

Sahabuddin vs Mohan Lal on 2 November, 1950

Equivalent citations: AIR1951ALL227, AIR 1951 ALLAHABAD 227

JUDGMENT

Malik, C.J.

1. The applt. was a month to month tenant & the rent reserved was Rs. 17/-only. He did not pay rent for the months of January & February 1946. The landlord on 6-3-1946 gave him a notice calling upon him to pay the arrears of rent & to vacate the premises on 31-3-1946. The arrears were not paid nor were the premises vacated. A suit for ejectment & for arrears of rent was filed on 3-5-1946. The parties entered into a compromise on 8-11-1946. The terms of the compromise were that the applt. would vacate the house within six months & he would pay Rs. 38/- on account of arrears of rent & damages for use & occupation. It was not specified how much of it was due as arrears of rent & how much for use & occupation. Rupees 38 were paid after several months. On 27-5-1947, after expiry of six months the decree-holder applied for execution of the decree for ejectment.

2. Reliance was placed on certain provisions of the United Provinces (Temporary) Control of Rent & Eviction Act (III [3] of 1947) & it was urged that the decree was no longer executable. This Act received the assent of the Governor-General on 28-2-1947 & was published in the U. P. Gazette (Extraordinary) on 1-3-1947. Subsection (3) of Section 1, however, provides that the Act must be deemed to have come into force on 1-10-1946. The result, therefore, is that though the Act was passed in the year 1947 it was given retrospective effect from 1-10-1946. The compromise decree being dated 8-11-1946, it must be deemed to have been passed after the Act came into force.

3. The question, therefore, arises whether in view of the provisions of Sections 14 & 15 the compromise decree is executable.

4. From the dates mentioned above that the Act came into force on 1-10-1946, & the decree was passed on 8-11-1946, it is clearly Section 15 which applies to the case. Section 15, U. P. (Temporary) Control of Rent & Eviction Act, 1947 is as follows:

"In all suits for eviction of a tenant from any accommodation pending on the date of this Act, no decree for eviction shall be passed except on one or more of the grounds mentioned in Section 3."

Ground (a) mentioned in Section 3 is "that the tenant has wilfully failed to make payment to the landlord of any arrears of rent within one month of the service upon him of a notice of demand from the landlord."

A notice of demand was given on 6-3-1946, for rent payable in January & February 1946. The suit was not filed till 3-5-1946, & it is not alleged that rents for the months of January & February, with respect to which notice was given on 6-3-1946 were paid before the suit was filed on 3rd of May. As a matter of fact in the compromise decree dated 8-11-1946 the judgment-debtor undertook to pay a sum of Rs. 38/- towards the arrears of rent & damages for use & occupation & even this amount was not paid till 24-2-1947. If Section 15 of the Act is applied, the decree which was a compromise decree, was clearly valid & could be executed.

5. Learned counsel has urged that Section 14 of the Act is applicable as the decree was passed on 8-11-1946, & the Act received the assent of the Governor-General on 28-2-1947. I do not see how this argument would help the learned counsel as the proviso to Section 14 is to the effect that a decree passed before the date of commencement to the Act shall not be executed provided the tenant agrees to pay to the landlord 'reasonable annual rent' or the rent payable by him before the passing of the decree, whichever is higher. The learned Dist. J. has said in his judgment that the judgment-debtor was not prepared to agree even before him to act in accordance with the proviso to Section 14. Section 14, to my mind, is not applicable & in any case, it does not help the applt.

6. Act III [3] of 1947 was passed for the benefit of the tenants on account of house shortage & to prevent their eviction. It was open to a tenant to forego the protection given under the Act & to agree to vacate the premises on a fixed date. In the case before me the tenant entered into a compromise & he agreed to vacate the premises on 7-5-1947. The decree of the Ct. is based on this compromise. I do not see how the provisions of the Act can invalidate the consent decree. In any view of the matter, the appeal has no force & is dismissed with costs.