act, for a period of seven years from the date of such completion.'

(7) The Act came into force on the 9th day of June, 1952. So the premises enjoying this exemption were those completed after the lst day of June, 1951, but before 9th day of June, 1955. The purpose for making this exemption was presumably to encourage building activity in Delhi as there was an acute shortage of available housing accommodation at the time when 1952 Act was passed; but the effect of this exemption was that the tenants in occupation of premises falling in this category were left without protection in the matter of their eviction, etc. and the inter se rights between them and their landlords were left to be determined under the provisions of the Transfer of Property Act. Suits for eviction were filed against them in civil courts and were decided in accordance with these provisions. In providing exemption or these premises under the 1952 Act, it was nto the intention of the legislature to exempt them from the operation of rent restrictions for all times to come. The exemption was allowed with a particular purpose in view and to serve a particular end. With the passage of time, having regard to the changed conditions, the legislature considered it proper to further amend the law regulating the rights of landlords and tenants. The Act of 1958 was, thereforee, promulgated; and at this stage the legislature decided to withdraw this exemption and to extend protection to tenants who were in occupation of or had occupied the exempted premises before 16th day of August, 1958. The 1952 Act was repealed in terms of section 57 of the new Act and section 50 was inserted in Chapter Viii headed as 'Miscellaneous'. Sub-section (2) of this section specifically dealt with the premises exempted under section 39 of the 1952 Act. It provided that any suit or proceeding pending in a civil court immediately before the commencement of this Act against a tenant in occupation of the exempted premises shall on such commencement abate. The words 'suit or proceeding' in this sub-section were very obviously intended to provide a comprehensive scope for its operation. The learned counsel for the appellant had to concede before us, and we think rightly, that the word 'proceeding' in this sub-section included proceedings in execution also. So viewed, the logical conclusion is that decrees in cases covered by this sub-section, where execution proceedings were actually pending in court on the date when the Act of 1958 came into force, would obviously abate and the decree would be inexecutable. But if the word 'pending' is given the restricted meaning to be confined to proceedings that were actually filed in court and thus pending in court in that sense, similar decree though fully covered by this sub-section would still be executable only because the landlord did nto take out the execution. We do nto think, the legislature intended this. The purpose of sub-section (2) of section 50 clearly was to afford protection to the tenants of the exempted premises against eviction and it would be defeating the object for which the sub-section was enacted to confine it only to decrees the executions of which were actually pending when the 1958 Act came into force.

(8) The comprehensive expression 'suit or proceeding pending in any civil court' to our mind has to be interpreted in a liberal way.

(9) In Dokku Bhushayya v. Katragadda Ramakrishnayyu, (2) their lordships held that the word 'suit' appearing in Order 32, rule 7 would include the proceeding in execution also, so that the next friend or guardian of a minor in the suit was bound to obtain leave of the court in case he wanted to enter into compromise after the suit had been decided and the matter was at the stage of execution. In R. S. Seth Girdhari Lal v. Ratan Lul, also the Court observed at page 393 of the Report that proceedings in execution were nto separate independent proceedings, but were proceedings in or arising out of the suit. The word 'pending' qualifies both the 'suit' as well as the 'proceeding'. In Salt v. Cooper it was held that so long as the final judgment in an action remained unsatisfied, the action was a cause or matter pending. Reading this expression, thereforee, in the context of

the sub-section, as a whole, we are of the view that it cannto be restricted to only those suits which had nto been decreed and only those proceedings which had actually been commenced in court. It includes those causes or actions also which had been decreed by this court but in implementation of which the landlord had nto initiated execution proceedings in court.

(10) The interpretation given to the word 'pending' in section 24 of the Judicature Act, 1873, in Salt v. Cooper referred to by us above, was also adopted by the learned court below but the learned counsel for the appellant took strong objection to it, and submitted that the meaning given to this word in this case (that a judgment unsatisfied as a cause or matter pending) were nto adopted by the English Courts themselves in the subsequent cases. He referred to Leggett v. Western (5) followed in Kolchmann v. Meurice (6) where these meanings in this very statute were nto acceptable to the court. But the argument has no merit because the provisions of section 7 of the Judicature Act 1873 where this word occurs in the latter two cases were sought to be invoked in a wholly unwarranted set of circumstances. In Leggett v. Western (5) the plaintiff after obtaining judgment in his favor against the defendant obtained an order charging the shares belonging to the defendant with the judgment debt and invoking section 7 of the Judicature Act, 1873, prayed to the court that the charge so obtained by him be enforced. It was under these circumstances that the court held :

'IT is admitted that before the Judicature Acts it would have been necessary for him to institute separate proceedings in order to obtain a sale or foreclosure of the shares subject to the charging order; but it is contended, under s. 24 of the Judicature Act, 1873, and the observations of the late Master of the Rolls upon that Act in Salt v. Cooper 16 Ch.D. 548 are relied on to show, that the Court would now be justified in ordering a sale of the shares by way of enforcing the judgment obtained in this action without it being necessary for the plaintiff to institute separate proceedings. I think the Court has no such power. I think that having obtained the charging order the plaintiff has the same remedies he would have had and is in the same position as he would have been before the passing of the Judicature Acts, and thereforee that it is necessary for him to institute separate proceedings to obtain an order for sale of the shares.'

(11) The same was the situation in Kolchmann v. Meurice (supra) (6) when a charging order similarly obtained was sought to be enforced which the court refused to do following Laggott v. Western These cases, thereforee, do nto mean that the word 'pending' in the context in which it is used is incapable of the meaning given to it in Salt v. Cooper.

(12) Reference in this connection may be made to Mahadeolal Kanodia v. The Administrator General of West Bengali), where the cardinal principles or rules that have to be kept in mind in interpreting the statutes have been laid down by the Supreme Court. After stating the first two principles that statutory provisions creating or taking away substantive rights are ordinarily prospective and that the intention of the legislature has always lo be gathered from the words used by it giving them their plain grammatical meaning, on page 939 of the Report their lordships said:

''.. . .The third rule is that if in any legislation the general object of which is to benefit a particular class of persons, any provision is ambiguous so that it is capable of two meanings, one which would preserve the benefits and another which would take it away, the meaning which preserves it should be adopted. The fourth rule is that if the strict grammatical interpretation gives rise to an absurdity or inconsistency such interpretation should be discarded and an interpretation which will give effect to the purpose the legislature may reasonably be considered to have had will be put on the words, if necessary, even by modification of the language used.'

(13) Construing the expression 'suit or proceeding pending in any civil court', in sub-section(2) of section 50 thereforee, in the light of these observations of the Supreme Court we have no doubt that it included decrees passed before the Act of 1958 came into force even if their executions were nto actually pending in court on the date when this Act came into force and that the legislature did nto intend to create the anomalous position of extending protection to some tenants against whom executions had been taken out and to

withhold it from other tenants similarly placed against whom execution proceedings had nto been initiated. We are also supported in so construing this expression by the rule of law laid down in Alembic Chemical Works co. Ltd. v. The Workmen where the court emphasised that an attempt must always be made to so reconcile the relevant provisions of law as to advance the remedy intended by the statute and the rule of liberal construction should be adopted in such cases to make it effective and operative.

(14) The learned counsel for the appellant then contended on the basis of Lakhmi Chand Khemani v. Kauran Devi that the word tenant in sub-section (1) of secion 50 did nto include a tenant who had suffered a decree of ejectment against himself and urged that this word used by the legislature in sub-section (2) of this very section should be given the same meaning and, so read, it positively excluded the possibility of the petitioner being construed to be entitled to the benefit of sub-section (2). It is nto possible to accept this submission either. It is nto correct to say that the word 'tenant' had been used by the legislature in the same sense in all the three sub-sections of section 50. While in sub-section (1) a person against whom a decree for eviction has been passed, is excluded from being treated as a tenant, as laid down by the Supreme Court in Lakhmi Chand's case sub-section in terms refers to such a person as a tenant though with the prefix of 'evicted'. 'Evicted tenant' both according to the definition of the word 'tenant' in the Act of 1958 as well according to the general law would be a contradiction in terms but the expression has been used by the legislature in sub-section (3). It was to be construed in a broad sense to denote an erstwhile tenant. The same is the case with sub-section (2). While the word 'tenant' with reference to a suit may be read to refer to a tenant against whom the suit for eviction is pending and has nto been decreed, this word with reference to 'proceeding' has to include a tenant against whom a decree for eviction had been passed. This word. thereforee, has nto the same meanings in sub-section (2) as it has in sub-section (1). It is possible for the court to interpret the same word differently in different parts of the statute to correctly give effect to the purpose of the legislature. Even the definition section 2 in the 1958 Act, clause (1) of which defines the 'tenant' for purposes of the Act, starts with the words 'In this Act, unless the context otherwise require...' The word 'tenant' has, thereforee, nto to be interpreted always according to the definition given in the Act.

(15) This situation arose in the Vanguard Fire and General Insurance Co., Madras v. M/s Fraser and Ross and another, In this case, the word 'insurer' was defined in section 2(9) of the Insurance Act, 1938, but this word in the context in which it was used in the different provisions of the Act, was held to have different meanings. On page 974 of the Report their Lordship observed:

'IT is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. thereforee in finding out the meaning of the word 'insurer' in various sections of the Act, the meaning to be ordinarily given to it is that given in the definition clause. But this is nto inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely unless there is anything repugnant in the subject or context. In view of this qualification, the court has nto only to look at the words but also to look at the content, the collection and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances. thereforee, though ordinarily the words 'insurer' as used in the Act would mean a person or body corporate actually carrying on the business of insurance it may be that in certain sections the word may have a somewhat different meaning.'

(16) The direct result of adopting the narrow construction suggest ed by the appellant on the words 'tenant' and 'pending' used by the legislature in sub-section (2) would be to introduce an anomalous position and to deprive that class of tenants from the benefit of this sub-section against whose execution had nto beer taken

out even though decrees for their eviction had been passed as we have pointed out earher. This is what the court should avoid. In interpreting relevant provisions in such cases it is open to the court to seek help from the subject-matter of the statute and the object of the statute in which the provision occurs The following observations of the Supreme Court in Sheik! Gulfan v. Sanat Kumar, are relevant on this aspect of interpretation of the statute :-

'ORDINARILY,the words used in a statute have to be construed in their ordinary meaning; but there are cases where judicial approach finds that the simple device of adopting the ordinary meaning of words does nto meet the ends of a fair and a reasonable construction. Exclusive reliance on the bare dictionary meaning of words may nto necessarily assist a proper construction of the statutory 'provision in which those words occur. Very often, in interpreting a statutory provision, it becomes essential to have regard to the subject-matter of the statute and the object which it is intended to achieve. That is the reason why in deciding the true scope and effect of the relevant words, the context in which the words occur, the object of the statute in which the provision is included, and the policy underlying the statute become relevant and material.'

(17) We are also unable to sustain the argument of the learned counsel for the appellant that the scheme of section 50 indicated that sub-section (2) was confined only to suits which had been filed and which were pending in court. In raising this argument the word 'proceeding' used by the legislature in this sub-section was completely ignored. If it had been the intention of the legislature to confine the operation of this sub-section, only to suits pending at the commencement of the Act, it was wholly unnecessary to use the words 'proceeding' in addition to 'suit'. This word has to be given its meaning and cannto be ignored as superfluous while interpreting this sub-section. It clearly includes execution proceedings. Confronted with this, as we have already said, the learned counsel had to concede that this subsection includes execution proceedings also and was nto confined to suits only.

(18) Placing reliance on Kanaiyalal Chandulal Monim v. Indumati T. potdar and another, and Halsbury's Laws of England, Third Edition, Volume 6, p. 423, the learned counsel also urged that provisions of sub-section (2) of section 50 were in the nature of inroads on the rights of the landlord and thereforee should be strictly construed. We are unable to see how this principle of strict construction is attracted to this case. The legislature conferred the benefit envisaged in sub-section (2) on the tenants of exempted premises and in terms extended it to proceedings pending also. There is no challenge to the power of legislature to do so. In construing a provision in the statute the court is duty bound to give full effect to the intention of the legislature and the purpose for which it was enacted. No question of an inroad on the vested rights of the landlords under the circumstances arises to stand in the way of placing a just and proper construction on the words used in the sub-section. The submission cannot, thereforee, be sustained.

(19) Before parting with the case, we must record that while adverting to the provisions of sub-section (3) during arguments a very anomalous situation arose. This sub-section provided that if a tenant was evicted before 16th day of August, 1958, from the premises exempted under section 39 of 1952 Act, in pursuance of a decree passed by a civil court, he was entitled on an application made to the Controller within six months of his eviction to be placed back in possession or to obtain such compensation as the Controller may think fit. If the interpretation put by the appellant on sub-section (2) was accepted and the execution in this case was allowed to proceed and the tenant herein was evicted, he would certainly be a tenant evicted after 16th day of August, 1958, within the meaning of sub-section (3) and as such entitled to apply to the Controller to be placed back in possession of the premises. In other words, he was to be evicted by the court only to be entitled to be placed back in possession. The legislature could nto have contemplated such a situation. Realizing this the learned counsel for the appellant tried to explain by say- ing that sub-section (3) also authorised the Controller to award suitable compensation to the tenant and, thereforee, his eviction would nto necessarily entail the restoration of possession to him in every case. The argument, evidently, has no merits. The alter- native of awarding compensation provided in this sub-section is primarily and ordinarily meant for cases as for instance where after the dispossession of the tenant third-party interests come to intervene in respect of the premises or some such thing happens, which makes the Controller feel that either

it is nto legal or just or proper that actual possession of the premises be restored to the tenant. The existence of this alternative provision does nto in any manner change the basic legal position that the legislature reserved a right to a tenant evicted after 16th day of August, 1958, to be placed back in possession. Such a right would nto have been conferred on the evicted tenant if the intention of the legislature was to endorse the proceedings for his eviction under sub section (2).

(20) For all these reasons we are of the opinion that the word 'tenant' in sub-section (2) of section 50 includes for purposes of this sub-section a tenant against whom a decree for ejectment had been passed and the expression 'any suit or proceeding pending in any civil court' in this sub-section includes also a case in which the decree had been passed but had nto been fully satisfied and no execution in respect of it was actually pending in court on the day when the 1958 Act came into force. The proceedings in such a case if the premises forming the subject-matter of the decree is found to have been completed after the 1st day of June, 1951, but before 9th day of June, 1955, will stand abated.

(21) In view of the foregoing discussion, this appeal fails and is dismissed, but having regard to the nature of the points involved, the parties are left to bear their own costs of this appeal.