Mohanlal vs Kanwar Sen on 18 December, 1953

Equivalent citations: AIR1954ALL480, AIR 1954 ALLAHABAD 480

JUDGMENT

Malik, C.J.

1. These two special appeals are connected and can be disposeu of by one judgment. Letters Patent Appeal No. 4 of 1952 is against the decree in Second Appeal No. 855 of 1946 and Letters Patent Appeal No. 3 of 1952 is against an order in Execution Second Appeal No. 231 of 1950.

2. The facts are not complicated but some difficulty has been created by reason of a recent enactment. The defendant had taken a house on rent under a registered lease dated 27-4-1938, for a period of one year. On the expiry of the year the defendant continued to remain in possession, The plaintiff alleged in the plaint that after the expiry of the year the tenancy became a month to month tenancy according to the Hindi calendar and the defendant was liable to pay to the plaintiff rent at the rate of Rs. 55/- per month. These averments were admitted by the defendant in the written statement. The fact being admitted in the pleadings, it is not possible for learned counsel now to urge that the tenancy was not a month to month tenancy according to the Hindi calendar and the notice to quit was, therefore, defective.

3. On 8-12-1944, the plaintiff said that rent for four months had been in arrears and gave the defendant a notice to quit with effect from the end of the Hindi month. A second notice was given on the 23rd of December but we are not concerned with it, as that notice was given as a matter of extra precaution. On 10-1-1945, the plaintiff filed a suit for realisation of rent and for ejectment of the defendant.

4. One of the pleas taken in defence and repeated before us was that the notice to quit was not in accordance with law. This argument was based on the ground that the tenancy was not a month to month tenancy in accordance with the Hindi month. The lower Courts have on the basis of evidence recorded a finding that the tenancy was a month to month tenancy according to the Hindi month. In view, however, of the admission in the written statement it was not open to the defendant to urge that the tenancy was not in accordance with the Hindi calendar month. Be that as it may, on the findings recorded that the tenancy was a month to month tenancy according to the Hindi month and the notice dated 8-12-1944, required the defendant to vacate the premises at the end of the Hindi month, the notice was rightly held to be a valid notice.

5. As regards the arrears, the plaintiff had claimed that a sum of Rs. 2207- was due for four months in accordance with the Hindi month commencing from the 3rd of September and ending with 29-12-1944. The defence was that on 2-11-1944, the defendant had sent a draft on the Jwala Bank to

the plaintiff at Calcutta for a sum of Rs. 110/- to cover the rent of the first two months that was in arrears. The plaintiffs case was that this draft never reached him and he had already, when on a previous occasion the defendant had sent rent by a bank draft, written to the defendant that it caused inconvenience to him and that he should sent rent by money order and not by bank drafts.

6. The Manager of the Jwala Bank gave evidence that the draft had not been cashed. The plaintiff's statement has been believed that the draft was lost in the post and it never reached him. The defendant was examined as a witness and he did not say that the plaintiff had ever agreed to any arrangement that payment may be made by bank drafts. The fact, therefore, that the defendant sent a bank draft to the plaintiff on 2-11-1944, which, however, never reached him, cannot be treated either as a valid payment or even as a valid tender. On 11-12-1944, the defendant sent a money order for Rs. 55/- but this was addressed to Rajnarain Phoolchand. The learned Munsif has observed as follows: "The money order for Rs. 55/- was sent on 11-12-1944, to Rajnarain and Phoolchand. It is not shown who is Rajnarain and Phoolchand."

Even if it be assumed that Rajnarain Phoolchand represented the plaintiff and the plaintiff had refused to receive the money order, it could not affect the plaintiff's rights as the plaintiff was not bound to accept Rs. 55/- when a sum of Rs. 165/- was due to him. The money order of Rs. 55/- having been refused, the money was returned to the defendant by the Post-office. On 2-1-1945, the defendant sent another money order, this time of Rs. 110/- and this was addressed to the plaintiff. The plaintiff refused to accept this money order and that too was returned to the defendant.

7. The position, therefore, is that the defendant had sent a bank draft for Rs. 110/- but it never reached the plaintiff and, in law, it cannot be deemed to be either a valid tender or a valid payment. The money order of Rs. 55/- could only be in part payment and the plaintiff was not bound to accept it. The money order of Rs. 110/-was also in part payment and the plaintiff was not bound to accept that either.

8. The trial Court held that the sum of RS. 222-8-0 was due to the plaintiff and on 26-5-1945, decreed the suit for ejectment and for arrears of rent. The defendant filed an appeal which was dismissed by the lower appellate Court on 22-12-1945. The defendant then filed a Second Appeal No. 855 of 1946 in this Court on 13-3-1946. The appeal was admitted by a learned Single Judge on 26-4-1946. On 1-3-1947, the U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947) was passed. Section 1 (3) of the Act provides that--"the Act shall be deemed to have come into force on the first day of October, 1946." The Act came into force, therefore, during the pendency of the appeal in this Court. A Bench of this Court has held that an appeal is a continuation of a suit and the Act must be deemed to have been intended to apply not only to pending suits but also to pending appeals: see the case of -- 'Manzoor All Usmani v. Mt. Lal Devi' AIR 1951 All 396 (A).

9. The decree-holder had applied for execution of his decree for ejectment and arrears of rent and the defendant-appellant judgment-debtor thereupon filed an application for stay of execution of the decree under Order 41, Rule 5, Civil P. C. This application was dismissed and the execution proceedings were, therefore, continued in the lower Court. During the execution proceedings the defendant raised an objection under the Rent Control and Eviction Act and the plaintiff

decree-holder thereafter applied to the District Magistrate for permission to eject the defendant. On 3-7-1948, the Additional District Magistrate granted the permission, the operative portion of which is as follows:

> "I, therefore, permit Kunwar Sen to file a civil suit for the ejectment of Mohan Lal, if necessary, and also for the execution of the civil Court's decree for ejectment if required." It was on the strength of this permission that the learned District Judge dismissed the objection of the judgment-debtor and allowed the decree for ejectment to be executed. Against the order passed by the learned District Judge rejecting the objection to the execution of the decree the judgment-debtor filed in this Court Execution Second Appeal No. 231 of 1950. The Second Appeal No. 855 of 1946 and the Execution Second Appeal No. 231 of 1950 were connected at the request of the appellant and both cases were heard together and disposed of by one judgment by the learned single Judge,

10. On the strength of the decision in --'Manzoor Ali Usmani's case (A)' it has been urged by learned counsel that though the suit for ejectment had been decreed by the lower Courts, as an appeal against that decree was pending in this Court, Section 15 of the Act was applicable and the decree for ejectment passed by the lower Courts could be affirmed only if any of the grounds mentioned in Section 3 of the Act existed.

11. It is urged by learned counsel that as grounds mentioned in Section 3 which could entitle this Court to affirm the decree for eviction did not exist the decree could not be affirmed and the sanction received from the Additional District Magistrate was not a 'ground' within the meaning of Section 15 and, in any case, the sanction being of the Additional District Magistrate, and not the District Magistrate, it was bad in law. In support of the last point mentioned above reliance is placed on the decision in -- 'Kedar Nath v. Mool Chand', AIR 1953 All 62 (B). The sanction was, however, filed in the Court of the learned District Judge in the execution appeal, pending in this Court and no objection on the ground that the Additional District Magistrate had no authority to grant the sanction was raised in that Court nor was such an objection raised before the learned single Judge. We cannot, therefore, in this Special Appeal allow learned counsel to raise a new point specially as it would necessitate further enquiry into the question whether the District Magistrate had delegated his authority to the Additional District Magistrate and the Additional District Magistrate was, therefore, qualified to grant the sanction.

12. The question, however, remains whether the permission given to file a civil suit for ejectment or for the execution of the civil Court's decree for ejectment entitled the learned single Judge to dismiss the appeal and affirm the decree for ejectment.

13. Section 15 of the Rent Control Act is as follows-

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

The learned single Judge laid stress on the words "no decree for eviction shall be passed" and he came to the conclusion that, if one or more of the grounds mentioned in Section 3 exist, then a decree for eviction can be passed. The question, therefore, arises what the words "one or more of the grounds mentioned in Section 3" mean.

14. The relevant part of Section 3 (1) is as follows: "Subject to any order passed under Sub-section (3) no suit shall, without the permission of the District Magistrate, be filed in any civil Court against a tenant for his eviction from any accommodation, except on one or more of the following grounds."

Thereafter grounds (a) to (f) are mentioned. If the words "on one or more grounds mentioned in Section 3" relate to grounds (a) to (f) only, then the decree can be passed only if grounds (a) to (f) exist. If, on the other hand, the permission of the District Magistrate can also be taken to be 'a ground' for passing a decree, then a decree for eviction can be passed even in a suit pending disposal on the date the Act came into force if such permission has been obtained.

15. It has been held in several cases that the Act was intended to apply to decrees which had been passed before the Act came into force but Which have to be executed after that date, to suits pending on the date when the Act came into force and to suits instituted after that date. It has also been held by this Court that the legislature in enacting Section 3 left the discretion to the District Magistrate to grant permission as it was not possible to define all cases where a landlord should have the right to eject a tenant.

Under the general law a tenancy is always terminable in accordance with the terms of the tenancy after a proper notice terminating the tenancy is given by the landlord. After the termination of the tenancy, every landlord has a right to file a suit for ejectment. By reason of dearth of accommodation and to prevent landlords being able to harass tenants with the object of rack-renting them, the Act set out certain grounds which it considered fair and just and if any of those grounds existed, the landlord had a right to eject a tenant. If, however, the grounds (a) to (f) were not available, but there was some other good ground why the tenant should be ejected and the landlord given back possession of the premises, a discretion was left in the District Magistrate to grant permission where he considered that the facts justified such grant.

As the Act originally stood, it was held by a Bench of this Court that this was, more or less, an executive or an administrative function exercised by the District Magistrate and the exercise of his discretion could not be challenged in a court of law. Now, however, the Act has been amended and the refusal to grant permission to file a suit has been made appealable to the Commissioner.

16. The learned single Judge relied on the words "no decree for eviction shall be passed" and held that while Section 3, which relates to the filing of a suit, lays stress on the pre-requisites for a filing of a suit, Section 15 which relates to pending suits, lays stress on the date when the decree is passed and, therefore, if the same conditions existed on the date when the decree has to be passed, as would have entitled the plaintiff to file a suit, there is no reason why a decree for ejectment should not be passed in plaintiff's favour.

There is a lot to be said for the view takers by the learned single Judge specially as all the three Sections 3, 14 and 15 should be so interpreted as to place the landlord and the tenant, more or less, in the same position. There is no reason why a landlord who had already obtained a decree for ejectment or who had filed a suit for ejectment before the Act came into force should be placed in a worse position than a landlord who wants to institute a suit after the Act came into force and he should be deprived of the opportunity of satisfying the District Magistrate that there are grounds not mentioned in Clauses (a) to (f) of Section 3(1) which entitled him to eject the tenant.

17. It is, however, pointed out that there are several decisions of this Court to the effect that the permission of the Magistrate under Section 3(1) must be obtained before a suit for ejectment is filed. This was held by a Division Bench of this Court in -- 'R. N. Seth v. Girja Shankar', AIR 1952 All 819 (C). The same view was taken by a Bench of the Calcutta High Court in -- 'Gupta Chowdhury v. Manmatha Nath', AIR 1949 Cal 374 (D). Section 3(1) provides that "no suit shall, without the permission of the District Magistrate, be filed in any civil court against a tenant for his eviction from any accommodation". It is, therefore, urged that the District Magistrate's permission must precede the filing of the suit and the District Magistrate can only grant permission to file a suit and he cannot, therefore, grant permission either to execute a decree for ejectment already obtained or to continue a suit for ejectment filed before the Act came into force.

There is considerable force in this argument and it is desirable that the Act be so amended that the point is made clear so that Sections 3, 14 and 15 may be brought in line and the rights of the landlord and the tenant may, in all cases, that is, in case of a decree obtained before the Act came into force in a pending suit and in a case where a suit has been instituted after the Act came into force, be the same.

18. The point, however, was considered by a Division Bench of this Court, to which one of us was a party -- 'Sunder Lal v. Mohammad Ishaq', AIR 1954 All 111 (E), by which decision we are bound. The words "to file a suit" in a case where the decree had already been passed before the Act came into force were interpreted to mean "to institute proceedings for execution by ejectment of the tenant" and in the case of a suit pending on the date when the Act came into force to mean "to continue the same". In view of that decision this appeal must fail and has to be dismissed.

19. There is, however, another reason why this appeal should fail. We have already said that on 8-12-1944, the plaintiff had given a notice to the defendant terminating the tenancy, as rent for four months was in arrears and a sum of Rs. 220/- was due. The suit for ejectment was filed on 10-1-1945 after the expiry of one month. The defendant did not pay the amount. On 11-12-1944 he sent a money order of Rs. 55/- only and when the money order was returned to him as refused, he sent another money order of Rs. 110/-on 2-1-1945. The defendant had thus made a wilful default within the meaning of Section 3(1) (a) of the Rent Control and Eviction Act. That subsection is as follows :

> "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." We looked into the evidence as the lower appellate court had not recorded a finding on the point but the facts were really not in dispute. The fact that the rent

for four months was due is admitted by the defendant himself. The defendant relied on the sending of the draft for Rs. 110/-on 2-11-1944 and having sent that draft on 2-11-1944, he considered that it was not necessary for him to either tender or to pay 220/- the whole amount due. He, therefore, sent a money order of Rs. 55/- and then a money order of Rs. 110/-, rent payable for two months. It is not even alleged by the defendant that there was an agreement between the parties that the plaintiff will accept the rent by a bank draft. If the defendant, therefore, sent a bank draft in payment and it did not reach the plaintiff and was lost in the post, the defendant must suffer the consequences. The plaintiff having demanded from the defendant the rent for four months there was no justification for the defendant not sending the whole amount.

20. Learned counsel has, however, urged that this does not amount to 'wilful default' within the meaning of those words in Section 3. There are several decisions of this Court dealing with that point. It has been held in -- 'Radhey Monan v. Harnarain Das', AIR 1952 All 504 (F), that the words 'wilful default' only mean that it was not an unintentional failure or a failure by inadvertence but a deliberate failure where the mind has been brought into play and a man has, after taking the facts into consideration, refused to make the payment. In that case also the defendant had believed that he was liable to pay rent at a lower rate than the rate claimed by the plaintiff and had, therefore, refused to pay the amount for which the notice had been given. It was held that this amounted to 'wilful default'.

Here the defendant refused to make the payment as he thought that sending the bank draft amounted to payment. We have already pointed out that sending a bank draft did not amount to payment or even a tender of the amount due. In the circumstances the defendant must be deemed to have been guilty of wilful default.

21. There is, therefore, no reason to interfere with the order passed by the learned single Judge. These appeals have no force and are dismissed with costs.