

Somraj Vs. Jethmal and ors.

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Court : Rajasthan

Decided On : Aug-28-1956

Reported in : AIR1957Raj392

Judge : Modi, J.

Acts : Marwar House Rent Control Act, 1949 - Sections 10(1); Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 8(2) and 30; [Contract Act, 1872](#) - Sections 65; Court-fees Act, 1870 - Schedule - Article 1; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 8, Rule 6

Appeal No. : Second Appeal No. 93 of 1952

Appellant : Somraj

Respondent : Jethmal and ors.

Advocate for Def. : Hastimal, Adv.

Advocate for Pet/Ap. : Prakash Chandra, Adv.

Disposition : Appeal allowed

Judgement :

Modi, J.

1. This is a second appeal by the defendant Somraj in a suit for eviction and arrears of rent.

2. The plaintiff Jethmal's case was that fine defendants Somraj and another had taken the suit shop on rent from the plaintiff on Migsar Vad 1. Smt. 2004 (corresponding to 29th November, 1847) at a rent of Rs. 45/- p.m. and that they had paid rent up to Smt. 2006. Baisakh Sudi 15 (corresponding to the 2nd May, 1950) but thereafter had failed to pay rent for a period of five months and a half up to Smt. 2007, Asoj Vadi 30 (corresponding to 11th October, 1950). The plaintiff, therefore, instituted his present suit for a sum of Rs. 247/8/- as rent for the said period and for eviction on the 17th October, 1950.

3. it is unnecessary to state any facts in so far as they bear on the question of eviction as that question is no longer in dispute between the parties.

4. The defendants resisted the suit. Their main contention was that on their complaint under the Marwar House 'Bent Control Act (No. XXV) of 1949 (hereinafter referred to as the Mar-war Act), the Rent Controller had fixed a fair rent for the suit shop at the rate of Rs. 18/- p.m. by his order dated the 10th July, 1950, and that as they had paid rent for a considerable period at the rate of Rs. 45/- p. m., up to Smt. 2006, Baisakh Sudi 15 (2-5-1950) they had paid excess rent to the tune of Rs. 948/- (it is not necessary for the purposes of this appeal to go into the details of these payments) and that accordingly on the 7th August, 1950, they had given a notice to the plaintiff to adjust the aforesaid amount against the rent due by them for the suit period and in future, and consequently, no rent was due to the plaintiff.

The defendants further contended that in fact they were entitled to refund of the excess rent paid and that they would file a separate suit for that purpose. The defendants lastly pleaded that the plaintiff was in no case entitled to charge rent except at the rate of Rs. 18/- p.m. which had been fixed as fair rent by the Rent Controller for the shop in question. It may be pointed out at once that a good deal of difficulty has arisen in this case because the Rent Controller did not specify in his order any particular date from which his order was to have effect.

5. The trial Court dismissed the plaintiff's suit. Its main finding relevant for our present purposes was that the Rent Controller should be deemed to have fixed the fair rent from the date of the agreement of tenancy, that is, Smt. 2002 Maha Sudi 16 (corresponding to 16th February, 1946) although he passed his order fixing the fair rent on the 10th July, 1950. On this view the trial Court was obviously of the opinion (although it did not say that in so many words) that the plaintiff's claim for arrears of rent made in the present suit was untenable as the defendants were certainly entitled to have the excess rent already paid by them adjusted against the arrears due and that this worked out to much more than the suit amount.

The plaintiff then went in appeal to the District Judge, Jodhpur. The appeal was decided by the Civil Judge (to whom it had been transferred by the District Judge) by his judgment dated the 8th February, 1952. The learned Civil Judge held the opinion that the order of the Controller should be given effect to from the date thereof, that is, the 10th July, 1950, and that the Munsiff was wrong in holding that the fair rent should be operative from the date of tenancy, that is, the 16th February, 1946. The learned Judge, therefore set aside the judgment and decree of the trial Court and decreed the plaintiff's suit for rent from Jeth Vadi 1, Smt. 2006 (equal to 3-5-1950) up to the date of the Controller's order, that is the 10th July, 1950, at the rate of Rs. 45/- p.m. and from the latter date to the date of the suit at the rate of Rs. 18/- p.m. and thus awarded a decree for Rs. 159/12/- as arrears of rent due to the plaintiff from the defendants. The defendant Somraj has appealed from the above judgment and decree to this Court.

6. The principal point for determination in this appeal is whether the order of the Rent Controller fixing the fair rent for the suit shop at the rate of Rs. 18/- p.m. takes effect from the date of the order or from any earlier point of time. The Rent Controller passed his order under the Marwar House Rent Control Act, 1949. The important sections to bear in mind in this connection are 3, 4 and 10. Section 3 provides that where on a written complaint or otherwise, the Controller has reason to believe that the rent of any house within the local limits of his jurisdiction, is excessive, he shall after holding a summary inquiry record a finding to that effect. Section 4 then enacts that if as a result of the inquiry made by him, the Controller finds that the rent of the house is excessive, he shall determine the fair rent to be

charged for the house.

Section 10 then deals with the consequences following upon the fixation of fair rent by the Controller. The Controller may fix a specific date for the purpose of giving effect to his order fixing the fair rent under Sub-section (2) of this section, and in such a case the order must have effect accordingly. Where the Rent Controller, however, does not fix the effective date for the operation of his order, the consequences mentioned in Sub-section (1) would be clearly attracted. The present case falls within the latter category. Clauses (b) and (d) of Sub-section (1) of Section 10 are important for our Present purposes.

Clause (b) says that when the fair rent of a house has been determined, any agreement for the payment of rent in excess of such fair rent shall be null and void in respect of such excess and shall be construed as if it was an agreement for payment of the said fair rent. Clause (d) reads as follows:

'any sum in excess of such fair rent and any premium, advance or any like sum in addition of rent, paid whether before Or after the commencement of this Act, in respect of residence after the commencement of this Act, shall be refunded to the person by whom it was paid, or at the option of such person, or otherwise adjusted.'

The meaning of these two clauses taken together to my mind, clearly is that where the fair rent of a house has been fixed by the Rent Controller, any agreement for the payment of rent in excess of such fair rent shall be altogether inoperative so far as such excess is concerned, and the agreement itself will be construed as if it was an agreement for the payment of such fair rent only, and further, that if any thing has been paid in excess of such rent, whether by way of rent or otherwise, no matter that such payment has been made, before or after the commencement of the Act such excess payment must be refunded to the person who has paid it, or, otherwise adjusted at the option of such person, provided that such excess is in respect of residence after the commencement of the Act.

In other words, the provision as to refund or adjustment is available in respect of residence after the commencement of this Act and will not be available with

respect to residence prior to the commencement of the Act. The correct position in law, in my opinion, therefore, is that where the Controller does not himself specify the date from which his order is to take effect, as in the present case, his order fixing the fair rent must receive effect not only from the date of the order but also for an earlier period of residence provided such residence relates to a period after the commencement of the Act, and that is why it is further provided that any excess received by the landlord over the fair rent fixed by the Controller shall be refunded to the person who paid it or would be otherwise adjustable at his option, that is it would be liable to adjustment against rent falling due in future.

The Marwar Act came into force on the 5th March, 1949. The order of the Controller in the present case was passed on the 10th July, 1950. It must follow as a corollary from what I have stated above that the order of Controller fixing the fair rent at Rs. 18/- p.m. in this case must receive effect not only from the 10th July, 1950, but for the period of residence of the defendants in the suit shop from the time when the said Act came into force, that is, the 5th March, 1949. This works out to about 14 months, as it is common ground between the parties that the defendants had not paid any rent after Smt. 2006 Baisakh Sudi 15 (i.e. from 3rd May, 1950).

7. It was argued on behalf of the plaintiff that the word 'shall' in Clause (l)(d) of Section 10 of the Marwar Act has only a directory effect and not a mandatory force and that no question of giving effect to an order fixing a fair rent should arise until the Rent Controller under Section 3 is invited or under Section 5 himself undertakes to fix a fair rent under Section 4. Learned counsel for the respondent invited my attention to *Kewalchand v. Samirmal*. AIR 1953 Nag 146 (A), in support of his argument. That case lays down that the Rent Controller's jurisdiction arises in cases where existing rent is found either excessive or insufficient and consequently he can order payment of rent fixed to operate only prospectively from the date on which he is moved and that the Rent Controller acts beyond jurisdiction where he fixes 'rent for period prior to that date.

The above case is, however, clearly distinguishable because it does not appear from its perusal that the Central Provinces and Berar Lettings of Houses and Rent

Control Order, 1949, contains any provision corresponding to Section 10(1) (d) of the Marwar Act. Again, the 'provision contained in this clause is, to my mind, clearly mandatory for the word 'shall' has, & must be given, its compulsive effect in the context in which it appears. The provision is absolutely clear where fair rent has been fixed and any payment in excess thereof has been made in respect of residence after the commencement of the Act, then no matter that such payment has been made even before the Act was passed, it 'shall' be refunded to the person by whom it was paid or where such person wants it to be adjusted otherwise, it should be so adjusted.

To say that such a provision is merely directory will be to destroy the provision altogether. I have no hesitation, therefore, in coming to the conclusion that the order of the Controller dated the 7th July, 1950, must receive effect right from the commencement of the Act, that is, the 6th March, 1949, so far as the Marwar Act is concerned.

8. The next Question is whether this position is in any manner affected by the circumstance that the above mentioned Act was repealed later by the Rajasthan Premises (Control of Rent and Eviction) Act (No. XVII) Of 1950 (hereinafter referred to as the 'Rajasthan Act'), as the latter Act had come into force on the 28th November, 1950, before the Munsiff decided the present suit on the 5th April, 1951. It was strenuously contended by learned counsel for the plaintiff-respondent that the Rajasthan Act does not contain any provision corresponding to Section 10(1)(d) of the Marwar Act and, therefore, that even if the defendants had any right of adjustment under the repealed act, that right was not kept alive under the new Act and could not be given effect to at the date the plaintiff's suit was -decided in 1951.

Learned counsel for the defendants-appellants sought to meet this objection by relying on Section 4 and Section 30 of the Rajasthan Act. Section 30 is a 'repeal and saving' section. It repealed certain corresponding Acts of the various States now integrated in the State of Rajasthan. It also provides in the next place that anything done or action taken under the repealed laws shall, until varied or superseded under this Act, continue and be deemed to have been done or taken

under this Act as if it were then in force.'

It seems to me that this section does not afford much help because all it saves is the order of the Controller fixing the fair rent. It is difficult to hold that the right to claim the refund consequent on that order stands also saved by virtue of this section. Turning to Section 4 of the Rajasthan Act, what is enacted thereunder is that the provisions of the General Clauses Act, 1897 of the Central Legislature shall mutatis mutandis apply, so far as may be, to this Act in the same manner as they apply to a Central Act. This, in my opinion, cannot and does not mean that the provisions of the General Clauses Act apply to those Acts which are repealed by this Act. All that the section says is that those provisions will apply to this Act. Reference was also made in this connection to the Marwar General Clauses Act (NO. VIII) of 1948.

I have read Section 6 of that Act, but unfortunately that section also is very restricted in its terms and applies to the repeal of Acts passed by the legislative authority in the former State of Jodhpur by what are called 'Jodhpur' Acts, and, certainly, the Rajasthan Act cannot be called a Jodhpur Act within the definition of that term as given in the Marwar General Clauses Act,

9. The real answer to the contention raised on behalf of the plaintiff-respondent to my mind is furnished by Section 8(2) of the Rajasthan Act which more or less corresponds to Sub-section (1) of Section 10 read with Section 65 of the Contract Act. Section 8(2) provides that any agreement for the payment of rent as such in excess of the standard rent shall be null and void and shall be construed as if it were an agreement for the payment of the standard rent only. The expression used in the Mar-war Act is 'fair-rent' but that really makes no difference in substance. The objective is that where a standard or fair rent has been fixed by a competent authority, any agreement for payment of rent in excess thereof shall be null and void and inoperative, and it will be deemed as if it was an agreement for payment of the standard or fair rent only.

Now, it is true that there is no farther provision corresponding to Sub-section (1) (d) of Section 10 which has already been quoted in extense above, in the Rajasthan Act. But once it is held that as soon as a fair or standard rent is fixed, it

is that rent alone which is payable and that if there is any agreement to pay any excess rent, then even such an agreement must be read as if it contained the clause relating to payment of fair rent only, then it follows that the agreement in so far as it was for the payment of such excess rent was inoperative and could never receive effect.

It further follows that where a party has received any advantage under such an agreement which he should not have received, he must restore the advantage which he has received under such agreement or make compensation for it to the person from whom he received it. Section 65 of the Contract Act provides that when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

I am therefore, of opinion that Section 8(2) of the Rajasthan Act read with Section 65 of the Contract Act leads to the same result as Section 10(1)(d) of the Marwar Act. It further seems to me that a specific provision as to the power to allow refund or adjustment was required or considered necessary to be made in the Marwar, Act as the Act was to be operated by certain officers who were in the nature of special functionaries (as distinguished from the Courts as such) and, who, therefore, did not possess the power to administer the ordinary civil laws of the land. Under the Rajasthan Act, however, the control of rent and eviction laws was entrusted to the ordinary courts of the State and such courts were certainly competent to exercise and give effect to the principles and provisions of ether 'was in so far as they are not or cannot be held to be ruled out by this special legislation.

In this view of the matter, I have arrived at the conclusion that it would be open under the Rajasthan Act also to give effect to a plea of adjustment (or refund as the' case may be) raised by a tenant in respect of any rent already paid by him in excess of the standard or fair rent fixed by competent authority against any so-called arrears of rent claimed by the landlord against the former and I hold accordingly. It is, however, unnecessary for the purposes of this case to decide

whether the claim for adjustment should operate from the date of the agreement and not merely from the 5th March, 1949 being the date of the commencement of the Marwar Act inasmuch as the plaintiff is bound to be non-suited as soon as the charging of any rent by him in excess of Rs. 18/- in respect of residence after the commencement of the Marwar Act (that is, from the 5th March, 1949) is held to be void and prohibited, as it must be, under that Act and the excess charged over such rent inevitably gives rise to a claim, or refund at the option of the person paying the excess.

Nothing that is contained in the Rajasthan Act can or does revitalize such a void contract. Put in plain language the plaintiff has certainly received excess rent to the tune of approximately Rs. 378/- for 14 months from 5th March, 1949, to 2nd May, 1950, whereas his suit is for Rs. 247/8/- for 5 1/2 months' rent at the rate of Rs. 45/- p.m. from the 3rd May, 1950 to 11th October, 1950, and he is consequently entirely out of Court and cannot get anything whatever for the suit period. It is entirely unnecessary to add that so long as the order fixing the fair rent at Rs. 18/- stands intact, the plaintiff's claim for rent, at a higher rate was and is altogether inadmissible, and was completely misconceived.

10. The next question which was debated before me on behalf of the plaintiff-respondent was that the defendants really claiming a set off and that they should have paid court-fee on it, and inasmuch as they did not do so, their claim should be rejected and that the plaintiff's suit should be decreed. I have carefully considered this contention and am of opinion that it is without force. The plea raised by the defendants in this case is not in the nature of a set off (whether legal or equitable) or a counter-claim.

What the defendants, in substance, pleaded is that fair rent having been fixed at a certain figure, they were liable to pay that rent only for a certain period and that they had actually paid more and that they had asked the plaintiff to adjust the excess paid by them against the arrears of rent claimed by the plaintiff and, consequently, the plaintiff's suit be dismissed as nothing was due from the defendants. This, to my mind, is a plea of an adjustment as distinct from the plea of set-off and no court-fee was payable on the same.

It is also worthy of notice that the defendants clearly stated in their written statement, that in so far as they had a claim for refund of the excess amount paid to the plaintiff, they would file a separate suit. I should like here to refer to certain observations made in *Ratan Lal v. Madari*, AIR 1950 All 237 (B), which have a relevance on the point before me. Wali Ullah J-, who delivered the judgment of the Bench, observed that a plea of satisfaction or extinguishment of a debt or a claim set up was different from a claim by way of a set-off.

The first necessarily refers to a satisfaction or extinguishment of a debt effected prior to the stage of the defence whereas a plea of set-off is in the nature of a cross-claim and in effect it prays for a satisfaction, or extinguishment of a claim, to be made in the future after the date when the plea has been set up. The learned Judge was of the opinion that a plea of the first nature did not come within, the scope of Article 1, Schedule 1, Court-fees' Act, and no court-fee would be payable on the amount mentioned in such a plea,

A similar view was taken in the *Punjab Electric Power Co. Ltd. v. Suraj Kishan*, AIR 1937 Lah 62 (C) where the defendant in answer to the plaintiff's suit pleaded that the plaintiff owed to him another amount which was adjusted with a claim in suit and that only a little balance had remained due to him and the plaintiff contended that the defendant could not claim the adjustment unless he paid court-fee on it, it was held that what was claimed was an adjustment and not a set-off and, therefore, no court-fee was necessary.

Having regard to all the circumstances of the case. I am of opinion that the plea raised by the defendants in this case was neither a legal nor an equitable set-off within the meaning of Article 1 of Schedule 1 of the Court-fees Act but that it was a plea of adjustment and no court-fee was payable on it. I therefore, over-rule this objection. I may add that the matter would have, in my opinion, stood on a different footing if the defendants in this case should have also asked for a refund of the excess rent said to have been paid by them to the plaintiff. But it is unnecessary to pursue the question further as the defendants themselves pleaded in their written statement that, they would file a separate suit for that purpose.

11. It follows from the findings arrived at by me above that the plaintiff's claim for arrears of rent amounting to Rs. 247/8/- 'is ill founded. I may point out once again that the plaintiff was entitled to claim rent at the rate of Rs. 18/- p.m. only from the 5th March, 1949, when the Marwar Act came into force, to the date for which he claims his arrears, that is, up to the 11th October, 1950, and that as against the sum of Rs. 247/8/- claimed by him in this suit he has received rent clearly in excess of the said amount, because admittedly he has received rent from the 5th March, 1949 (the date of the commencement of the Mar-war Act) to the 2nd May, 1950 (Smt. 2006 Baisakh Sudi 15) at the rate of Rs. 45/- p.m. which excess works out to Rs. 378/- approximately. Consequently this suit must stand dismissed.

12. The result is that I allow this appeal set aside the judgment and decree of the Civil Judge. Jodhpur, and dismiss the plaintiff's suit with costs throughout.

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