

Sita Ram Vs. Nasiruddin

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Court : Rajasthan

Decided On : Jun-03-1994

Reported in : 1994(2)WLN220

Judge : R. S. Kejriwal, J.

Appeal No. : S.B. Civil Revision Petition No. 570 of 1994

Appellant : Sita Ram

Respondent : Nasiruddin

Judgement :

R.S. Kejriwal, J.

1. This revision is directed against the order dated 20.1.1994, passed by learned Munsif and Judicial Magistrate (West), Jaipur City, Jaipur, in Civil Suit No. 824/1933, by which the said Court rejected the application of the petitioner for condonation of delay.

2. Brief relevant facts of the case are that the plaintiff non-petitioners filed a suit for eviction inter alia on the ground that the petitioner committed default in payment of rent. The trial Court vide its order dated 9.9.1991, determined the arrears of rent Under Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, (for short the 'Act'). The petitioner could not deposit the same within the time

granted by the trial court but deposited the same on 28.3.1992. He further committed defaults in payment of monthly rent. Later on the petitioner submitted an application praying that the delay in depositing the determined amount and monthly rent be condoned. The trial Court vide its order dated 20.1.1994, rejected the said application of the defendant petitioner. This order has been challenged in this revision.

3. The submission of the counsel for the petitioner is that the trial court in arbitrary way rejected the application submitted by the petitioner for condonation of delay. When a question was asked to the learned Counsel for the petitioner as to under which provision of law the application for condonation of delay was filed by the petitioner, counsel for the petitioner submits that the application was filed Under Section 5 of the Indian Limitation Act. He submits that the question has already been decided by the Full Bench of this Court reported in Vishandas v. Savitri Devi. [AIR 1998 Rajasthan, 198.] From this judgment it appears that the following three questions were referred to the Full Bench.

1. Whether the provisions of Section 5 of the Limitation Act, can be applied in the matter of depositing of rent Under Section 13(4) of the Act, 1950?

2. Whether the Court has no power even in the interest of justice and equity to extend time beyond the limit prescribed Under Section 13(4) of the Act? &

3. Whether Section 13(5) of the Act, is directory?

4. The Full Bench answered all these three questions in affirmative.

5. Sub-sections (3), (4) and (5) of Section 13 of the Act read as under:

3. In a suit for eviction on the ground set forth in clause (a) of Sub-section (1) with or without any of the other grounds referred to in that Sub-section, the court shall, on the first date of hearing or on any other date as the court may fix in this behalf which shall not be more than three months after filing of the written statement and shall be before the framing of the issues, after hearing the parties and on the basis of material on record provisionally determine the amount of rent to be deposited in court or paid to the landlord by the tenant. Such amount shall be calculated at the

rate of rent at which it was last paid or was payable for the period for which the tenant may have made default including the period subsequent thereto upto the end of the month previous to that in which such determination is made together with interest on such amount calculated at the rate of six percent per annum from the date when any such amount was payable upto the date of determination.

Provided that while determining the amount under this Sub-section, the court shall not take into account the amount of rent which was barred by limitation on the date of the filing of the suit.

4. The tenant shall deposit in court or pay to the landlord the amount determined by the court under Sub-section (3) within fifteen days from the date of such determination, or within such further time, not exceeding three months, as may be extended by the court. The tenant shall also continue to deposit in court or pay to the landlord, month by month the monthly rent subsequent to the period upto which determination has been made, by the fifteenth of each succeeding month or within such further time, not exceeding fifteen days, as may be extended by the court, at the monthly rate at which the rent was determined by the court under Sub-section (3). (Emphasis supplied)

5. If tenant fails to deposit or pay any amount referred to in Sub-section (4) on the date or within the time specified therein, the court shall order the defence against eviction to be struck out and shall proceed with the hearing of the suit.

6. For deciding the question as to whether the Provisions of Section 5 of the Indian Limitation Act, can be applied in the matter of depositing of rent Under Section 13(4) of the Act, it is necessary to reproduce Section 5 of the Indian Limitation Act, which reads as under:

5. Extension of prescribed period in certain cases- Any appeal or any application other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

7. The Full Court answered question No. 1 in affirmative on the basis of judgment of this Court in *Gopal Doss and Ors. v. Nathulal Baraya*. In this case the facts were that plaintiff landlord filed a suit for eviction against the tenant inter alia on the ground of default. During the pendency of the suit, Section 13-A was amended by Rajasthan Ordinance No. 26/1975, with effect from 29.9.1975. This Ordinance was replaced by Rajasthan Premises (Control of Rent and Eviction) Amendment Act, 1975. Under Section 13-A(b) of the Act, it was provided that in every such proceeding, the Court shall, on the application of the tenant made within thirty days from the date of commencement of the amending ordinance notwithstanding any order to the contrary, determine the amount of rent in arrears upto the date of the order as also the amount of interest thereon at 6% p.a. 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. In that case the defendant tenant filed an application Under Section 13-A(b) of the Act, after the expiry of period of 30 days, alongwith an application Under Section 5 of the Indian Limitation Act, and that application was allowed by the trial Court. This order was challenged before this Court in revision. This Court held that Section 5 of the Indian Limitation Act was applicable in view of the provisions of Section 29(2) of the Indian Limitation Act. It is pertinent to note that Section 13-A(b) of the Act provides a period of thirty days for filing an application. Section 5 of the Indian Limitation Act applies only when an appeal or application other than an application under Order XXI of Civil P.C. is filed beyond the time prescribed for the same. For depositing the rent determined by the Court or the monthly rent, neither any application is required to be filed nor any period is fixed for filing such an application. Under these circumstances. In my view, no application for condonation of delay for depositing the rent determined or the monthly rent is maintainable. The Question No. 1 answered by the Full Bench requires re-consideration by larger Bench.

8. Question No. 2 was answered by the Full Bench in affirmative on the basis of judgments of Apex Court passed in *Shyamcharan Sharma v. Dharamdas* : [1980]2SCR334 *Santosh Mehta v. Om Prakash* : [1980]3SCR325 *Ram Murti v.*

Bhola Nath : AIR 1984 SC1392 Ganesh Prasad Sah Kesari v. Lakshmi Narain Gupta : [1985]3SCR825 and M/s B.P. Khemka Pvt. Ltd. v. Birendra Bhomick and Anr. : [1987]2SCR559 .

9. These judgments are based on different Rent Control Acts of various States. The provisions of these Acts are not similar to the Provisions of the Rajasthan Rent Control Act. In Sub-section (4) of Section 13 of the Rajasthan Rent Control Act, the Legislature has specifically mentioned that a Court can extend the time for depositing the determined amount not beyond 3-1/2 months and the monthly rent not beyond on month. Such language has not been used in other Acts.

10. In Gan Pat Ladha v. Sashikant Vishnu Shinde : [1978]3SCR198 the Apex Court dealt with a matter under Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), and observed as under:

If there is statutory default or neglect on the part of the tenant, whatever may be its cause, the landlord acquires a right under S. 12(3) (a) to get a decree for eviction. But where the conditions of S. 12(3)(a) are not satisfied, there is a further opportunity given to the tenant to protect himself against eviction. He can comply with the conditions set out in S. 12(3)(b) and defeat the landlord's claim for eviction. If however, he does not fulfil those conditions, he can not claim the protection of S. 12(3)(b) and in that event, there being no other protection available to him, a decree for eviction would have to go against him. It is difficult to see how by any judicial valour discretion exercisable in favour of the tenant can be found in S. 12(3)(b), even where the conditions laid down by it are satisfied, to be strictly confined within the limits prescribed for their operation.

11. It is settled law that the Legislature does not use superfluous words in an enactment. In Sub-section 4 of Section 13 of the Act, the Legislature has prescribed maximum period, which can be extended by a Court from time to time for depositing the arrears determined by the Court under Sub-section (3) of Section 13 and also the monthly rent. Language used in this Sub-section is clear & unambiguous. Courts should interpret Sub-section (4) of Section 13 of the Act as it was intended by the Legislature irrespective of the consequence. In view of this, Question No. 2 decided by the Full Bench also requires re-consideration.

12. Under the Transfer of Property Act, a landlord has unfettered right to get possession of his premises after terminating the tenancy by a valid Notice. This light of the landlord has been restricted by the Act for limited purposes of protecting tenants from misuse of landlords' power to evict them, in these days of scarcity of accommodation, by asserting his superior rights in property or trying to exploit his position by extracting too high rents from helpless tenants. The object was not to deprive the landlords, altogether of their rights in property which have also to be respected. The Act has not been enacted solely for the benefit to tenants but also for the benefit of the landlords. On account of Sub-section(3), (4) and (5) of Section 13 of the Act, the landlords get the arrears of rent soon after the same are determined by the court and deposited by the tenants. They also get monthly rent in time. In case the tenants make default in payment of rent, the landlords get a right of striking of the defence of the tenants. After the passing of the judgment by the Full Bench in Vishandas's case (supra), the Hon. Supreme Court in Manju Choudhary and Ors. v. Dulal Kumar (9), while interpreting Section 13 of the Bihar (Building) Rent and Eviction) Ordinance, 1982, which is similar to Section 13(5) of the Act, held as below:

Therefore, there is a duty cast on the Court to strike out the defence if there is a failure of the tenant to deposit arrears or rent within 15 days.

13. In this case, the rent for the month of July, 1979, was to be deposited by 15th August, 1979. There was delay only of five days and still the defence of the defendant was struck out.

14. It appears that these aspects of the case could not be considered by the Full Bench, as the counsel of the landlord remained absent when the case was argued. All these questions are interlinked and of great importance and effects so many cases pending before lower courts and also before this Court.

15. Considering the language of Section 5 of the Indian Limitation Act and Sub-sections (3), (4) and (5) of Section 13 of the Act and the judgments of the Apex Court in Ganpat Ladha's and Manju. Choudhary's case (supra), the questions answered by the Full Bench require re-consideration.

16. Office is directed to place the file before Hon. the Chief Justice for constituting a larger Bench for reconsidering the questions answered by the Full Bench in its Judgment passed in Vishan Das's case (supra).

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