Om Prakash Gupta vs Ranbir B. Goyal on 18 January, 2002

Equivalent citations: AIR 2002 SUPREME COURT 665, 2002 (2) SCC 256, 2002 AIR SCW 278, (2002) 1 JCR 388 (SC), 2002 SCFBRC 101, 2002 (1) SCALE 227, (2002) 1 JT 254 (SC), 2002 (1) JT 254, 2002 (3) SRJ 183, 2003 (1) BLJR 96, 2003 BLJR 1 96, 2002 (2) ALL CJ 936, (2002) 1 LANDLR 411, (2002) 1 PUN LR 799, (2002) 1 RENCJ 144, (2002) 1 RENCR 150, (2002) 3 CIVILCOURTC 155, (2002) 2 MAHLR 218, (2002) 1 RENTLR 271, (2002) 1 SUPREME 202, (2002) 2 ICC 878, (2002) 1 SCALE 227, (2002) WLC(SC)CVL 169, (2002) 47 ALL LR 203

Author: R.C. Lahoti

Bench: R.C. Lahoti, Brijesh Kumar

CASE NO.:
Appeal (civil) 5460 of 1999

PETITIONER:
OM PRAKASH GUPTA

Vs.

RESPONDENT:
RANBIR B. GOYAL

DATE OF JUDGMENT: 18/01/2002

BENCH:
R.C. Lahoti & Brijesh Kumar

JUDGMENT:

R.C. Lahoti, J.

The suit premises are described as booth no.13, Sector 8, Panchkula. These premises were let out by the plaintiff-respondent to the defendant-appellant sometime in August, 1989 on a monthly rent of Rs.2650/-, excluding electricity charges. Since then the defendant-appellant has been running therein a shop of provision goods and general stores. He fell into arrears of rent and electricity charges with effect from 1st April, 1990. The plaintiff-respondent served on him a notice demanding payment of arrears and terminating his tenancy. On failure to comply with the notice a suit for eviction was filed in the Court of Civil Judge on 12.9.1990. The defendant-appellant contested the

suit mainly on the ground of notice of ejectment being defective. The Trial Court, by its judgment dated 11th June, 1998, answered all the issues in favour of the plaintiff-respondent and directed the suit for eviction and recovery of arrears to be decreed. First and second appeals preferred by the defendant-appellant have been dismissed. This is an appeal filed by special leave.

It has been common case at the Bar that the suit premises are situated in the State of Haryana where the provisions of the Transfer of Property Act are not applicable and the rights and obligations of the parties are to be worked out and governed under common law of the land. At the time of hearing it was conceded by the learned counsel for the appellant that no fault can be found with the decree of the Trial Court as confirmed by the First Appellate Court and the High Court. However, the learned counsel for the appellant submitted that there has been a subsequent event having a material bearing on the judgment under appeal and the right of the respondent to decree. Such subsequent event is now the core of controversy, the relevant facts relating to which, are stated in the succeeding paragraphs.

It appears that the suit premises have been constructed by Haryana Urban Development Authority (HUDA, for short), governed by the provisions of The Haryana Urban Development Authority Act, 1977 (the Act, for short). The premises have been allotted by HUDA to the plaintiff-respondent and the latter is required to pay certain instalments to HUDA and a failure in payment of instalments renders the allotment liable to cancellation with recovery of arrears, imposition of penalty and resumption of possession under Section 17 of the Act. The High Court rendered its judgment in Second Appeal on 15.12.1998. The only contention dealt with by the High Court, in view of the singular submission made before it, was to allow the appellant three months' time for vacating the premises subject to an undertaking for vacating the premises on expiry of three months. SLP was filed on 8.3.1999. On 30.3.1999 this Court directed a notice on SLP to be issued to the respondent and at the same time passed an interim order staying the operation of the decree appealed against. On 15.3.1999, the date on which the time appointed by the High Court for vacating the premises was coming to an end, the tenant-appellant moved an application before the High Court seeking one month's extension of time for compliance with the direction of the High Court on two grounds: firstly, that though the SLP was filed in this Court it was yet to be taken up for hearing; and secondly, HUDA had initiated proceedings for resumption of the suit premises against the plaintiff-respondent. It appears that the High Court extended the time for vacating the premises till 20.4.1999. In the meantime, as already stated, this Court granted interim relief to the appellant although the factum of extension of time granted by the High Court and the grounds therefor were not brought to the notice of this Court. All these facts were brought to the notice of this Court through an affidavit filed (by way of counter-affidavit to the special leave petition) on 11th May, 1999 by the plaintiff-respondent submitting that the conduct of the defendant-appellant did not entitle him to any relief in the discretionary jurisdiction of this Court under Article 136 of the Constitution.

An additional affidavit by way of rejoinder was filed by the appellant on 8th June, 1999 wherein it has been stated that after the filing of SLP in this Court the appellant had received a notice dated 7.4.1999 from the Estate Officer, HUDA asking him to vacate the suit premises. On 19.5.1999 the appellant has submitted an application to HUDA requesting them to allot the suit premises to the appellant on the same terms and conditions or any other terms and conditions as may be thought fit

by HUDA. It was submitted that in these circumstances, as the plaintiff-respondent has ceased to be owner of the suit premises, he was not entitled to execute the decree for eviction and the same was liable to be set aside.

At the time of hearing the learned counsel for the plaintiff-respondent brought to the notice of this court an order dated 22.6.2000 passed by Chief Administrator, HUDA, an Appellate Authority over the Estate Officer, HUDA whereby an appeal filed by the respondent has been allowed and the respondent has been allowed an extension of time for payment of the arrears of instalments to HUDA.

The relevant facts emerging from a perusal of the documents placed on record by the parties insofar as they relate to the proceedings before HUDA may briefly be noticed.

On 12.2.1999 the Estate Officer, HUDA passed an order recalling the allotment of the suit premises for failure of the respondent to pay the amount of instalments in arrears and the interest accrued thereon, forfeiting the amount already paid. On 7.4.1999 the appellant was served with a notice by the Estate Officer to remove his unauthorized occupation of the premises. On 19.5.1999 the appellant proposed to HUDA that he was ready and willing to pay the Authority the entire amount which was to be paid by the respondent to it along with interest and to have the suit premises allotted to himself. In between, the plaintiff respondent had preferred an appeal under Section 18 of the Act, putting in issue the order of Estate Officer, which appeal came to be allowed and the order of resumption has been set aside. It appears that there was a dispute as to the rate at which the interest was levied by HUDA on the amount of instalments in arrears, as to which the High Court of Punjab & Haryana had issued some directions which the Authority was required to comply. The Appellate Authority directed the Estate Officer to calculate interest consistently with the decision of the High Court and to allow 30 days' time to the respondent to make payment failing which the resumption may follow. On 3.11.2000 the respondent has written to the Estate Officer inviting his attention to the appellate order, his failure to act thereon and expressing the willingness of the respondent to pay the amount subject to its being calculated by the Estate Officer as per the appellate order of the Administrator. What has happened thereafter is not known.

It is common case of the parties that the rights and obligations of the parties as landlord and tenant are not to be worked out as statutorily enacted by Transfer of Property Act as the same is not applicable to the State of Haryana. However, still, the learned counsel for the parties have not disputed that the principles flowing from the provisions of the Transfer of Property Act may safely be taken as a guide to work out the mutual rights and obligations of the parties under the general law. A tenant inducted into possession of the tenancy premises is ordinarily bound to restore possession over the tenancy premises to the landlord on the tenancy coming to an end. Such obligation comes to an end either by actually fulfilling the obligation or by proving that the landlord's title stands extinguished by the landlord's eviction by title paramount. The burden of proving eviction by title paramount lies on the party who sets up such defence. In a recent decision by us in Vashu Deo Vs. Bal Kishan (C.A. Nos.5467-5468 of 1998 decided on January 11, 2002) we have held :

> "To constitute eviction by title paramount so as to discharge the obligation of the tenant to put his lessor into possession of the leased premises, three conditions must be satisfied: (i) the party evicting must have a good and present title to the property; (ii) the tenant must have quitted or directly attorned to the paramount title holder against his will; (iii) either the landlord must be willing or be a consenting party to such direct attornment by his tenant to the paramount title holder or there must be an event, such as a change in law or passing of decree by a competent court, which would dispense with the need of consent or willingness on the part of the landlord and so bind him as would enable the tenant handing over possession or attorning in favour of the paramount title holder directly; or, in other words, the paramount title holder must be armed with such legal process for eviction as cannot be lawfully resisted. The burden of raising such a plea and substantiating the same, so as to make out a clear case of eviction by paramount title holder, lies on the party relying on such defence."

In Vashu Deo's case (supra) the landlord-owner of the tenancy premises was a Trust. The Trust had let out the premises to a tenant and the tenant had inducted a sub-tenant in the premises. The Trust had instituted a suit for eviction against the tenant subsequent to the institution of the suit by tenant against sub-tenant claiming arrears of rent and eviction of the latter. Immediately on institution of suit by the principal owner, i.e. the Trust, the sub-tenant had voluntarily attorned in favour of the principal owner and without the consent of the tenant. Suit by the principal owner against the tenant was still pending. This Court noticed the provisions of local rent control law whereunder entitlement of the tenant to hold the suit premises as tenant would not come to an end unless a decree for eviction against him was passed by a court of law in a suit for eviction instituted by the principal owner against the tenant and then held - 'till then he would remain a tenant of the Trust. Mere institution of a suit for eviction by the Trust, the owner of the property, against the respondent does not bring the tenancy of the respondent to an end. The respondent cannot be said to have been evicted by title paramount. It cannot be said that the respondent-tenant does not have any defence nor can he lawfully resist the suit filed by the owner Trust. The plain and simple legal position which flows is that the appellant must discharge his statutory obligation to put his landlord, that is, the respondent, in possession of the premises in view of the latter's entitlement to hold the tenancy premises until his own right comes to an end and the respondent must discharge his statutory obligation to put his own landlord, that is, the Trust, in possession of the tenancy premises on his entitlement to hold the tenancy premises coming to an end. The plea of eviction by paramount title is not available to the appellant for three reasons: firstly, it cannot be said that the Trust is armed with a legal process for eviction which cannot be lawfully resisted by the tenant-respondent or to which he has no defence; secondly, the attornment by the appellant in favour of the Trust is voluntary and not under any compulsion; and thirdly, it cannot be said that the Trust has such good and present title against the tenant-respondent so as to hold the appellant liable to be evicted against his will'.

For two reasons we do not think that the defendant-appellant is entitled to any relief and for setting aside of the decree for eviction. Firstly, there is neither any order of resumption and forfeiture within the meaning of Section 17 of the Act passed by HUDA against the respondent nor is there an

allotment by HUDA directly in favour of the appellant. In view of the order of the Estate Officer having been set aside by the Appellate Authority under the Act the allotment made by HUDA in favour of the respondent continues to subsist. His title, under which he had inducted the appellant in possession of the suit premises, has not come to an end. The triple test, laid down by this court in Vashu Deo's case is not satisfied. Secondly, the appellant is placing reliance on an event happening after the institution of suit, i.e. a subsequent event and a case for taking notice of such subsequent event by court so as to impair the judgment under appeal is not made out.

The ordinary rule of civil law is that the rights of the parties stand crystalised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied : (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; (iii) that such subsequent event is brought to the notice of the Court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In Pasupuleti Venkateswarlu Vs. The Motor & General Traders - AIR 1975 SC 1409 this Court held that a fact arising after the lis, coming to the notice of the Court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the Court cannot be blinked at. The Court may in such cases bend the rules of procedure if no specific provision of law or rule of fairplay is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. The court speaking through Krishna Iyer, J. affirmed the proposition that court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fairplay is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautions, and (iv) the rules of fairness to both sides should be scrupulously obeyed.

Such subsequent event may be one purely of law or founded on facts. In the former case, the Court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order 6 Rule 17 of the CPC. Such subsequent event the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties. In Messrs. Trojan & Co. Vs. RM. N.N. Nagappa Chettiar - AIR 1953 SC 235 this Court has held that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found; without the amendment of the pleadings the Court would not be entitled to modify or alter the relief. In Sri Mahant Govind Rao Vs. Sita Ram Kesho & Ors. - (1898) 25 Indian Appeals 195 (PC), their Lordships observed that, as a rule, relief not founded on the pleadings should not be granted.

Power of the Court to take note of subsequent events, specially at the appellate stage, came up for the consideration of a Full Bench of Nagpur High Court presided over by Justice Sinha (as His Lordship then was) in Chhote Khan Vs. Mohammad Obedulla Khan, AIR 1953 Nag 361. Hidayatullah, J. (as His Lordship then was) held, on a review of judicial opinion, that an action must be tried in all its stages on the cause of action as it existed at the commencement of the action. No doubt, Courts 'can' and sometimes 'must' take notice of subsequent events, but that is done merely 'inter partes' to shorten litigation but not to give to a defendant an advantage because a third party has acquired the right and title of the plaintiff. The doctrine itself is of an exceptional character only to be used in very special circumstances. It is all the more strictly applied in those cases where there is a judgment under appeal. His Lordship quoted the statement of law made by Sir Asutosh Mookerjee, J. in a series of cases that merely because the plaintiff loses his title 'pendente lite' is no reason for allowing his adversary to win if the corresponding right has not vested in the adversary but in a third party. In the case at hand, the defendant-appellant has simply stated the factum of proceedings initiated by HUDA against the plaintiff-respondent in an affidavit very casually filed by him. He has not even made a prayer to the Court to take notice of such subsequent event and mould the relief accordingly, or to deny the relief to the plaintiff-respondent as allowed to him by the judgment under appeal, much less sought for an amendment of the pleadings. The subsequent event urged by the defendant-appellant is basically a factual event and cannot be taken cognizance of unless brought to the notice of the Court in accordance with established rules of procedure which if done would have afforded the plaintiff-respondent an opportunity of meeting the case now sought to be set up by the appellant. We do not think this Court would be justified in taking notice of a fact sought to be projected by the appellant in a very cavalier manner. The fact remains that the present one is a landlord-tenant dispute and we cannot upset the relief granted by the courts below and the High Court to the plaintiff-respondent by relying on the doctrine of eviction by title paramount as it cannot be said that the proceedings initiated by HUDA against the plaintiff-respondent have achieved a finality or are such proceedings wherein the plaintiff-respondent cannot possibly have any sustainable defence.

For the foregoing reasons the appeal is held liable to be dismissed and is dismissed accordingly with costs throughout. The appellant is allowed three months time to deliver vacant and peaceful possession to the plaintiff respondent subject to his filing usual undertaking and clearing all the arrears under the decree within 3 weeks.

.....J. (R.C. Lahoti) .....J. (Brijesh Kumar) January 18, 2002