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Ram Rakhamal Vs. Hari Ram and ors.

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Court : Delhi

Decided On : Dec-22-1972

Reported in : ILR1973Delhi555

Judge : S.N. Andley and; S.N.Shankar, JJ.

Acts : Slum Area (Improvement and Clearance) Act, 1956 - Sections 19

Appeal No. : Civil Revision Appeal No. 5070 of 1968

Appellant : Ram Rakhamal

Respondent : Hari Ram and ors.

Advocate for Pet/Ap. : D.N. Bhasin and; Amarjit Singh, Advs

Judgement :

S.N. Andley, J.

(1) Since the correctnsss of the decision of S.K.. Kapur J. in Sinf. Shakuntla and others v. Pi. Bhagwan Dass and others reported in (1967 (69) Punjab Law Reporter 130 (Delhi Section) was assailed by the respondents in these revision petitions, they were ordered to be placed before a Division Bench. The point of law is common to these revision petitions and it is whether permission to execute a decree for eviction passed before the coming into force of the Slum Areas (Improvement and Clearance) Amendment Act, 1964, was necessary,

(2) The petitioner in all these petitions is the landlord of House No. 2767/1937 situate in Gali Ahiran, Malka Ganj, Delhi. The respondent in each of these petitions is occupying a portion of this house as a tenant under the petitioner. While Delhi and Ajmer Rent Control Act, 1952, was in force, the Slum Areas (Improvement and Clearance) Act. 1956, was passed. Under section 19 of this Act, a decree for the eviction of a tenant from any building in a slum area was not executable except with the previous permission in writing of the Competent Authority constituted under this Act. On or about June 12, 1958, the petitioner filed five suits for eviction of the respondents from the respective premises occupied by them in the said house on various grounds under the Delhi and Ajmer Rent Control Act, 1952. Four of the suits were decreed on April 28, 1959 but the fifth was dismissed.

(3) However, in an appeal filed by the petitioner, the fifth suit was also decreed on December 23, 1959. Then, as required by the Slum Areas (Improvement and Clearance) Act, 1956, hereinafter referred to as 'the Slum Act', the petitioner applied for permission to execute the decrees but permission was refused on April 28, 1962 by the Competent Authority. This Act was amended by the Slum Areas (Improvement and Clearance) Amendment Act. 1964, hereinafter referred to as 'the Amending Act' which came into force on and from February 27,1965. Although various sections of the Slum Act were amended, these revision petitions are concerned only with the amendment of section 19 which was substituted by a new'section 19 by the Amending Act. Then on October 18. 1967, the petitioner applied for execution of all the five decrees obtained by him without applying for permission of the Competent Authority. Objection was taken by the respondents to the executability of these decrees on the ground that the requisite permission under the amended section 19 of the Slum Act had not been obtained. The execution applications were dismissed by the trial Court by its order dated February 3, 1968. The appeals filed by the petitioner in the Court of the Senior Subordinate Judge also failed by orders dated May 30, 1968. Both the trial Court and the first appellate Court distinguished the aforesaid decision of S.K. Kapur J. inter alia, on the ground that that decision was in respect of a decree for eviction from land which had been included in the amended section 19 of the Slum Act and not in respect of a building. In our opinion, neither the trial Court nor the first appellate Court was justified in making the distinction.

(4) Section 19 of the Slum Act did not contain any principle to guide the Competent Authority in granting or refusing to grant permission to execute decrees for eviction from buildings. Section 19 as substituted by the Amending Act did three things:- (1) it added land in sub-section (1) of section 19(2) it prescribed the factors to be taken into consideration in granting or refusing to grant permission to execute a decree for eviction; and (3) it provided for the obtaining of the permission.

(5) For the purposes of these revision petitions, only sub-section (1) of the unamended and the amended section 19 is material. These are set out below:- Before amendment :

'19.(1) Notwithstanding anything contained in any other law for the time being in force, no parson who has obtained any decree or order for the eviction of a tenant from any building in a slum area shall be entitled to execute such decree or order except with tho previous permission in writing of the competent authority'.

After amendment:

'19.(1) Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority,- (a) institute, after the commencemant of the Slum Are-is (Tnprovement and Cicarancs) Amendment Act, 1964, any suit or proceeding for obtaining any dscrae or order for the eviction of a tenant from any building or land in a slum area; or (b) where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of a tenant from any building or land in such area, execute such decree or order'.

(6) Whereas before the amendment permission under section 19(1) was contemplated after the obtaining of the decree for eviction from any building in a slum area, after the amendment such permission was made a pre-requisite for the institution of a suit for eviction from any building or land in aslum area and such psrm'ssion had to bs taken after the amendment in respect of any suit or proceeding instituted before the commencement of the Amending Act for the eviction of a tenant from any building or land in a slum area where any decree or

order 'is obtained'.

(7) The exact contention with which we have to deal is whether by reason of the words 'is obtained' in clause (b) of sub-section (1) of section 19 as amended such permission was requisite only in case of decrees or orders which were passed after the commencement of the Amending Act and not in respect of decrees or orders which had been passed before such commencement.

(8) S. K. Kapur J. was dealing with a decree for possession of land which had been passed on November Ii, 1964, i. e., before the coming into force of the Amending Act. The learned Judge noticed the decision of the Supreme Court in Vijendra Nath and others v. Jagdish Rai Aggarwal and others : : [1967]2SCR138 which also dealt with the Slum Act as amended and came to the following conclusion:

'from the decision of the Supreme Court it would follow that if a decree is obtained before coming into force of the Amending Act and execution application also filed before the said Act. section 19 as amended would not create any bar to the execution'.

(9) The learned Judge repelled the argument that section 19(1)(b) applies to all decrees whether obtained before or after the commencement of the Amending Act, provided the suit or proceeding is instituted before such commencement and observed:-

'The result of accepting this argument would be that the said amended section will divide the decree-holders into two categories: (i) those who had applied for execution before the Amending Act came into force; and (ii) those who applied thereafter. In the case of the first category of landlords no permission would be necessary while section 19(l)(b) would operate as a bar to execution in other cases. That could not have been contemplated by the Legislature. If, on the other hand, the argument of the learned counsel for the respondent is accepted and it is held that section 19(l)(b) applies only to those cases where decrees or orders are obtained after the commencement of the Amendment Act, 1964, on a suit or proceeding instituted before such commencement, there will not arise any unfair

treatment to the landlords only on the basis of the date ofthe execution application. It is accepted rule that retrospective legislation is looked upon with disfavor because of its tendency to be unjust and supress (sic.). Ancillary to this rule is another rule that no law should be given greater retrospective effect than its language clearly expresses or implies. Bearing these rules in mind, I am of the opinion that section 19(l)(b) of the said Act doss not affectthe rights of the decree-holders to execute decrees obtained before the commencement of the said Amendment Act and applies only to decrees or orders obtained thereafter. Since land was included in section 19 forthe first time by the Amendment Act, 1964, the landlord was entitled to execute the decree without permission of the Competent Authority'.

(10) In our opinion, the judgment of the Supreme Court referred to does not with respect, lead to the conclusions arrived at.

(11) In fact, we are of the view thatthe Supreme Court has construed section 19(l)(b) of the amended Slum Act inthe way contended for by the respondents. In the case bsfore the Supreme Court, an application for execution of a decree, for eviction filed on July 22, 1964 had been consigned to the record room. On March 23, 1965, that is after the coming into force of the Amending Act, the decree-holders filed another application for execution of the decree with the object, as observed by the Supreme Court, to revive the substantive application for execution which was filed on July 22, 1964 and which was still pending. The Supreme Court treated the subsequent execution application made on March 23, 1965, as in continuation of the execution proceeding commenced by the first application and repelled the contention on behalf of the tenant that a fresh permission of the Competent Authority should have been taken before filing the subsequent execution application on March 23, 1965. The Supreme Court construed clauses (a) and (b) of sub-section (1) of section 19 as amended. As to clause (b), the Supreme Court observed:

'SUB-SECTION(1)(b) of the newly inserted S. 19 imposes a bar on the execution of a decree for the eviction of a tenant from any building in a slum area obtained in any suit instituted before the commencement of the Amending Act without the

previous permission in writing of the competent authority'.

(12) The Supreme Court did not say while making this observation that permission of the Competent Authority to execute the decree for eviction was necessary only if the decree was obtained after the commencement of the Amending Act and they do no appear to have attached any significance to the word 'is' in the expression 'is obtained' appearing in section 19(l)(b) as amended.

(13) It is to be noticed that the unamended sub-section (1) of section 19 contained the words 'has obtained'. These words do not mean and have not been held to mean that permission under the amended section was necessary only in respect of decrees for eviction which had been obtained before the coming into force of the Slum Act. The expression 'has obtained' covered decrees for eviction which were obtained after the commencement of the Slum Act. It is, thereforee, clear that the expression 'has obtained' referred not to the point of time when the decree was obtained but to the point of time when the application for permission of the Competent Authority was made and it did not matter whether a decree had been obtained before the commencement of the Slum Act or after.

(14) The construction sought to be placed by the petitioner on the expression ' is obtained' and by S.K. Kapur J. in the judgment referred to would create a situation where a decree obtained before the commencement of the amended section 19 would not require the permission of the Competent Authority to execute. We are conscious of the rules of interpretation that where words are plain and clear, the Court has to construe them and by a process of construction words cannot be added to the plain meaning of the section as has been held in The New piece Goods Bazaar Co. Ltd., Bombay v. Commissioner of Incomefax Bombay Air 1950 SC 1650 State of West Bengal v. M/s. B . K. Mondal and Sons : : AIR 1962 SC779 Northern India Caterers (Private) Ltd., and others v. The State of Punjab and others; 1967 Puj L R 781 and Prem Sagar Chawla v. Messrs Security And Finance (P) Ltd., -.1967 Punjab Law Reporter 214 (Delhi Section What is then the plain meaning of the words 'is obtained' used in the amended section 19(1)(b) In Mst. Jagir Kaur and another v. Jaswant Singh : : [1964]2SCR73 it was observed,-

'THEverb 'is' connotes in the context the presence or the existence of the person in the district when the proceeding are taken'.

(15) thereforee, the context in which the words 'is obtained' have been used in clause (b) of sub-section (1) of section 19 as amended has to be ascertained. If the conetext so requires, 'is' can give retrospective operation to a section. For example, the word 'are'-which is the plural of 'is'-was held in Eastbourne v. Bradford : (1896) 2 205 to connote an existing state of things, giving the section a retrospective operation where the expression used was 'where. . . .houses. . are connected with a public sewer.'

(16) Now the amended section 19 of the Slum Act provided that proceedings for eviction of tenants could not be taken without the permission of the Competent Authority. Clause (a) of sub-section (1) of section 19 provided the obtaining of such permission as a condition precedent to the institution of a suit for eviction and this clause applied to suits or proceedings taken after the coming into force of the Amending Act. Clause (b) intended to provide for execution of decrees or orders in suits or proceedings which had been instituted before the commencement of the Amending Act. thereforee, the material fact to be ascertained was when a suit or proceeding had been instituted and not when the decree in such a suit or proceeding is obtained. If a suit or proceeding was instituted before the commencement of the Amending Act, clause (b) of this section was clearly intended to apply irrespective of whether the decree or order was obtained in such suit or proceeding before or after the commencement of the Amending Act. The word 'is' in clause (b) refers to the ascertainment of the fact whether a decree or order has been obtained in a suit or proceeding instituted before the commencement of the Amending Act and not to the ascertainment of the fact as to when such decree or order was obtained. In the context, it clearly indicates that the expressions 'is obtained' is intended to cover decrees obtained even before the commencempnt of the Amending Act and not merely decrees obtained after the commencement of the Amending Act. Clause (b) imposes a bar on execution without the previous permission in writing of the Competent Authority. The bar is in respect of all decrees whether obtained before or after the commencement of the Amending Act if execution of such decrees is applied for after the coming into

fores of the Amending Act.

(17) S. K. Kapur J. has pointed out the division of decree-holders into two categories according to the interpretation contended for by the respondents and has not accepted that interpretation for that reason. But if the argument of the petitioner is accepted, decree-holders who have obtained decrees or orders for eviction in respect of buildings will have to be divided into two categories-(1) those who had obtained decrees before the Amending Act came into force and (2) those who obtain decrees after the Amending Act came into force. In the case of the first category of decree-holders, no permission would be necessary, according to the argument of the appellant, even if execution is applied for after the coming into force of the Amending Act while it will be necessary in the case of the second category. It is true that in the case of decrees or orders for eviction from land obtained before the coming into force of the Amending Act, no permission to execute the decree will be required if execution is taken out before the commencement of the Amending Act. This is, however, a necessary result of the fact that on the date of the application for execution there would be no necessity under any law to obtain such permission. According to the construction placed by us, the point of time when the application of the amended section 19 is to be considered is the point of time when execution of the decree is applied for. If on the date of the application for execution, the law requires such permission, permission will have to be obtained irrespective of when the decree was obtained provided only that the suit was instituted before the commencement of the Amending Act. thereforee, the division of decree-holders into two categories cannot lead to the inference that it was not so contemplated by the Legislature.

(18) We are, thereforee, of the opinion that clause (b) of sub-section(l) of section 19 bars the execution of any decree or order from any building or land irrespective of whether the decree or ordsr is obtained before or after the commencement of the Amending Act provided only that the suit or proceeding which resulted in the decree or order was instituted before such commencement. We, thereforee, over-rule the decision of S. K. Kapur J. cited earlier and for the aforesaid reasons, the revision petitions are dismissed though for reasons different from the reasons mentioned by the courts below. In the circumstances, we leave the the parties to

bear their respective costs.

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