M. Paul Verghese and Co., Ltd. Vs. G.A. Dhanaliwala

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Court : Chennai

Decided On : Oct-29-1959

Reported in : (1960)1MLJ288

Appellant : M. Paul Verghese and Co., Ltd.

Respondent : G.A. Dhanaliwala

Judgement :

Anantanarayanan, J.

1. This is a Letters Patent Appeal by the plaintiff-respondent in City Civil Appeal No. 34 of 1954 before Basheer Ahmed Sayeed, J. That appeal was from the judgment and decree of the learned Principal City Civil Judge in a suit (O.S. No. 79 of 1951) instituted by the plaintiff (appellant here) for recovery of a sum of Rs. 3,650-15-10 and costs. The learned Judge (Basheer Ahmed Syeed, J.) remanded the suit to the lower Court for an enquiry into the actual amount that had been paid by the plaintiff to the defendant, and in order to determine what exactly would be the amount that plaintiff would be entitled to claim a refund of excess rent paid under Section 6(1)(b) of the Madras Buildings (Lease and Rent Control) Act XXV of 1949, as amended upto date.

2. The facts are simple, and may be stated as follows. The plaintiff (appellant here) was the tenant under the defendant with regard to a portion of a certain premises in Madras City from 10th March, 1947, on a monthly rental of Rs. 150. The plaintiff

had paid an advance of Rs. 450 towards the tenancy. The plaintiff made an application to the Rent Controller, and fair rent was fixed at Rs. 85 per month on and with effect from 27th December, 1949. Both the landlord and the tenant preferred appeals from this decision (H.R.A. Nos. 76 of 1950 and 89 of 1950.) In appeal the fair rent was determined at Rs. 40 per month, and this order was made on 30th August, 1950. The plaintiff claimed a refund of the excess amount collected, as also a sum of Rs. 410 out of the advance. After notices between parties, the suit in the City Civil Court was filed, and the defendant contended that the plaintiff would be entitled to a refund of the excess amount of rent paid only for the period of one year reckoned back from 28th August, 1951, which was the date upon which two petitions filed by the parties for the issue of writ of certiorari had been dismissed. The defendant relied on Section 6(1)(b) and the Proviso thereto, as amended and introduced by the amending Act VIII of 1951.

3. It has to be noticed that it was the defendant who instituted the appeal before the learned Judge (Basheer Ahmed Sayeed, J.,) and several contentions appear to have been raised before the learned Judge by respective counsel for the parties. Learned Counsel for the plaintiff-respondent before the learned Judge, here appellant, seems to have then contended that the suit for the refund of the excess amount of rent was not a suit or proceeding with reference to Madras Act XXV of 1949(and the amending Act VIII of 1951, but was a claim in pursuance of a common law right. Consequently, it was contended, that the period of limitation specified in the Proviso to Section 6(1)(b) did not apply. The present argument that a suit of this character was not an

application made, appeal preferred or other proceeding instituted under the said Act and pending at the commencement of this Act

within the scope of Section 20 of Madras VIII of 1951 which was clearly a section intended to give retrospective effect to the Proviso to section 6(1)(b), was not raised by the present appellant, in that form, but it appears to have been touched upon by the learned Counsel for the present respondent (appellant before the learned Judge.)

4. However this might be, the present appellant (plaintiff) puts forward two broad contentions before us. The first is that limitation cannot be applied in this case with reference to the Proviso to Section 6(1)(b) of the Act, as introduced by the amending Act VIII of 1951. This is because the Act must ordinarily be considered as prospective in effect, and not restrospective. Section 20 of the Amending Act VIII of 1951 alone invests the Proviso with retrospective effect, but Section 20, in its terms, cannot apply to this suit. This suit is not an

application made, appeal preferred, or other proceeding instituted under the said Act.

This suit is one instituted as an action in common law or under the Code of Civil Procedure, for the enforcement of a right declared by the statute (Act XXV of 1949) no doubt, but not in the form of any proceeding for which either that Act, or the Rules made thereunder provide. The next argument is that the learned Judge was not correct in holding that the date upon which the Writ Petitions were disposed of by this Court (28th August, 1951), should be the date from which limitation is to be reckoned back, for purposes of the refund. On the contrary, it must only be the date upon which the Rent Controller fixed the fair rent, and there is judicial authority for such a view.

5. We shall deal with both these contentions, but the second contention raises little or no difficulty, and is concluded by authority of this Court. We shall consequently refer to it last. As regards the first contention, it is noteworthy that it was not raised in this form by the appellant before the learned Judge (Basheer Ahmed Sayeed, J.) at all. On the contrary, the point urged, as stated by the learned Judge, was that there was a common law right vested in the plaintiff to claim a refund of any excess paid to the landlord, quite independently of Section 6(1)(b) and the Proviso thereto. The learned Judge pointed out that, as between an ordinary tenant and a landlord, the provisions of the Transfer of Property Act would govern their relations (apart from any application of the provisions of the Madras Act XXV of 1949), and that no-question of fixation of fair rent would arise. The contract would govern the parties, and, since the question of a fixation of fair rent would not arise, apart from the contract, the question of a refund would also not arise. This is so clear and

irrefutable, that the contention deserves no further consideration. It is at least a matter for doubt whether the appellant is really entitled to raise before us some other contention, which was not before the learned Judge at all, namely, that Section 6(1)(b) and the Proviso thereto (introduced by Amending Act VIII of 1951) did not apply to the present facts, since Section 20 of the amended Act, which gives retrospective effect, did not apply to a suit of this character, which was not a proceeding instituted under the Act. However, since curiously enough, it is learned Counsel for the defendant (appellant there and respondent here) who does appear to have raised the point before the learned Judge, we are now dealing with it. It is sufficient to state that, upon this matter, the learned Judge observed as follows:

I do not think authority is needed to support the proposition that suit is a comprehensive term, which would include all proceedings which may arise or which may be taken in respect of a suit. The present suit out of which this appeal has arisen, as I have already observed, is only a proceeding under the Act.

6. Learned Counsel for the plaintiff (appellant here) has relied upon a decision of this Court in Md. Abdulla and Sons v. Dorai Arasu : AIR1956 Mad254 . That was a Bench decision of Govinda Menon and Ramaswami Gounder, JJ., and certainly it did arise with reference to the Amending Act VIII of 1951, which introduced the Proviso that where before the determination of the fair rent, rent had been paid in excess thereof, the refund or adjustment would be limited to the amount paid in excess for a period of one year immediately before such determination. The learned Judges also referred to Section 20 of the Amending Act VIII of 1951, which embodied the retrospective effect of the Proviso, but, upon the facts of the matter before them, the learned Judges came to the conclusion that neither the Proviso nor Section 20 could be applied. That was a peculiar case in which the decision as regards the fixation of fair rent became final prior to the Amending Act of 1951, because the appeal actually instituted by the plaintiff in that matter was for a further reduction of the rent, as the plaintiff was not satisfied with the reduction ordered by the Rent Controller. The learned Judges observed:

In other words...so far as the reduction of Rs. 5 ordered by the Rent Controller was concerned, his order, dated 16th January, 1951, was final.

The learned Judges then proceeded to apply Article 120 to the claim for refund of excess paid, holding that Article 62 was not applicable. This decision does not help the appellant, because it is totally distinguishable. It does not even consider how far the Proviso had retrospective effect, either standing by itself, or by virtue of Section 20 of Amending Act VIII of 1951. The case entirely proceeded on the footing that a final order had been passed as between the parties, determining the fair rent, before the Amended Act came into operation at all. So that Section 20 was also rendered inapplicable to the subject-matter of dispute. The situation here is totally different, and we have to consider whether the suit in the present case is not a proceeding instituted under the Act, which would hence be governed by the retrospective effect given to the Proviso to Section 6(1)(b).

7. It cannot be disputed that, ordinarily speaking, Act of the Legislature should be construed as prospective in effect, and that a retrospective effect should not be spelt out of the language, unless a clear intention, appears to the contrary. Reference might be made here to Maxwell on 'The Interpretation of Statutes,' 10th Edition, page 213:

It is a fundamental rule of English Law that no statute shall be construed to have a retrospective, operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.

See also 'The Construction of Statutes', Crawford, Chapter XXV, Section 277, page 562, and Craies on 'Statute Law' (5th Edition) page 358, quoting Lord Hatherley in Pardo v. Bingham (1870) L.R. 4 Ch. App. 735. But needless to say, even the general presumption is not unqualified, particularly where a statute is curative or remedial in its amendment. Where the intention is clear that the Act should have a retrospective operation, it has to be so construed irrespective of the consequences (Maxwell op-cit., page 222). Crawford states (page 579):.considerations of public policy, public good, and the like may play an important part in exempting curative Acts from the general rule which forbids a construction that gives a statute retroactive effect, even though vested rights may thereby by impaired.

It is observed in Craies On 'Statute Law' at page 369:

Where, however, the necessary intendment of an Act is to affect pending causes of action, the Court will give effect to the intention of the Legislature even though there is no express reference to pending actions.

A very interesting case up on this aspect is Hutchinson v. Jauncey L.R. (1950) 1 K.B. 575. That was a case in which a tenant of a house, within the protection of the Rent Restriction Acts, sub-let two rooms. The sub-tenant subsequently bought the house, subject to the tenancy, and in his capacity as landlord attempted to eject the tenant, but on June 2, 1949, the Landlord and Tenant (Rent Control) Act 1949, came into force, by which the protection was furnished. Upon a true construction of Section 10, the Court held that the relevant provision of the Act applied to pending actions, and that the tenancy was protected with regard to the law as it existed on the date of hearing. It is significant that the principle or rule in Hutchinson v. Jauncey L.R. (1950) 1 K.B. 575, was also applied in Jonsa v. Rosenberg L.R. (1950) 2 K.B. 52.

8. If, for a memonet, we look at Section 6(1)(b) as it stood in Madras Act XXV of 1949 or Madras Act XV of 1946 (this is Section 6(c)), we find that the rule merely states that the sum paid in excess of the fair rent shall be refunded to the person by whom it was paid or, at the option of such person, otherwise adjusted. The failure to specify any period of limitation was clearly a lacuna, and it could not have been the intention of the Legislature that such refund was claimable irrespective of any period of limitation. We must remember that, particularly with regard to ancient tenancies in Madras City which do exist, the fixation of fair rent might give rise to a claim for refund going back for decades. It was apparently in view of this difficulty, that, in Md. Abdulla and Sons v. Dorai Arasu : AIR1956 Mad254 , the learned Judges applied Article 120 upon the facts of that case, where the Proviso to Section 20 of Amending Act VIII of 1951 had no application, because the order had become final before the enactment, and no proceeding with regard to that declaration of rights was then pending. We have no doubt in concluding that, judged from the terms of the Proviso itself, and even apart from Section 20 of the amended Act, the intendment that the Proviso should be retrospectively applied to all cases of claims for refund which were pending upon that date, and not merely to causes which might arise thereafter, can be spelt out of the language, the

context, and the purpose of the Proviso. Such a view is reinforced by the explicit provision of Section 20 of the Amending Act. The argument that the present suit is not a proceeding instituted under the said Act, within the meaning of Section 20, overlooks the vital consideration that the purpose of the Proviso and of the Amending Act itself should be borne in mind as a rule of construction, and that, hence, the words

application made, appeal preferred or other proceeding instituted under the said Act

should be liberally construed. That would certainly include a suit of this character, for this suit is for the enforcement of a right declared under the Act, and is not an independent action under the common law.

9. With reference to the second point, it may be very briefly disposed of, since it is concluded by the authority of the Bench decision of the learned Chief Justice and Ganapatia Pillai, J., in Patel v. Ponnayya Nadar (1959) 1 M.L.J. 32. This enunciates that, in applying the Proviso to Section 6(1)(b) introduced by the Amending Act, a period of one year in such cases must count from the date of the original order of the Rent Controller fixing the fair rent. This is because the determination of fair rent by the appellate authority will date back to the order of the Rent Controller upon the reasoning that, in effect, the order of the appellate authority is the order which the Rent Controller ought to have passed. Hence, the limitation will be a period of one year reckoned back from the date of the order of fixation of fair rent by the Rent Controller; but there can be no other enlargement of this claim. With this modification in the directions of the learned Judge the appeal is dismissed. There will be no order as to costs. Court-fee paid in the appeal will be refunded.