

Gopal Singh Vs. Smt. Suraj Devi

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Court : Rajasthan

Decided On : May-13-1987

Reported in : 1987WLN(UC)728

Judge : Jagdish Sharan Verma, C.J.

Appeal No. : S.B. Civil Revision Petition No. 304 of 1933

Appellant : Gopal Singh

Respondent : Smt. Suraj Devi

Disposition : Petition allowed

Judgement :

Jagdish Sharan Verma, C.J.

1. This is defendant-tenant's revision against the trial court's order dated April 5, 1983 rejecting the defended application dated February 19, 1983 made for correction of the trial Court's earlier order dated October 11, 1979 striking out the defence. The material facts are stated here under.

2. The suit was filed on March 9, 1978 for eviction of the defendant on certain grounds contained in Sub-section (1) of Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (here-in-after referred to as 'the Act'. The monthly rent admittedly was Rs. 15/-. The trial court made order on May 25, 1978

under Section 13(3) of the Act determining Rs 150/- as the arrears of rent due from the defendant-tenant for the period of ten months at rate of Rs. 15/-per month and directed payment of the same together with interest thereon amounting to 36.50 or in all the sum of Rs. 187.50. This amount Rs. 187.50 was deposited by the defendant-tenant the same day on May 26, 1978 for payment to the plaintiff landlord. Thereafter the defendant-tenant paid on July 27, 1978 the sum of Rs. 30/- as rent for the months of May and June & continued to pay the subsequent rent regularly as required by Section 13 of the Act.

3. An application dated March 19, 1979 was filed by the plaintiff for striking out the defence on the ground that the rent due for the months of May and June was paid late on July 27, 1978 and therefore there was default in payment of this rent amount of Rs. 30/- within the prescribed period. The trial Court allowed that application and struck out the defence on October 11, 1979 merely on this ground, even though there was prompt deposit of Rs. 187.50 on May 25, 1978, the date on which the order Under Section 13(3) of the Act was passed and there was regular payment of the entire subsequent rent within the prescribed period. The appeal and thereafter the revision against the order dated October 11, 1979, striking out the defence were dismissed.

4. Subsequently the defendant discovered that the correct amount of interest required to be paid under Section 13(3) of the Act on the arrears of rent amounting to Rs. 150/- for the period of ten months was only Rs 4.12 so that in depositing the sum of Rs. 187.50 on May 25, 1978 the defendant-tenant had deposited an excess amount of Rs. 33.38 that day. This factual position was not disputed at the hearing of this revision. The defendant-tenant also realised that in view of the excess deposit of Rs. 33.38, the amount of Rs 30/- due for the months of May and June could be easily adjusted towards the same with the result that the rent of May and June having been paid on May 25, 1978 there was not only no default, but payment of the rent in advance. On this basis there was no default and consequently no foundation for the order striking out the defence, since the commitment of any default in payment of rent by the defendant-tenant is a

condition precedent to the making of such an order. For this reason the defendant-tenant made an application on February 19, 1983 under Section 151 and 152 CPC for correcting the earlier orders of the trial court including the order striking out the defence on this basis. This application has been rejected by the impugned order dated April 5, 1983. Hence this revision by the defendant.

5. The above facts clearly indicate that that the trial Court would not have struck out the defence if it was alive to the fact that an excess amount of Rs. 33.38 had been deposited by the defendant-tenant on May 25, 1978 while the rent for the months of May and June amounting to Rs. 30/- only become due only after May, 1978 so that the rent due for months of May and June could be easily adjusted towards the excess amount deposited on May 25, 1978. The obvious consequence was that as a result of such an adjustment there was not only no default in payment of any rent by the defendant-tenant, but the payment made by him was in advance. Even when there is a default made by the defendant-tenant in payment of the rent within time, it is not incumbent on the court to strike out the defence and such an order has to be made in exercise of the judicial discretion of the Court taking into account all the facts and circumstances of the particular case. It is reasonable to assume that a mere technical default which had later been removed by payment of rent is viewed liberally by the Courts and the power to strike out defence is exercised only in cases where the tenant's conduct is unreasonable or contemptuous. It is equally obvious that in the facts of the present case where a mere direction to adjust the excess amount of Rs. 33.38 towards the rent due for the months of May and June amounting to Rs. 30/- only was required to be made by the Court to wipe out the alleged default, no reasonable person would have acted otherwise and construed it as a default of the defendant-tenant or struck out the defence in these circumstances. Obviously the order dated October 11, 1979 striking out the defence was made as a result of misapprehension of facts by every one including the trial court. The question, therefore, is whether the Court is powerless in such a situation to correct its own error resulting in the hardship of striking out the defence and thereby depriving the defendant-tenant of his legitimate right to contest the suit.

6. It is a maxim of law that the act of a Court shall prejudice no man '*actus curiae nominem gravabit*'. However, learned Counsel for the respondent strenuously urged that the excess amount of Rs. 33.38 was deposited on May 25, 1978 towards interest and not rent, even though it was the result of a wrong calculation of interest which was mentioned as Rs. 37.50 in place of Rs. 4.12 in the trial Court's order dated May 25, 1978 under Section 13(3) of the Act. He argues that this excess amount deposited towards interest would no doubt be refunded to the defendant in accordance with Sub-section (8) of Section 13 of the Act, but the same could not be adjusted towards the rent due without an express order to that effect made prior to the striking out of the defence. He also argued that the order dated October 11, 1979 striking out the defence having become final as a result of dismissal of the appeal and withdrawal of the revision against it, the same could not be set at naught thereafter. Learned counsel for the respondent also placed reliance on certain decisions in support of his contention. These decisions will be referred subsequently.

7. In my opinion, this revision must be allowed in accordance with the legal maxim '*actus curiae nominem gravabit*'. To hold otherwise would be to perpetuate injustice on admitted facts when the Court undoubtedly has inherent power to make such orders as may be necessary for the ends of justice which is reiterated in Section 151 CPC. Section 152 CPC also is significant in as much as it enables and also requires the Court to correct any clerical or arithmetical mistake in its orders arising therein from any accidental slip or omission and such a correction can be made at any time even *suo moto*. The power coupled with the duty of the Court flowing from Section 151 and 152 CPC is wide enough to do justice in the present case by correcting the arithmetical mistake of specifying Rs. 37.50 instead of Rs. 4.12 as the interest due from the defendant in the order dated May 25, 1978 under Section 13(3) of the Act; consequently directing adjustment of the excess amount of Rs. 33.38 towards the rent due for the months of May and June, 1978 and thereafter; and as a logical consequence thereof to rescind the order dated October 11, 1979 striking out the defence on account of the lack of foundation of any default by the defendant-tenant which is jurisdictional fact necessary for making such an order. Once the true facts are brought to the notice of the Court, it becomes its duty to correct the mistake and relieve the defendant of the injustice

resulting from the aforesaid erroneous orders passed by the Court on the basis of an arithmetical mistake and misappreciation of facts. Keshavdeo Chamria v. Radha Kishan Chamaria and Ors. : [1953]4SCR136) and Janakirama Iyer and Ors. v. P.N. Nilkamamta Iyer and Ors. : AIR 1962 SC633).

8. The first decision relied on by learned Counsel for the respondent is Bhanwar Lal and Ors. v. Avtarsingh (1987(1) RCJ 71). It is not necessary to deal with this decision at length, because the same related to correction of a mistake after decision of the suit and not during its pendency. The present case is of correction of an interim order during the pendency of the case. However, even that decision indicates that the options available were to apply under Section 152 CPC to the trial Court for correction of the mistake or to file an appeal or cross-objection. It was held that without adopting any of these courses it was not open to the defendant-tenant to claim in the plaintiff's appeal that the interest had been wrongly calculated and if the same was rightly calculated then the amount under Section 13A would have stood paid. That decision is clearly distinguishable for the reasons given and has no application to the facts of the present case. Another decision of this Court is Gulab Chand v. Raghuvirnath (1981 WLN (UC)237). That case has no application. Similarly the decisions in Jagannath Tawar v. Dr. Gopal Prasad AIR 1983 Patna 50) and S. Balachandmn v. Champalal Jain (1980(2) RCJ 383) cited by learned Counsel for the respondent do not deal with the question involved in the present case. At best they indicate that there is no authentic adjustment of the excess amount deposited by the defendant and an express order to that effect is required to be made. I have already indicated that such an order would have been made by the Court merely for the asking. In the present case the fact of excess deposit of Rs. 33.38 against the alleged default of Rs. 30/- only was missed by the parties and the Court.

9. The contention of learned Counsel for the respondent that the order dated October 11, 1979 striking out the defence cannot now be rescinded after dismissal of the appeal and revision against it, has also no merit. The appeal being dismissed, the trial Court's order remained untouched. The revision was dismissed as withdrawn and, thereafter, there was no decision on merits. In other words, the appellate or revisional order did not vary or modify the trial Court's order and

merely dismissed the appeal and the revision against it. In such a situation there is no impediment in the way of the trial Court in recalling its earlier order dated October 11, 1979 once it modifies the order dated May 25, 1978 on which the order dated October 11, 1979 is based. On the admitted facts the trial Court must correct the arithmetical mistake in its order dated May 25, 1978 by substituting the amount of Rs. 4.12 as interest in place of Rs. 37.50 and thereafter a direction has to be given to adjust the excess amount of Rs. 33.38 towards the rent due from the month of May, 1973 and thereafter. As a consequence of this order the trial Court has to make a further order rescinding or recalling its earlier order dated October 11, 1979 striking out the defence, since there is no foundation then for making such an order. The trial Court shall also make necessary consequential orders to enable the defendant to contest the suit as if the defence was not struck out. It is ordered accordingly.

10. The revision is allowed in this manner and the impugned order dated April 5, 1983 is set-aside. The parties shall bear their own costs.

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