Chotey Lal vs L. Chhakkilal Alias Hari Shanker And ... on 8 October, 1952

Equivalent citations: AIR1953ALL113, AIR 1953 ALLAHABAD 113

JUDGMENT

Desai, J.

1. This is a defendant's appeal from a decree for ejectment passed against him. The dispute is about a shop which admittedly was let out to the appellant by the plaintiff- respondent.

2. On 24th February 1948 a decree for arrears of rent was passed against the appellant. Previous to the institution of that suit the respondent had given a notice for payment of the arrears and appellant had sent the arrears by money order, but the money order had been refused by the respondent. Consequently the decree was passed without costs. Subsequently rent again fell into arrear and the respondent gave a notice to the appellant demanding the arrears that has fallen due since the passing of the decree on 24th February 1948, and also the arrears decreed on that date. The appellant sent only the arrears that had fallen due subsequent to the passing of the decree, within the period of one month. He did not send the decreed arrears but deposited them in Court after a month. The respondent thereupon sued the appellant for ejectment from the shop contending that he had wilfully defaulted in paying the arrears within a month of the receipt of the notice demanding the same. The suit was dismissed by the trial Court which held that there was no wilful default on the part of the appellant but has been decreed by tho lower appellate Court on the ground that he committed wilful default in not paying the decreed arrears. The lower appellate Court took tho view that the words 'arrears of rent' in Section 3(a), Control of Bent Act, include not only undecreed arrears, but also decreed arrears of rent.

3. Two questions arise; (1) Whether the words 'arrears of rent' include decreed arrears of rent and (2) "Whether the appellant committed wilful default.

4. The words 'arrears of rent' have no technical meaning. Bent that is not paid on the date on which it falls due becomes an arrear of rent and it remains so even though a suit is brought for its recovery and decreed. The only effect of the passing of the decree is that the cause of action is merged in the decree and that the landlord can realise the decreed amount in a certain manner; it has not the effect of changing the arrear of rent into something other than arrear of rent. So long as the rent has not been paid, whether a decree has been passed for the same or not, it is rent in arrear. It remains 'rent' even if a decree is passed, and so long as it is not paid it is in arrear. There is no reason for thinking that the words 'arrears of rent' in Section 8 (a) mean only undecreed arrears of rent.

5. If a tenant can be ejected on the ground of his failure to pay undecreed arrears of rent within a month of the receipt of a notice of demand, there is all the greater reason for his. being ejected on the ground of his failure to pay the arrears of rent within a month of the receipt of a notice of demand in spite of a decree for the same having been passed against him. A tenant who does not pay the arrears of rent in spite of a decree having been passed against him undoubtedly stands in a weaker position than one against whom no decree has been passed. Because the landlord can realize the decreed arrears by executing the decree, he gets no licence for not paying them at all, or unless a warrant of attachment or arrest is issued against him. The lower-appellate Court rightly held that the appellant did not pay all the arrears of rent rightly demanded from him within a month of the receipt of the notice of demand,

6. The default of the appellant was undoubtedly wilful. It was deliberate or intentional and not caused by any accident or any circumstance beyond his control. He intended not to pay the decreed arrears of rent, why he intended so is absolutely irrelevant. What is material is the existence of the intention not to pay the demanded arrears and not the reason or motive for that intention. Therefore there arises no question of mala fides or dishonest intention.

7. In Gould v. The Mount Oxide Mines Ltd., 22 C. l. r. 490, it was said by Issac J. that 'wilful default' is a term which must depend for its precise connotation on the subject-matter and the context, that it does not connote dishonesty, and that in that case it meant a course of conduct consciously pursued. In U. S. A. v. Murdock, 290 U. S. 389 : (78 L. e. 381) it was laid down by Roberts J. that the word 'wilfully' often denotes an act which is intentional or voluntary or knowingly as distinguished from accidental, though when used in a criminal statute, it generally means an act done with a bad purpose, without justifiable excuse, stubbornly, obstinately, perversely. A provision in a statute punishing a person who 'wilfully and knowingly' used any passport obtained by making false statement was considered in Browder v. U. S. A., 85 L. e. 862 : (312 U. Section 835) and it was held that the words 'wilfully and knowingly' do not suggest that fraudulent use as an element of crime. Reid J. said :

> "Wilfully and knowingly can be taken only as meaning deliberately and with knowledge and not something which is careless or negligent or inadvertent."

Another provision making it an offence for anyone to fail 'wilfully" to pay a tax or make a return came up for discussion in Spies v. U. S. A., 317 U. S. 492 : (87 L. E. 418). It was observed in that case that 'mere voluntary and purposeful' as distinguished from accidental, omission to make a timely return might meet the test of wilfulness. "But in view of the traditional aversion to imprisonment for debt, the Supreme Court understood the word 'wilful' to include some element of evil motive and want of justification. We are not concerned in the present case with any criminal or penal statute. The provision that a landlord can file a suit for ejectment against a tenant who wilfully defaults in paying the arrears in spite of notice of demand is certainly not a penal provision. The Rent Control Act does not penalise anything which was not liable to punishment previously. On the contrary, before the enactment of the Rent Control Act a landlord had a right to sue for ejecting a tenant whose tenancy had been terminated without assigning any reason. That right has been curtailed by the Rent Control Act except when there is wilful default on the part of a tenant. Therefore, allowing a

landlord to sue a tenant who is guilty of wilful default is not a penal clause and there arises no question of including in the meaning of wilfulness an element of evil motive. Even in respect of a provision in a criminal statute punishing one for wilfully submitting an untrue return it was held that the word 'wilfully' meant absence of inadvertence or mistake and not a wrong view of the law or ignorance of law and that no criminal intent to submit an untrue return was necessary ; see In re Jayarama Chettiar, A. I. R. 1949 Mad. 95.

In Faulger v. Steadman, (1872-73) L. R. 8 Q.B. 65, a man without paying the licence fee that was duo from him to the railway, kept his carriage on the land belonging to the railway and refused to leave. He was held to be a wilful trespasser within the meaning of a statute punishing a person who "shall wilfully trespass upon a railway". His plea that he believed the land to be a public thoroughfare and that consequently he was not a wilful trespasser was rejected because he 'intentionally and purposely stayed on the railway land although fancying that he was entitled to remain there. "Wilful default" was discussed by the Court of Appeal in Re Mayor of London and Tubb's Contract, (1894) 2 oh. 524. There was default in that case but as it was not intentional but due to an oversight and that too an oversight easily accounted for, it was held to be a perversion of the word "wilful" to hold it wilful. Lopes L. J. said on p. 538 :

> "If it were treated as wilful there would be no distinction between what was intentional and what was unintentional and accidental."

The learned Lord Justice approved of Lewis v. Great Western Railway Co., (1877) 3 Q. B. D. 195 in which Bramwell L. J. denned "wilful" when used in connection with "misconduct" as something opposed to accident or negligence.

8. My conclusion is that if there is a default, and that default is committed intentionally or deliberately, it is a wilful default, regardless of the reason why the default was intended. The appellant knew that he was committing default and deliberately committed it. It is not that he did not intend to commit the default or that he did not think that it was a default, He, therefore, cannot derive any benefit out of Lala Raj Narain v. Ram Prasad Vaish, 1951 A. W. R. 115, where the arrears had been deposited by the tenant in Court and in reply to the notice he informed the landlord that he could withdraw the money from the Court. Clearly the tenant there did not intend not to pay the arrears. When he asked the landlord to withdraw the money from the Court he bona fide thought that he was paying the arrears and complying with the notice. Therefore, even if there was a default (inasmuch as he actually did not pay the arrears to the landlord) it was not intentional or deliberate.

9. That the appellant used to pay his rent regularly in the past is quite irrelevant. His default on this occasion does not cease to be a wilful default on account of his being regular in payment in the past.

10. The argument that there was no default, or no wilful default, because the respondent had refused to accept the money orders for the arrears before the decree was passed is devoid of force. The refusal of the respondent to accept the money orders did not wipe off the appellant's liability. The appellant remained liable to pay the arrears though he might not be liable to pay the costs of the suit brought by the respondent to recover them. In spite of the previous refusal, the appellant was bound

to pay the decreed arrears; that was the decree passed against him. Further when the respondent demanded the decreed arrears through notice, the appellant was bound to pay them. He could not refuse to pay them on the ground that the respondent had refused the previous tender.

11. The decree passed by the lower appellate Court is affirmed and the appeal is dismissed.