Dilip vs Mohd. Azizul Haq & Anr on 14 March, 2000

Equivalent citations: AIR 2000 SUPREME COURT 1976, 2000 (3) SCC 607, 2000 AIR SCW 1035, 2000 (2) SCALE 347, 2000 (4) LRI 897, (2000) 2 ALLMR 560 (SC), 2000 (1) UJ (SC) 705, (2000) 3 JT 114 (SC), 2000 (4) SRJ 151, 2000 (3) JT 114, (2000) 1 RENCJ 643, (2000) 1 RENCR 350, (2000) 2 RECCIVR 448, (2000) 1 HINDULR 690, (2000) MATLR 340, (2000) 1 ALLCRILR 783, (2000) 2 MARRILJ 285, (1999) 2 CAL HN 625, (2000) 2 MAH LJ 741, (2000) 1 RENTLR 437, (2000) 2 SUPREME 337, (2000) 2 SCALE 347, (2000) 2 CURCC 30, (2000) 3 BOM CR 324, 2000 (2) BOM LR 609, 2000 BOM LR 2 609

Author: S.Rajendra Babu

Bench: S.Rajendra Babu

PETITIONER:
DILIP

Vs.

RESPONDENT:
MOHD. AZIZUL HAQ & ANR.

DATE OF JUDGMENT: 14/03/2000

BENCH:
S.S.M.Quardi, S.Rajendra Babu

JUDGMENT:

RAJENDRA BABU, J. :

Leave granted in S.L.P. (C) Nos. 6767-6768 of 1999.

Respondent No. 1 filed a civil suit against the appellant regarding the plot in Civil Suit No. 268 of 1987 on the ground that the premises is open land and the provisions of C.P. and Berar Letting of Houses and Rent Control Order, 1949 [hereinafter referred to as the Order] was not applicable to the said premises and that the tenancy of the appellant stood terminated by efflux of time followed by a notice dated 8th March, 1986 with effect from 1st April, 1986. The appellant took the stand that the premises in question is not an open plot but is a house as defined in the Order as the said land is a part and parcel of the residential house and the residential house cannot be used

without the said land. Further it was contended that permission to construct a shed had been granted, the open land was no longer an open land as such shed had been constructed with permission. There is a well also situate in this land which is for the use of the occupants of the house in the premises and, therefore, clause 13-A of the Order would dis-entitle the respondent from obtaining the relief of a decree. The Civil Judge, Akola, passed a decree. The appellant preferred an appeal challenging the findings of the trial court that the premises in possession of the appellant is an open plot and not a house as defined in clause 13 of the Order. On 27th June, 1989 the Order was amended by substituting the word premises for the word house, wherever it occurs, and by this amendment, sub- clause (4-A) was also inserted in clause 2 whereby lands not being used for agricultural purposes also stood included in the definition of the premises. Thereafter the State of Maharashtra made another amendment which became effective from 26th October, 1989 and introduced clause 13-A in the Order to the effect that no decree for eviction shall be passed in a suit or proceeding filed and pending against the tenant in any court or before any authority unless the landlord produces a written permission of the Controller as required by sub- clause (1) of clause 13. At that stage, the appellant filed an application under Order 7 Rule 11 of the Civil Procedure Code to contend that in view of the amendment introduced by insertion of clause 13-A read with the definition of premises in clause 2(4-A) the Order stood extended to open plots and, therefore, even on the basis of the plaint allegations the same was liable to be rejected. In the meanwhile, the respondent filed a Writ Petition before the High Court of Judicature at Bombay, Nagpur Bench, challenging the validity of clause 2(4-A) and clause 13-A of the Order on the ground that the same are ultra vires Section 2 of the C.P. and Berar Regulation of Accommodation Act, 1947 [hereinafter referred to as the Act]. The High Court stayed the proceedings in the appeal pending before the District Court. A Division Bench of the High Court declared the said provisions in clause 2(4-A) and clause 13-A of the Order ultra vires the Act. The appellant preferred an appeal by special leave to this Court. This Court allowed the said appeal and the matter stood remanded to the High Court with a direction that the High Court to restore to its file the original Writ Petition and to decide the question with regard to the applicability of clause 2(4-A) and clause 13-A of the Order to the facts as available in the present case and to dispose of the Writ Petition afresh as to the vires of the clauses, if so warranted. In the meanwhile, Joint District Court, Akola, allowed the appeal filed by the appellant and the suit filed by the respondent No. 1 was dismissed. A revision application was filed before the High Court questioning the correctness of the order made in the appeal which is pending consideration by the High Court.

After remand in the writ petition, the High Court took the view that there was no appeal filed or pending against the tenant on 26th October, 1989 when the second amendment was published and hence it has to be inferred that no proceedings are filed or pending against the tenant as on that date and thus the amendment was not applicable to the instant case as the tenancy in respect of the open plot was deemed to have expired immediately on 10th April, 1986 in view of Section 106 of the

Transfer of Property Act and the suit plot was not covered under the provisions of the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 and the suit was decreed. The second amendment brought into force on 26th October, 1989 was not applicable to the plot as the same would be prospective and not retrospective. On that basis the High Court held that clause 2(4-A) and clause 13-A of the Order would not be applicable to the suit land and disposed of the writ petition. This order is in challenge before us.

A contention has been raised before us that the expression house would also include land appurtenant to such building and, therefore, it is a part of the house and even if the amendment is not held applicable, the High Court should have examined the question whether the premises in question is a house as defined under the Act or not. Further at the time of hearing, a point, which was put forth before us, is that clause 13-A is applicable to a pending appeal even filed by a tenant. On behalf of the appellants reliance is placed on three decisions Amarjit Kaur v. Pritam Singh & Ors., 1974 (2) SCC 363; Lakshmi Narayan Guin & Ors. v. Niranjan Modak, 1985 (1) SCC 270, and H. Shiva Rao & Anr. v. Cecilia Pereira & Ors., 1987 (1) SCC 258, to contend that if a rent Act is made applicable during pendency of an appeal irrespective of the fact whether the appeal is preferred by the landlord or by the tenant, such appeal would be governed by the Act and its provisions would operate from the date of the filing of the suit and if the suit filed not in terms of the ground specified in the rent Act, the suit would be incompetent and, therefore, the appeal must be disposed of accordingly. Shri V.A. Mohta, the learned senior Advocate appearing for the respondents, submitted that the Act provides for regulating the letting and sub-letting of accommodation in the State of Madhya Pradesh of which Akola town was a part prior to the reorganisation of the States and that the Act is applicable. Government under Section 2 of the Act could, by an order, extend by a notification for regulating the letting and sub-letting of any accommodation or class of accommodation whether residential or non-residential, whether furnished or unfurnished and whether with or without board and, inter alia, providing for preventing the eviction of tenants or sub-tenants from such accommodation in specific circumstances. Therefore, it was argued that the Order is only an administrative order and cannot have retrospective effect and relied upon the decisions of this Court to support this proposition in The Income Tax Officer, Alleppy v. M.C. Ponnoose & Ors. etc., 1969 (2) SCC 351; The Cannanore Spinning and Weaving Mills Ltd. v.. Collector of Customs and Central Excise, Cochin & Ors., 1969 (3) SCC 112, and Bakul Cashew Co. & Ors. v. Sales Tax Officer, Quilon & Anr., 1986 (2) SCC 365. It was further contended that the accommodation would only mean a residential or dwelling house and can never mean open plot of land; that the definition of house could not have been replaced by premises and, therefore, the said provision is ultra vires. It was further submitted that the appeal was filed only against the decree and thus the bar under clause 13-A was only in respect of passing of a decree and inasmuch as a decree had already been passed, it would not be applicable to a proceeding in an appeal or a revision petition. Shri A.K. Sanghi, the learned

counsel for the respondents, adopted these arguments of Shri Mohta as to the interpretation of the provisions and added by submitting that there had been a surrender of the premises which, however, was not supported by any material on record.

The vires of the provisions are not in issue before us. Now what we have to consider in this proceeding is whether the provisions of clause 13-A would be applicable to the present case or not. The High Court proceeded on the basis that there is no appeal filed or pending against the tenant on 26th October, 1989 when the amendment came into force and, therefore, it has to be inferred that no proceedings were filed or pending against the tenant as on that date. This view of the High Court does not take note of the language of clause 13-A of the Order. The effect of a decree passed by a court against which an appeal is filed has been considered in Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri, 1940 FCR 84, wherein the Federal Court explained that once a decree passed by a court has been appealed against the matter became sub-judice again and thereafter the appellate court acquired seisin of the whole case. It has been a principle of legislation in India at least from 1861 onwards that a court of appeal shall have the same powers and shall perform as nearly as may be the same duties as conferred and imposed on courts of original jurisdiction. Such a view was taken even before the Civil Procedure Code was introduced in Kristnama Chariar v. Mangammal, 1902, ILR 26 Mad 91, that the hearing of an appeal is under the processual law of the country being in the nature of a re-hearing and it is on the theory of an appeal being in the nature of a re-hearing that the courts in this country have, in numerous cases, recognised that in moulding the relief to be granted in a case on appeal, the court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against. As an appeal is a re-hearing, it must follow that if an appellate court dismisses an appeal it would be passing a decree affirming eviction and thereby passes a decree of its own, and in the event it upsets the decree of the trial court, it would be again passing a decree of its own resulting in merger of decree of the trial court with that of the appellate court. In Garikapati v. Subbiah Chowdhry, AIR 1957 SC 540, this Court enunciated that the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and one to be regarded as one legal proceeding.

After we heard the arguments, the learned counsel for the respondents circulated a decision Motiram Ghelabhai v. Jagan Nagar, 1985 (2) SCC 279, to contend that when a provision is amended or repealed in respect of a pending suit the principle that an appeal is a continuation of the suit, cannot invoked so as to apply to appeals. In that case, when the appeal was pending, Part II of the Bombay Rents, Hotel and Lodging Housing Rates Control Act, 1947 was made applicable to the area directly covered by the proviso to Section 50 with a separate paragraph added thereto and the appeal was liable to be decided and disposed of as if the 1947 Act had not been passed, that is to say, the appeal had to be disposed of in accordance with the law then applicable to it.

Therefore, in those circumstances, this Court made the observation that the language of Section 50 of the 1947 Act read with the proviso thereto was an ordinary repealing clause and it was held that the principle that the appeal is a continuation of the suit could not be invoked inasmuch as such a provision prevails over a general provision affording protection to tenants. Otherwise, we cannot reconcile this decision with the three decisions referred to earlier in this order and relied on by the learned counsel for the appellants. Hence, the learned counsel for the respondents cannot derive any support from this decision.

In theory the appeal is only a continuation of the hearing of the suit. Accordingly, the word suit in the Order has to be understood to include an appeal. The result is that at the time of the institution of the suit for eviction clause 13-A was not in force, but at the time of appeal such a clause is introduced, the tenant in appeal becomes entitled to its protection. We draw support for these propositions from the three decisions of this Court cited by the learned counsel for the appellants. Therefore, we are of the view that the High Court was not justified in holding that there was no appeal filed or pending against the tenant. In this case, although a decree for eviction had been passed in the suit, that decree was under challenge in a proceeding arising out of that suit in appeal and was pending in a court. Thus an appeal being a re-hearing of the suit, as stated earlier, the inference drawn by the High Court that no proceedings were filed or pending against the tenant as on the date would not be correct..

The High Court further concluded that the amendments have no retrospective effect. The provision came into force when the appeal was pending. Therefore, though the provision is prospective in force, has retroactive effect. This provision merely provides for a limitation to be imposed for the future which in no way affects anything done by a party in the past and statutes providing for new remedies for enforcement of an existing right will apply to future as well as past causes of action. The reason being that the said statutes do not affect existing rights and in the present case, the insistence is upon obtaining of permission of the Controller to enforce a decree for eviction and it is, therefore, not retrospective in effect at all, since it has only retroactive force.

The problem concerning retrospectivity concerning enactments depends on events occurring over a period. If the enactment comes into force during a period it only operates on those events occurring then. We must bear in mind that the presumption against retrospective legislation does not necessarily apply to an enactment merely because a part of the requisites for its action is drawn from time antecedent to its passing. The fact that as from a future date tax is charged on a source of income which has been arranged or provided for before the date of the imposition of the tax does not mean that a tax is retrospectively imposed as held in Commissioners of Customs and Excise v. Thorn Electrical Industries Ltd., 1975 (1) WLR 1661. Therefore, the view of the High Court that clause 13-A is retrospective in effect is again incorrect.

The High Court further took the view that the expression premises in the Act does not state as to when the amendment was to be effective as it does not state whether the amendment was retrospective or prospective. The same is on the statute book on the date on which the suit or proceeding is pending for purpose of eviction and cannot ignore the provision on the statute book. Therefore, the view of the High Court on this aspect of the matter also, is incorrect. The arguments advanced on behalf of the respondents that these amendments are retrospective in character and could not have been made in the absence of an authority under the main enactment by virtue which such order is made is untenable.

For the aforesaid reasons, the appeals are allowed, the order made by the High Court is set aside and the matter is remitted to the High Court for a fresh consideration in accordance with law. There will be no order as to costs.