Indumati Markandray Trivedi vs Jhala Umedsinhji Merubhabhai on 1 February, 1985

Equivalent citations: AIR1985SC369, (1985)2GLR803, 1985(1)SCALE216, (1985)1SCC567, 1985(17)UJ679(SC), AIR 1985 SUPREME COURT 369, 1985 (1) SCC 567, 1985 (2) 26 GUJLR 803, 1985 MPRCJ 187, 1985 SCFBRC 139, (1985) 1 APLJ 37.2, (1985) 2 GUJ LR 803, 1985 UJ (SC) 679, (1985) GUJ LH 359, (1985) 1 LANDLR 339, (1985) MAHLR 383, (1985) 2 RENCJ 17, (1985) 1 RENCR 331, (1985) 1 RENTLR 388, (1985) 2 BOM CR 151

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Bench: S. Murtaza Fazal Ali, R.B. Misra

JUDGMENT

R.B. Misra, J.

1. The present appeal by special leave raises two questions: (1) whether the expenses incurred by the tenant on repairs of the tenanted premises can be deducted from or adjusted towards the rent due to the landlord despite the claim for recovery having become barred by time; and (2) whether the period of limitation in the present case for the adjustment of the amount spent on repairs towards the rent due will be three or six years?

2. The appellant' is admittedly the owner of the residential house in dispute and the respondent is her tenant of the said premises on a monthly rent of Rs. 20/-. As the tenant-respondent had fallen in arrears of rent for more than six months the appellant served a notice of demand but on failure of the tenant to clear the arrears the appellant terminated his tenancy and filed a suit for his eviction and for recovery of arrears of rent. The suit was resisted by the tenant-respondent on grounds inter-alia that he had spent a substantial amount on repairs of the tenanted premises and if the same was adjusted towards the rent due, the arrears of rent were not for more than six months and, therefore, the suit for eviction on the ground of default was not maintainable.

3. The trial court came to the conclusion that the entire amount spent by the tenant-respondent on repairs could not be adjusted towards the rent due as a substantial part of it was spent on repairs without any notice to the landlord. In respect of the part of the expenses incurred towards repairs the court held that as the claim for recovery of the said amount was barred by three years' rule of limitation, that amount also could not be adjusted towards the rent due to the landlord. In this view of the matter the tenant was in arrears of rent for more than a period of six months. Consequently he was liable to be evicted for default and the court passed a decree in favour of the

plaintiff-appellant. On appeal the appellate court substantially confirmed the judgment and decree of the trial court.

4. On revision the High Court set aside the judgment and decree of the trial court and dismissed the suit holding that the defendant-respondent was entitled to deduct the amount spent by him on repairs of the suit premises after notice to the landlord, the claim for which had not become barred by time and after deducting that amount from the arrears of rent the defendant-respondent was not in arrears for more than six months. The Court further held that the limitation for recovery of the amount spent on repairs of the house was six years and not three years and on that basis it found that a substantial portion of the expenses incurred on repairs by the defendant-respondent could be adjusted towards the rent due as the same was well within time. The plaintiff appellant has now come to challenge the judgment and order of the High Court.

5. The first question for consideration, as stated earlier, is whether the expenses incurred by the tenant on repairs of the tenanted premises can be deducted from or adjusted towards the rent due to the landlord despite the claim for recovery having become barred by time. This point is no more res Integra as it is concluded by a decision of this Court in Maganlal v. Chandrakant . Dealing with Section 20 of the Bombay Rents, Hotel and Lodging House Rents Act, 1957 the Court held:

> The section gives the tenant a general right of recovery of the overpaid rent within six months from the date of payment. Without prejudice to any other mode of recovery, he may deduct the overpayment from any rent payable by him to the landlord. Deduction is one mode of recovery. If the amount is incapable of recovery because of the bar of limitation, it cannot be recovered by deduction. In other words, the right of recovery by deduction is barred at the same time as the right of recovery by suit. If the tenant seeks recovery of the overpaid amount he must bring the suit or make the deduction within six months.
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> Therefore, if the claim for recovery of the amount spent on repairs has become barred by time the same cannot be adjusted towards the rent due for the same reason. It would be anomalous to hold that if one remedy by way of recovery is barred by time the other mode of recovery, that is by adjustment, will not be barred.

6. A feeble attempt was made to contend that there is no period of limitation prescribed for the adjustment of the amount spent by the tenant on repairs towards the rent due and, therefore, the amount so spent can be adjusted at any time before the suit. We feel difficulty in accepting this argument in face of the aforesaid decision of this Court.

7. Now the next question is whether the period of limitation applicable to the facts of the present case for recovery of the amount spent on repairs or for adjustment of the same towards the arrears of rent due will be governed by three years' limitation or six years' limita-tion. The trial court and the first appellate court applied Article 23 of the Limitation Act, 1963 and held that the present case is governed by three years' rule of limitation. The High Court on the other hand applied Article 113 read with Section 30 of the Limitation Act, 1963 and held that six years' rule of limitation would be

applicable. We see no reason to differ from the view taken by the High Court. The Rent Act was intended to give protection to the tenants. Certain amount had been spent on repairs after notice to the landlord. The tenant is entitled to adjustment of the said amount legally spent by him towards repairs of the tenanted premises and the only ground on which he can be deprived of that right will be the bar of limitation. The trial court and the first appellate court applied Article 23 of the Limitation Act but this article can be attracted "only for money payable to the plaintiff for money paid for the defendant-" The expression by necessary implication suggests that the defendant must be under some legal obligation to pay to some third party. But there was no such liability cast on the landlord. The tenant in the instant case paid certain amount to third persons for repairs of the tenanted premises. But there was no liability either statutory or contractual on the landlord to pay the amount to the third parties. This liability was purely on the tenant to pay to the third parties for repairs done. So the money paid by the tenant to the third persons was not for the landlord. This article, therefore, has no application to the present case and the High Court in our view was fully justified in so holding. The High Court applied Article 113 read with Section 30 of the Limitation Act for good and valid reasons and we concur in the view taken by it. Computing the period of limitation on the basis of Article 113 read with Section 30 of the Limitation Act the claim for recovery of substantial part of the amount spent on repairs was well within time and adjusting that amount towards arrears of rent the defendant-respondent was not in arrears for more than six months at the time of the suit and, therefore, he was not liable to be evicted as a defaulter.

8. For the reasons given above the appeal must fail and it is accordingly dismissed, but in the circumstances of the case there will be no order as to costs.