Dhan Singh Ramkrishna Chaudhri & Ors vs Laxminarayan Ramkishan & Anr on 16 April, 1974

Equivalent citations: 1974 AIR 1613, 1975 SCR (1) 94, AIR 1974 SUPREME COURT 1613, 1975 MAH LJ 22, 1975 (1) SCJ 94, 1975 (1) SCJ 358, 1974 2 SCC 293, 1974 SCD 695

Author: Ranjit Singh Sarkaria

Bench: Ranjit Singh Sarkaria, M. Hameedullah Beg

PETITIONER:
DHAN SINGH RAMKRISHNA CHAUDHRI & ORS.

Vs.

RESPONDENT:
LAXMINARAYAN RAMKISHAN & ANR.

DATE OF JUDGMENT16/04/1974

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
BEG, M. HAMEEDULLAH

CITATION:
1974 AIR 1613 1975 SCR (1) 94
1974 SCC (2) 293

ACT:
Bombay Tenancy and Agricultural Lands Act, 1948, S.25(2)--Part payment of rent for each year for 3 years--If failure to pay rent for 3 years within the meaning of section.

HEADNOTE:
If, rent is agreed upon between the landlord and tenant, under s. 7 of the Bombay Tenancy and Agricultural Lands Act, 1948, the rent payable by the tenant would be such rent subject to the maximum rate fixed by the State Government under s. 6 of the Act. Under s. 25(2) of the Act as it stood before 1956, if the tenant had failed for three years to pay rent within the period specified in s. 14 the concerned officer would have no discretion to grant time lo

the tenant to pay the arrears and thus afford relief against forfeiture.

In the present case, the rent agreed upon between the parties was Rs. 850/-. For 1952-53, the tenant paid Rs. 850/- but in view of the Government notification dated September 1, 1952, issued under s. 6, the maximum rent chargeable in respect of the land could not exceed Rs. 685/5/-. For 1953-54, he paid only Rs. 350 but credit was given to him by the authorities for Rs.. 164/11/- by adjusting that amount out of Rs. 850, which he had paid for 1952-53, when he had to pay only Rs. 685/5/-. He paid nothing in the year 1954-55 and made a part payment of Rs. 531/1/- towards the rent for the year 1955-56 after the expiry of the period under s. 14. The balance of arrears for the 3 years was Rs. 1010/3/-. The Tribunal, under the Act, directed the appellant-tenant to deliver possession of the land to the respondent-landlord. A writ petition challenging the order was dismissed by the High Court.

In appeal to this Court, it was contended that the observations in Raja Ram's ,case [1962] Supp. 1 SCR 739 and in Vithal's case [1968] 1 S.C.R. 541, showed that in order that s. 25(2) may be attracted, the total amount of arrears of rent must exceed the aggregate rent of two years.

Dismissing the appealed

HELD : The appellant defaulted in payment of rent for the 3 years 1953-54. 1954-55 and 1955-56, within the meaning of the section, and hence was not entitled to relief from forfeiture.

The language of s. 25(2) is unambiguous, clear and unequivocal. There is no scope even with the aid of any rule of beneficent interpretation for construing the sub-section in a manner contrary to its plain ordinary meaning. The failure or defaults in payment for any three years, envisaged by the sub-section, may be either with regard to the amount of rent or the period specified for payment or both. Failure and default are synonymous terms. Failure means a falling short, and default means omission of that which a man ought to do. Therefore, a partial default or failure to pay the whole of the rent due for the year will also be a failure within the meaning of the sub-.section, more so, if the part payment had been made beyond the specified period. Any other construction would lead to strange results, and even a persistently defaulting tenant would be able to stave off eviction by paying only a part of the rent due every year so that the unpaid arrears remain. in the aggregate less than the total rent of two years. [100 B-E; 102 G-103 A]

Raja Ram Mahadev Paranjype and ors. v. Aba Maruti Mali & ors, 11962] Supp. 1, S.C.R. 739, followed.

Vithal Vasudeo Kulkarni & ors. v. Maruti Rama Nagane & Ors., [1968] 1, S.C.R. 541, explained.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 697 of 1971. From the judgment and order dated 10th August, 1970 of the Bombay High Court in S.C.A. No. 1430 of 1,967. M.C. Bhandare, P. H. Parekh, and Mrs. Sunanda Bhandare for the appellant.

B.D. Bal and S. V. Parekh, and S. V. Tambvekar for the respondent.

The Judgment of the Court was delivered by SARKARIA J. This appeal is directed against the judgment and order, dated 10th August, 1970, of the High Court of Judicature at Bombay.

Appellants are heirs of one Ramkrishna Khandu Chaudhari who was a protected tenant of the suit lands belonging to Respondent No. 1. The landlord made an application against the tenant in the Court of Extra Aval Karkum for possession of the suit lands under s. 29 read with ss. 14 and 25(2) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter called the Act) on the ground that the tenant had committed defaults in payment of the rents for the years 1953-54, 1954-55 and 1955-56. The Aval Karkum who tried the application, found that the annual rent of the lands payable by the tenant was Rs. 685/-, and that, in all,, the tenant had paid Rs. 1045112/- towards the rent of these three years. He held that the appellants were not wailful defaulters and granted them under s.25(1) three months' time to pay the arrears of rent. He however refused to pass any order for payment of the subsequent rent. The tenant did not appeal against this' order. But the landlord preferred on appeal to the District Deputy Collector, Jalgaon who on September 30, 1961 allowed the appeal, set aside the order of the Aval Karkun and remanded the case for finding out the exact amount of the arrears up to the date of the order and decreeing the claim accordingly. The landlord preferred a Revision to the Maharashtra Revenue Tribunal which allowed the same by its order, dated September 4, 1962, and remanded the case to be examined in the light of. the law laid down by this Court in Raja Ram Mahadev Paranjype and Ors. v. Aba Maruti Mali and Ors.(1) and in some High Court judgments. It further directed that the District Deputy Collector might allow the parties to lead additional evidence, if he thought it necessary.

On remand, the Deputy Collector allowed the parties to lead evidence and redecided the case. He held that the rent fixed was Rs. 500,1per year, and that only one default, and not three defaults, bad been proved and consequently, the land-lord was not entitled to the possession of the suit lands. He remitted the case to the Extra Aval Karkum for passing an order under s. 25 (1) of the Act. The landlord again went in revision before the Tribunal against this order, dated April 23, 1964. The Tribunal held that the Deputy Collector had no jurisdic-

1. [1962] suppl. 1. S. C. R. 739.

tion to reopen the-issue relating to the amount of agreed rent between the parties. It also examined the law laid down by this Court in Raja Ram Mahadev's case (supra). A set aside the order of the Deputy Collector and directed delivery of possession of the 'suit land to the landlord. For impugning this order, dated April 13, 1967, of the Tribunal, the tenants moved the High Court by a writ petition

under Article 227 of the Constitution. The writ petition came up for hearing before a learned Judge of the High Court, who by his order, dated November 14, 1969, referred this question to the Division Bench "Can the tenant be said not to have failed for any three years to pay rent within the meaning of section 25(2) of the Bombay Tenancy Act, when as a result of part payments made by him, total amount of arrears do not exceed rent equivalent to two years"?

The Division Bench decided this question against the tenants and dismissed their writ petition. The High Court granted a certificate under Article 133(1)(b) of the Constitution that the case was fit for appeal to this Court.

This case is admittedly governed by the Act as it stood before the amendment of August 1, 1956. The material provisions of the Act relevant for decision of this appeal may now be set out.

The Preamble inter alia states that the Act is enacted for the purpose of improving the economic and social conditions of peasants. Section 2(15) defines 'reasonable rent' to mean the rent determined under s.12.

Sub-section (1) of s. 6 lays down that notwithstanding any agreement, usage, decree or order of a Court or any law, the maximum rent payable by a tenant for the lease of any land, in the case of an irrigated land, shall not exceed 1/4th and in the case of any other land exceed 1/3rd of the crop of such land or its value. Sub-section (2) thereof enables the State Government to fix by notification in the official gazette a lower rate of the maximum rent payable by the ten- ants. Such a notification was issued in this case.

Section 7 defines 'rent' to mean "The rent payable by a tenant shall subject to the maximum rate fixed under Section 6, be the rent agreed upon between such tenant and his landlord or in the absence of any such agreement, the rent payable according to the usage of the locality or if there is no such agreement or usage, or where there is a dispute as regards the reasonableness of the rent payable according to such agreement or usage, the reasonable rent."

Section 14 in so far it is material for our purpose, reads "14(1) Notwithstanding any agreement, usage, decree or order of a Court of law, the tenancy of any land held by a tenant shall not be terminated unless such tenant-

> (a)(i) has failed to pay in any year within fifteen days from the day fixed for the payment of the last instalment of land revenue in accordance with the rules made under the Bombay Land Revenue Code, 1879, for that year, the rent of such land for that, year, or . . . . "
>
> The crucial provisions, the interpretation of which is involved, are in S. 25 which runs : "(1) Where any tenancy of any land held by any tenant is terminated for non-payment of rent and the landlord files any proceedings to eject the tenant, the Mamlatdar shall call upon the tenant to tender to the landlord the rent in arrears together with the cost of the proceeding, within fifteen days from the date of order,

> and if the tenant complies with such order, the Mamlatdar shall in lieu of making an order for ejectment, pass an order directing that the tenancy had not been terminated and thereupon the tenant shall hold the land as if the tenancy had not been terminated.....
>
> (2)Nothing in this section shall apply to any tenant whose tenancy is terminated for non-payment of rent if be has failed for any three years to pay rent within the period specified in section 14."

Section 26 lays down that in the absence of an express intimation in writing to the contrary by a tenant every payment made by a tenant to the landlord shall be presumed to be a payment on account of rent due by such tenant for the year in which the payment is made.

Mr. Bhandare, learned Counsel for the appellants has canvassed the following points

(i) that there was no failure to pay rent by the tenant as the agreed rent had not been established and the tenant has been paying the rent every year at the rate of Rs. 500/which, according to him, was the agreed rent;

(ii)Section 25(2) is attracted only if the amount of arrears exceeds the aggregate of two years' rent. This is not the case here.

Reliance has been placed on this Court's decision in Vithal Vasudeo Kulkarni and ors. v. Maruti Rama Nagane and ors.(1) wherein the earlier decision of this Court in Raja Ram Mahadev's case (supra) was distinguished, The first question to be considered is Did the Court of Extra Aval Karkun determine the agreed rent payable by the tenant within the meaning of s. 7 of the Act ? An analysis of the definition of s. 7 would show that the rent payable by a tenant (subject to the maximum rate fixed under s. (6) (2) [1968] 1, S. C. R. 541.

is (a) the rent agreed upon between such tenant and landlord Pr (b) in the absence of' any agreement, the rent according to usage of the locality or (c) where there is dispute as regards the reasonableness of the rent payable according to such agreement or usage, the reasonable rent. The case before us, fell under Clause (a). The landlord alleged that the agreed rent was Rs. 850/-. Since the rent fixed under the Government Notification was 'less than the agreed rent, the landlord actually claimed an amount as rent calculated on the basis of the lower rate i.e. Rs. 685/5/- per annum. However, the tenant contended that the agreed rent was Rs. 5001- per annum. Ile Extra Aval Karkun reduced this point of controversy into an issue to this effect :

> "No. 4. What was the rent fixed between the parties in respect of the suit lands."

He answered this point, as "Rs. 685/5/-." His reasoning in arriving at this finding was that "in the absence of any written document or sufficient oral evidence, the mere statements (of the parties) cannot be relied upon. It will have therefore to be presumed that the rent of the suit lands was fixed according to Government Notification No. 3490/49 dated September 1, 1952 as five times the

assessment".

It is to be noted that the. suit land was assessed to Rs. 137/1/and five times of that assessment works out to Rs. 685/5/-. Though the language employed by the ' Aval Karkun with regard to the reliability and sufficiency of the statement of the landlord was inapt and unhappy, yet there is no doubt that in substance, he accepted the landlord's stand that the agreed rent which was Rs. 850/- would be presumed to have, been scaled down by the parties to. Rs. 685/5/in accordance with the Government Notification. The fact remains, that he found that the rent fixed between the parties, was Rs. 685/5/-.

It is important to bear in mind that the tenant did not appeal against this determination whereby the Aval Karkun had rejected his contention regarding the rent being Rs. 5001-. This determination therefore, that the agreed rent as scaled down, was Rs. 685/5/had become final, so far as the tenant was concerned.

The landlord felt aggrieved against that part of the order by which the Aval Karkun had granted relief to the tenant against forfeiture. He therefore, carried an appeal against the order of the Karkun to the District Deputy Collector. The Deputy Collector, who was the final tribunal of fact, in his order dated September 30, 1961, noted "that the rent of the suit land was fixed at Rs. 850/-, as could be seen. from the entry of V. F. VII-XII of s. Nos. 12 of Bhokani village". But in view of the fact that under the Government Notification of September 1, 1962, the maximum rent charge- able in respect of the land in dispute could not exceed Rs. 685.31, he upheld the carrying over and adjustment of a part of the rent paid for the year 1952-53, in excess of the maximum notified rate, allowed by the Aval Karkun, towards the rent for the year 1953-54. It is noteworthy that the contractual rent for the years 1950-51 and 1951-52 was Rs. 850/- per annum. The tenant had defaulted to pay the rent of those years. The landlord instituted proceedings for the tenant's eviction. Those proceedings ended in a compromise on February 24, 1952, according to which, the tenant was to pay the arrears at the rate of Rs. 850/- per year within a stipulated time failing which the landlord could enforce forfeiture, counting the previous defaults for 1950-51 and 1951-52. The tenant paid Rs. 1700/- towards the two years rent at the agreed rate, but beyond the stipulated time. Before the Deputy Collector, the landlord contended that the previous defaults should also be taken into account so that the tenant was not entitled to any relief against forfeiture. The Collector did not accept this contention for the reason that "there has been a compromise between the parties and so the force of willfulness of default does not remain". The Deputy Collector decreed the landlord's claim to rent presumably at the rate of Rs. 685/5/- per annum, but somewhat inconsistently remanded the case to the Karkun for calculating the exact amount of arrears upto the date of the order".

The tenant did not challenge this order by way of revision or otherwise. It is therefore too late in the day for the appellants to 'urge that the agreed rent for the years in question was not Rs. 685/5/- but Rs. 5001- per annum. Rs. 685/5/- per annum being the rent payable, there could be no. manner of doubt that the tenant had defaulted for the three years in question in payment of that rent in two ways. Firstly, he did not pay the full rent due for any particular year he made only part-payments. Secondly, he did not pay within the period specified according to S. 14. As admitted before us, the

rent was payable by the 25th February of the year for which it was due. In 1953-54. he paid Rs. 350/-, but credit was given to him later by the authorities for Rs. 164/11 by adjusting that amount out of Rs. 850/- which he had paid as agreed rent for the year 1952-53. Thus he paid Rs. 514/11/- only and Rs.- 170/10/- remained outstanding for the year 1953-54. He paid nothing for the year 1954-55. His claim that he had paid Rs. 500/- in that year was found to be false. He made a part payment of Rs. 394/3/- only towards the rent for the year 1955-56, on February 29, 1956 i.e. after the expiry of the period indicated in s. 14. In this defaulting manner. the total amount paid by the tenant for these three years was Rs. 1045/12/- and the total balance of rent in arrears due from him,, was Rs. 1010/3/- made up as below :

Arrears for the year 1953-54 Rs. 170-10-0 Arrears for the year 1954-55 Rs. 685-5-0 Arrears for the year 1955-56 Rs. 154-4-0 Rs. 1010-3-0 The question that fell for decision was : Whether on the above facts, the tenant could be held to have failed within the contemplation of sub-section (2) of s. 25, as it stood before 1956, 'for any three years to pay rent within the period specified in section 14'? If the answer to this question was in the affirmative, then the Aval Karkun/Mamlatdar would have no discretion to grant the tenant time to pay up the arrears and thus afford relief against forfeiture.

From a plain reading of sub section (2) of s. 25, it is manifest that the failures or the defaults in payment for any three years, envisaged by it may be either with regard to the 'amount of rent or the period specified for payment, or both. Failure and default are synonymous terms. 'Failure' in the dictionary sense, means 'a failing short', 'a deficiency' or 'lack. Default means omission of that which a man ought to do. Therefore, a partial default or failure to pay the whole of the rent due for the years will also be a failure within the meaning of this sub-section, more so, if these part payments had been made beyond the specified period. If the tenant makes only part payments of 'rent for any three years, he would be a persistent defaulter even if the aggregate of the amount in arrears does not exceed the total rent of two years for the purpose of the sub-section.

The language of sub-section (2) is unambiguous, clear and unequivocal. It is not susceptible of two interpretations. There is therefore, no scope-even with the aid of any rule of beneficent interpretation-for construing this sub-section in a manner contrary to its plain ordinary meaning. Moreover, the point is covered by the decision of this Court in Raja Ram's case (supra) and we are bound by the same. In Raja Ram's case (supra) the tenants were in default in paying rent for three years and duo notices had been served by the landlords terminating the tenancies. They applied to the Mamlatdar under s. 29 of the Act for possession of the lands. The Mamlatdar refused to make an order for possession on the ground that the tenants were entitled to relief against forfeiture on equitable 'principles. In the 'fourth' appeal before the Court, in respect of the default in the first year, the tenant had been granted relief against forfeiture under 25(1) of the Act. The tenant contended that the default in the first year had merged in the order 'under s. 25(1) and could not be relied upon for

holding that he had defaulted for three years. It was held by this Court that the landlords were entitled to orders for possession because upon default in payment of rent for three, years a statutory right accrued to the landlords under s. 25(2) to terminate the tenancy and to obtain possession. There was no provision in the Act for granting relief against forfeiture in such a case; the provision in s. 29(3) that the Mamlatdar "shall pass such orders as he deems fit" did not give him such a power. The Act merely empowered him to grant relief where the tenant was not in arrears for more than two years. No relief against forfeiture could be granted to a tenant who fails to pay rent for any three years within the period specified in section 14, either on equitable grounds or under S. 114 of the Transfer of Property Act.

This decision does not support the appellants' contention that in order that sub-section (2) of S. 25 may be attracted the total amount of arrears must exceed the aggregate rent of two years. Rather the finding that in the "fourth appeal" the default in the first year could also be taken into consideration in computing of three years in spite of the tenant having been relieved against forfeiture for that year, and that the order granting the relief did not wipe out the default, gives ,in indication to the, contrary. Vithal's case (supra) does not advance the appellants' case. It does not lay down a principle in conflict with the ratio of Raja Ram's case (supra). In Vithal's case the rent was payable by the 20th March every year. The rent for the years 1951-52, 1952-53, 1953, 54 and 1954-55 was paid by the tenant and accepted by the landlord though it was not paid on due dates. Thus, on the date on which the landlord filed the application under S. 29 of the Act for eviction of the tenant on the ground that the rent had not been paid for the aforesaid years by the due dates. No arrears of rent were outstanding against the tenant. Dismissing the landlord's appeal which he had filed by special leave, this Court speaking through Shelat J., construed S. 25 of the Act thus :

"Sub section (1) thus presupposes that there are =ears at the date of the application which the Mamlatdar can direct the tenant to pay and that on such arrears being paid the Mamlatdar has to, order notwithstanding the termination of the tenancy by the landlord that such tenancy had not been terminated and no order of eviction can be passed against such tenant. Sub-section (2) on the other hand deals with a case where there is persistent default by the tenant for three years and provides that to such a case the provisions of sub-s. (1) would not apply. The Mamlatdar in such a case has not the power to order payment of arrears as he would do under subsection (1) and on payment of such arrears to direct as he would do under subsection (1) that the tenancy shall be treated as not having been terminated. Sub-section (2) therefore also presupposes (i) that the tenant has made defaults for more than two years and (ii) that the tenant was in arrears at the date of the application which arrears in this case the Mamlatdar cannot order the tenant to pay up. Sub-secti on (2) is in contra, distinction of sub-section (1) that is to say whereas in the case of less than 3 defaults the Mamlatdar can call upon the tenant to pay the arrears and can' on payment of such arrears direct that the tenancy was not terminated. be cannot do so under sub-

> section (2) where there are more than two defaults and direct that the tenancy bad not been terminated. If this was not the correct construction of sub-section (2) and if the appellants' construction were to be accepted it would lead to a very astonishing result, viz., that even where the tenant has paid up all the arrears and the landlord has accepted them, he would still have the right to evict the tenant, though his reason for terminating the tenancy and his cause of action for an action for eviction have disappeared by his acceptance of the arrears due to him. (emphasis added) It will be seen that in Vithal's case this Court was dealing with an entirely different situation. No arrears were in existence or subsisting on the date of the landlord's application, whereas in the present case, a sum to the tune of Rs. 1010/3/- being the total of short payments for the three years in question, was still outstanding against the tenant. In fact, if the tenant offers and the landlord accepts the full amount of rent in arrears, the, cause of action for ejectment on the ground of non-payment of rent disappears. The acceptance of rent may amount to waiver of the landlord's right to evict. By no stretch of imagination the decision in Vithal's case can be understood as laying down that if the amount of rent due from the tenant at the date of the landlord's application for eviction does not exceed the total of two years rent, Subs. (2) of s. 25 cannot apply. "Arrears" mean money unpaid at the due time; as rent behind (see Earl Jowitt's Dictionary of English Law).

Sub-section (2) of s, 25 lays down in clearest peremptory terms that if the tenant fails to pay the rent for any three years within the period specified in s. 14, the authority concerned will be left with no discretion under subsection (1) to allow the tenant to pay up the arrears, and on such payment to direct that the tenancy had not been terminated. The words "the tenant has made defaults for more than two years" and "arrears" in the underlined portion of the above quoted, passage convey nothing more or different from what is explicit in the words "if he has failed for any three years to pay rent within the period specified in S. 14"

> occurring in sub-section (2) of S. 25. All that was intended to emphasis was that even if the tenant defaults. in payment of rent for any three years, but the arrears relatable to these defaults are cleared as a result of the tender of full amount due by the tenant and its acceptance by the landlord, this sub-section (2) will not come into operation and the landlord's application 'for eviction, when no arrears are outstanding would not be maintainable. It will bear repetition that "failure to pay rent for any three years" is not the same thing as failure to pay rent equivalent to Pore than two years rent. Even if the tenant fails to Pay Part of the rent due in any year within the period specified, in s. 14, be defaults to pay rent for that year. Such partial defaults are all defaults within the contemplation of sub-s. (2) of S. 25. Any other construction would lead to strange results, and even a persistently defaulting tenant would be able to stave off eviction by paying only a part of the rent due every year so that the unpaid arrears remain, in the aggregate, less than the total rent of two years.
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> In the light of the above discussion, we negative the contentions Canvassed on behalf of the appellants uphold the decision of the High Court and dismiss this appeal. In

the circumstances of the case, we leave the parties to bear their own costs.

V.P.S. Appeal dismissed.