

Sanwarmal Vs. Murarilal

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Court : Rajasthan

Decided On : Jan-09-1979

Reported in : AIR1979Raj68

Judge : P.D. Kudal and; M.B. Sharma, JJ.

Acts : Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 13(A) and 14(A)

Appeal No. : Second Appeal No. 175 of 1976

Appellant : Sanwarmal

Respondent : Murarilal

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

Advocate for Pet/Ap. : M.B.L. Bhargava and; A.K. Bhandari, Adv.

Judgement :

M.B. Sharma, J.

1. This Civil Second Appeal by the defendant-tenant Sanwarmal involves a question of law regarding the ambit and scope of Section 13 (A) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as the Act).

2. The facts of the case and the events leading to the preference to the Division Bench are these.
3. Two shops, fully described in para 2 of the plaint, were let out by Murarilal plaintiff-respondent under a rent note dated March 10, 1958 to defendant-appellant Sanwarmal on a monthly rent of Rs. 19/-. The plaintiff Murarilal and the defendant Sanwarmal shall hereinafter be referred to as the plaintiff and defendant respectively.
4. A suit for eviction and recovery of arrears of rent for the period commencing from July 6, 1966 to Nov. 6, 1968 amounting to Rs. 551/- and for notice expenses was filed by the plaintiff against the defendant in the Court of Munsif, Sikar on two grounds; firstly, that the plaintiff required the suit premises under Section 13 (1) (h) of the Act reasonably and bona fide for his own use as well as for the use of his brothers; and, secondly, under Section 13 (1) (a) of the Act alleging that the defendant has neither paid nor tendered the amount of rent due from him for more than six months and is thus a defaulter.
5. The suit was contested by the defendant on both the grounds and it was averred that the rent was only due from Dec. 6, 1967. On the first date of hearing i.e., Jan. 27, 1969 the defendant moved an application that he was prepared to deposit the rent due from him from Dec. 6, 1967 along with interest thereon and costs of the suit. The Court permitted the defendant to deposit the rent, as desired by him in his above referred application, but the defendant did not deposit the arrears of rent on the first date of hearing and a sum of Rs. 527/- was deposited by the defendant in the Court on February 6, 1969.
6. Issues were framed, but no issue with regard to the dispute as to whether the defendant was a defaulter was framed and the learned Munsif, after evidence, dismissed the suit of the plaintiff vide his judgment dated April 5, 1971. An appeal was filed by the plaintiff to the Court of Additional District-Judge, Sikar. During the pendency of that appeal, an application under Section 13 (6) of the Act, as it stood prior to the amendment, by the Rajasthan Premises (Control of Rent and Eviction) (Amendment) Ordinance, 1975, Ordinance No. 26 of 1975 (hereinafter referred to as the Amending Ordinance), which came into force with effect from 29-9-1975,

was filed by the plaintiff seeking an order that the defence against eviction of the defendant be struck out. The defendant submitted the reply to the application of the plaintiff on 1-9-72 wherein it was alleged that the defendant had deposited the arrears of rent along with interest thereon on the first date of hearing and thereafter continued depositing rent every month. The defendant was always ready and willing and is ready and willing to deposit the rent. The Court never ordered the defendant to deposit the rent and, therefore, the defence against eviction could not be ordered to be struck out

7. The learned Additional District Judge, Sikar by his judgment dated May 9, 1973 allowed the appeal of the plaintiff and after framing additional issues sent the case back to the trial Court for fresh decision in accordance with law. Issue No. 3 was framed to the effect, as to whether the defendant has not committed any default in the payment or tender of the rent? Issue No. 6, was whether the defendant has failed to pay or deposit the amount in accordance with Section 13 (4) and (5) of the Act, and his defence against eviction is to be struck out for his failure to deposit the amount of rent on the first date of hearing and on subsequent dates. The learned Munsif recorded additional evidence of the parties on the additional issues and recorded the following findings.

(1) That the defendant failed to deposit rent for the period from July 6, 1966 to Dec. 6. 1967;

(2) That the defendant failed to deposit arrears of rent, interest thereon, costs of the suit amounting to Rs. 569/- on the first date of hearing, i.e. Jan. 27, 1969, and further that the defendant also failed to deposit rent month by month by 15th of each succeeding month;

(3) That the defendant did not comply with the provisions of Section 13 (4) of the Act and, therefore, his defence against eviction was likely to be struck out under Section 13 (6) of the Act.

8. As a result of the above findings, the learned Munsif by his judgment dated Aug. 21, 1974 held the defendant to be a defaulter within the meaning of Section 13 (1) (a) of the Act and consequently decreed the suit for eviction in favour of the

plaintiff and against the defendant. An appeal of the defendant was dismissed by Civil Judge, Sikar by his judgment dated July 15, 1976. A second appeal was filed in this Court on July 20, 1976 challenging the appellate decree of the Civil Judge, Sikar dated July 15, 1976.

9. It may be stated here that during the pendency of the appeal in the lower appellate Court, the provisions of the Act were amended by the Amending Ordinance, which, as already stated above, came into force with effect from Sept, 29, 1975. The Amending Ordinance was replaced by the Rajasthan Premises (Control of Rent and Eviction) Amendment Act, 1976 (Rajasthan Act No. 14 of 1976). Section 13 (A) of the Act, as amended by the Amending Ordinance, and replaced by Act No. 14 of 1976 is relevant and will come up for consideration in this appeal. Amended Section 13 (A) of the Act reads as follows :--

"Section 13 (A) -- Special provisions relating to pending and other matters -- Notwithstanding anything to the contrary in this Act as it existed before the commencement of the Amending Ordinance or in any other law.

(a) no court shall, in any proceeding pending on the date of commencement of the amending ordinance pass any decree in favour of landlord for eviction of a tenant on the ground of non-payment of rent, if the tenant applies under Clause (b) and pays to the landlord or deposits in court, within such time such aggregate of the amount or rent in arrears, interest thereon and full costs of the suit as may be directed by the court tinder and in accordance with that clause;

(b) in every such proceeding, the Court shall, on the application of the tenant made within thirty days from the date of the commencement of the amending ordinance, notwithstanding any order to the contrary, determine the amount of rent in arrears up to the date of the order as also the amount of interest thereon as 6% per annum and costs of the suit allowable to the landlord; and direct the tenant to pay the amount so determined within such time, not exceeding ninety days, as may be fixed by the Court; and on such payment being made within the time fixed as aforesaid, the proceeding shall be disposed of as if tenant had not committed any default;

(c) the provisions of Clauses (a) and (b) shall mutatis mutandis apply to all appeals; or applications for revisions, preferred or made after the commencement of the amending ordinance against decrees for eviction passed before such commencement with the variation that in Clause (b), for the expression from the date of commencement of the amending ordinance, the expression 'from the date of presentation of the memorandum of appeal or application for revision' shall be substituted.'

10. It is common ground between the parties that no application, as provided in Clause (b) of the above section was made in the first appellate court by the defendant within the prescribed period of 30 days from the date of commencement of the amending ordinance.

11. The appeal came up for hearing before the learned single judge. It was contended before him on behalf of the defendant that though no application under Section 13 (b) of the Act as amended by the amending ordinance was made by the defendant before the first appellate Court, but to the application of the plaintiff dated July 28, 1978 moved under Section 13 (6) of the Act, the defendant submitted a reply on Sept. 1, 1972 wherein it was stated that if the Court thinks proper then on order being passed to that effect by the Court, the defendant can deposit the rent, and that this reply of the defendant should be taken as an application under Section 13 (A) (a) and (b) of the Act as amended by the amending ordinance, as it substantially complies with the requirements of those provisions. The Court should determine the amount of rent etc. and the defendant be permitted to deposit in the Court or pay to the landlord the amount so determined. This contention was based on a decision of this Court in Chunnilal v. Vaspu Jaiji Maha-raj, 1966 Raj LW 295, where the provisions of Section 13 (A) of the Rajasthan Premises (Control of Rent and Eviction) (Amendment) Act No. 12 of 1965 which are in pari materia to the provisions of Section 13 (A) of the Act as amended by Ordinance No. 26 of 1975 came for consideration. In that case, while dealing with Second Appeal No. 149 of 1961 (Raj) Udaram v. Barkatali, Hon'ble Bhandari J., as he then was, observed as follows :--

'In Second Appeal No. 149 of 1961 (Raj) Udaram v. Barkatali: no application was made after the coming into force of the amending Act, but the tenant had already made applications when the suits for evictions were pending in the trial court showing the preparedness to pay the entire amount of rent due and the cost of the suit. It is urged by the learned counsel for tenants that such application must be deemed to be application under Section 13-A as what is envisaged under Clause (b) is that an opportunity be given to the tenant to pay the landlord the rent in arrears, with interest and costs of the suit. No doubt there was no application made by the tenant in this appeal under Section 13-A, but, in my opinion, there is no reason why the benefit of this section should not be given to the tenant who had already made an application for the payment of arrears of rent even when the provision of Section 13-A was not on the statute book. Section 13-A has been incorporated in the statute book to grant relief to the tenants who are otherwise liable to be ejected under the law then existing. It is a law which calls for a liberal construction in favour of the tenants. The purpose of the law is to benefit a tenant and to see that if he fulfills certain conditions, he should not be evicted. In interpreting the provisions of a beneficial piece of legislation the court must lean in favour of that interpretation which advances the purpose. A tenant who has already made an application which is more or less in terms of Clauses (a) and (b) of Section 13 (A) even before the amendment came into force, must be held entitled to obtain relief under Clause (a) of Section 13-A. In this view of the matter, I am of the view that even a tenant, who had not made an application after the coming into force of the amending Article but had made application before it came into force to the same effect as required under Clauses (a) and (b) is entitled to take advantage of Section 13-A.'

12. The learned single judge did not agree with the above observations of Bhandari J. and observed that on a clear reading of Sub-sections (1) and (b) of Section 13-A of the amending ordinance, it will be clear that the defendant has to move a fresh application within 30 days, as provided in the aforesaid provisions and if he fails to do so, then in his humble opinion he cannot fall back on any earlier application made before the amending ordinance came into force. As in the opinion of the learned single Judge, the question involved is an important one, he thought it proper that it may be decided authoritatively by a larger Bench. It is how

this appeal has come to us.

13. The learned Judge has referred the appeal for decision to a larger Bench, but we are of the opinion that we need only decide the legal point involved with regard to the ambit and scope of Section 13 (A) of the Act as it stands after amendment by the amending ordinance, which has been replaced by Act No. 14 of 1976. Both the learned counsel for the parties have also desired that we should confine to the decision of legal point involved.

14. To us, the legal point involved appears to be as follows :--

Whether under Sub-sections (a) and (b) of Section 13 (A) of the amending ordinance, which has been replaced by Act No. 14 of 1976, the defendant has to move a fresh application within 30 days of 29th of Sept. 1975, the day on which the amending ordinance came into force, or he can fall back on any earlier application, which is more or less in terms of Sub-sections (a) and (b) of amended Section 13-A of the Act?

15. We have heard the learned counsel for the parties.

16. The argument of the learned Advocate for the defendant is that the Act was amended by amending ordinance. By the amendment, it is intended to give one more chance to the tenants to avoid eviction by complying with the provisions of Sub-sections (a) and (b) of amended Section 13 (A) of the Act, in case of those category of cases, which are based on the ground of default under Section 13 (1) (a) of the Act. According to the learned Advocate, the amending Ordinance, which has been replaced by amending Act No. 14 of 1976 is a piece of beneficent legislation meant to control eviction of tenants, and, therefore, its provisions should be reasonably and liberally construed. According to him, the legislature could not have intended that the benefit of this beneficent measure should not be extended to those defendants who had made applications before the coming into force of the amending ordinance, but had not made applications within 30 days of the coming into force of the amending ordinance. It is submitted by the learned Advocate for the defendant that the reply of the defendant dated September 1, 1972 to the application of the plaintiff under Section 13 (6) of the Act submitted

before the first appellate Court should be taken as an application under amended Section 13 (A) (a) and (b) of the Act, as it is more or less in terms of those clauses and the court should now determine the amount of rent etc. in terms of Sub-clause(b) of amended Section 13 (A) of the Act. It will be proper to reproduce the reply of the defendant dated Sept. 1, 1972:--

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2 ;g fdnj[okLr dh en uEcj 2 esa 27@1@69 dks :i;s tek djkusdk vkns'k nsuk Lohdkj gSa A

3 ;g fd nj[okLr dh en uEcj 3xYr gS Lohdkj ugha gS A nkok nk;j gksus ds ckn igyh rkjh[k ls prh gS rks vkns'kgksus ij fdjk;k tek dj;k;k tk ldrk gS A

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17. The learned Advocate for the plaintiff, on the contrary, has contended that the question of construction or interpretation of Section 13 (A) of the Act, as it stands after the amendment by the amending ordinance does not arise in this case, because the language is simple and admits of no two meanings. According to him, firstly the reply of the defendant dated 1-9-1972 is not in terms of Clauses (a) and

(b) of amended Section 13 (A) of the Act, and, secondly, assuming, though not accepting, it to be so, it is necessary for the defendant to apply within a statutory period and the defendant cannot be allowed to fall back on any earlier application moved before the coming into force of the amending ordinance.

18. In Chunnilal's case (1966 Raj LW 295), Hon'ble Bhandari J. has observed that it is a law which calls for liberal constructions in favour of tenants. Its purpose is to benefit a tenant and to see that if he fulfils certain conditions, he should not be evicted. In interpreting the provisions of a beneficial piece of legislation, the court must lean in favour of that interpretation, which advances the purpose. In our opinion, there can be no doubt that rent control laws are remedial measures and should be interpreted reasonably and not literally. But, at the same time, it is also true that if the words of the statute are in themselves precise and unambiguous then no more can be necessary than to expound these words in their natural and ordinary sense. Maxwell on the Interpretation of Statutes (12th Edition) page 29 says as follows:--

'Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise.'

At page 92, Maxwell in the same book has said as follows ;--

'Nevertheless, even where the usual meaning of the words falls short of the object of the legislature, a more extending meaning may be attributed to them, if they are fairly susceptible of it. Previous editions of this work have referred to this relaxation of strictly literal principles of interpretation as beneficial construction, and the modern cases provide many instances of the judges' reluctance to stand upon the letter of a statute. They will not, of course, supply omissions, but where they are faced with a carries out between a wide meaning which carries out what appears to have been the object of the legislature more fully, and a narrow meaning which carries it out less fully or not at all, they will often choose the former. Beneficial construction is a tendency, rather than a rule.'

19. We are, therefore, of the opinion that the question of interpretation or beneficial construction will only arise when the language of the statute is not plain and

admits of more than one meaning. In cases where the language is plain and admits of only one meaning, the task of interpretation or applicability of the beneficent rule of construction will not arise. Further when the words used in a statute are capable of two constructions, only then the question of giving effect to the policy or object of the Act concerned can legitimately arise. Here, it will be convenient to refer to a few authorities.

20. In *Damodar v. Nandram* 1960 MPLJ 925: (AIR 1960 Madh Pra 345), the majority of the learned Judges constituting the Full Bench laid down that where the language of a statute is clear, the words must be given their ordinary and general meaning without considering the reasonableness of the consequence.

21. In *Commissioner of Agricultural Income-tax, West Bengal v. Keshab Chandra* AIR 1950 SC 265, Das J. while delivering the judgment on behalf of the majority observed, that where the language of a statute is plain, the question of hardship or inconvenience would be wholly or relevant. To the same effect is the pronouncement of their Lordships of the Supreme Court in *Parbhani Transport Co-operative Society Ltd. v. R. T. Authority*, AIR 1960 SC 801. In *Kanai Lal Sur v. Paramnidhi Sadhukhan*, AIR 1957 SC 907, their Lordships indicated the principles of construction to be adopted while interpreting statutes. It has been laid down that the first and primary rule of construction, is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only, then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. It has further been held that when the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act, while the other construction is likely to assist the achievement of the said policy then the courts would prefer to adopt the latter construction. It is only in such cases that it becomes relevant to consider the mischief and defect which the Act purports to remedy and correct. In *Krishnayya v. Seshachalam* AIR 1965 SC 639, it has been

observed as follows (at p. 644):--.

'In the first place, every provision in the statute must be given effect to unless by doing so any conflict with any other provision of the Act would arise. In the second place, we cannot ignore the object of the legislature in enacting this law which was to grant relief to the agriculturists and that any beneficial measure of this land should as far as permissible be interpreted in such a way as to carry out the main object which the Legislature had in view.' (underlining is ours).

22. The provisions of Section 13 (A) of the Act as amended by Ordinance 26 of 1975 came for consideration before the Supreme Court recently in *Gyan Chand v. Kunj Beharilal* (1977) 2 Ren CR 212 (Para 14): (AIR 1977 SC 858 Para 14), and Hon'ble Goswami J. while speaking for himself and Hon'ble Chandrachud J., as his Lordship then was, observed as follows:--

'The question of limitation provided under Section 13A (b) and (c) is important and the terminus a quo for the purpose of Section 13A (c) is from the date of presentation of the memorandum of appeal.'

23. We have already reproduced Section 13 (A) of the Act as amended by the amending ordinance. A reading of Sub-sections (a) and (b) of amended Section 13 (A) of the Act will make it clear that the language is plain and admits of only one meaning, i.e., a tenant has to make an application within 30 days of the coming into force of the Ordinance. Thus, an application could be made on any day between 29th Sept. 1975 to 28th Oct., 1975 (both days inclusive),

24. The provisions of amended Section 13A (a) and (b) have been made applicable mutatis mutandis to appeals or applications for revision preferred or made after coming into force of the amending ordinance. Therefore also, it appears that the intention of the Legislature while enacting amended Section 13 (A) of the Act was that an application has to be moved within 30 days of the commencement of the amending ordinance. The language of amended Section 13 (A) of the Act is not ambiguous and, therefore, in our opinion, no question of interpretation or applicability of the rule of beneficial construction will arise in this case. In our opinion, amended Section 13 (A) of the Act cannot be read as to

make it applicable to applications made before the coming into force of the amending ordinance. To read it in that manner would be adding such words which are not there.

25. We, therefore, conclude that a fresh application has to be made by the tenant under Sub-clause (b) of Section 13A of the Act as amended by Ordinance No. 26 of 1975 within 30 days of the commencement of the amending ordinance and a tenant cannot be allowed to fall back on any earlier application, even though that application may be more or less in terms of Sub-section (b) of Section 13 (A) of the Act, as amended by Ordinance No. 26 of 1975. We are of the opinion that the view of Hon'ble Bhandari J., as his Lordship then was, while disposing of Second Appeal No. 149 of 1961 (Raj) (Udaram v. Barkatali) in Chunnilal's Case 1966 Raj LW 295, is not correct and we are of the opinion that the view taken by Modi J., while referring this appeal to a larger bench, is the correct view. We answer the point framed by us accordingly.

26. Moreover, a bare perusal of the reply of the defendant dated 1-9-72, which has been reproduced above, will make it clear that it cannot be treated as an application under Section 13 (A) (a) and (b) of the Act as amended by Ordinance 26 of 1975. Therefore, also, in our view the defendant cannot take any advantage out of it.

27. The case be now listed before a Single Judge for decision of the appeal on other points.