Hari Ram And Anr. vs Dr. C.K.C. Misra on 10 May, 1950

Equivalent citations: AIR1951ALL425, AIR 1951 ALLAHABAD 425

ORDER

Seth, J.

1. This is a defendants' application in revision arising out of a suit for fixation of rent under Section 5 (4), U. P. (Temporary) Control of Rent and Eviction Act, III [3] of 1947, (hereinafter referred to as the 'Act'). The applicants are the landlords and were defendants to the suit which was instituted by the opposite party.

2. The opposite party entered into the occupation of the accommodation as a tenant of the applicants in July 1944, and the rent was fixed at Rs. 65 per month by an agreement between parties. A few months later, that is, near about February 1945, it was reduced to Rs. 60 per month. After the passage of the Act, the applicants enhanced the rent to Rs. 75 per month by means of a notice served upon the plaintiff opposite party under Section 5 (2) of the Act. The Municipal assessment of the accommodation is at the rate of Rs. 65 per month. So that according to the annual reasonable rent of the accommodation its monthly rent would be Rs. 81-4-0. The defendants were thus authorised by law to enhance the rent by means of a proper notice upto Rs. 81-4-0 per month, although they chose to enhance the rent upto Rs. 75 per month only. On receipt of this notice of enhancement and on demand being made for payment of rent at Rs. 75 per month, the plaintiff was led to institute the present suit.

3. The plaintiff's case is that having regard to the condition of the house, the reasonable rent is too excessive and that even the agreed rent was excessive. The plaintiff alleged that the house was old and dilapidated and not safe to live in, and that the plaintiff had to stick to the house because in spite of his best efforts he could not get another house.

4. The suit was defended, inter alia, on the ground that Rs. 75 par month was a fair and reasonable rent of the house and that if the condition of the house had deteriorated, the responsibility for it lay on the shoulders of the plaintiff himself and that the plaintiff should not be permitted to take advantage of his own improper conduct.

5. The Court below has found that the house is in a hopeless condition of disrepair, that it is not safe for habitation, that two roofs have already collapsed in the rainy season of 1947, that the woodwork of the remaining roofs has been damaged by white ants rendering them also unsafe, that some of the walls have burst and are showing big cracks at various places, that the plaster is falling at various places and that the entire woodwork has been damaged by white ants. It has also found that the suggestion of the defendants that the plain tiff has himself brought about this deterioration of the house is manifestly false. Being of the opinion that the plaintiff should pay rent at the agreed rate of

Rs. 60 per month, it has fixed the rent at that rate.

6. As many as seven grounds challenging the decision of the Court below, were put forward in the memorandum of revision, but none of them was pressed before me, and rightly too, for I find that there is no force in any one of them.

7. The application was pressed on one ground only, and that too a ground not put forward in the memorandum of revision. Relying on certain observations in Narain Das v. Chhotu, 1949 A. L. J. 459 : (A.I.R. (37) 1950 ALL. 90), wherein I have said :

> "Such a suit is maintainable only where a reasonable rent is payable and is being paid. It is not maintainable when no question of reasonable rent arises. In a case where there is an agreed rent payable by the tenant to the landlord no question of reasonable rent arises. The suit was, therefore, not maintainable either under the Ordinance or under the Act."

Learned counsel for the applicants contended that the present suit is not maintainable because the 'reasonable annual rent' is neither paid nor is payable in this case.

8. Learned counsel for the opposite party submits that that sentence does not state the law correctly. The learned counsel is right in his submission. It is the second sentence, and not the first, which correctly states the law. When I made these observations I was under the erroneous impression that I was saying the same thing in both the sentences, that I was putting the same thing both positively and negatively. It did not occur to me then, as it occurs to me now, that the language employed by me in the first sentence conveys a meaning different from what is conveyed by the second sentence, and that merely because a particular kind of suit is not maintainable when no question of 'reasonable annual rent' is involved, it does not necessarily follow, therefrom, that such a suit is maintainable only when 'reasonable annual rent' is being paid or is payable, for there may be cases involving questions relating to 'reasonable annual rent' although such rent is neither paid nor is payable.

9. As certain observations made in Narain Das v. Chhotu, 1949 A. L. J. 459 : A. I. R. (37) 1950 ALL. 90) (Ubi Supra) have been found to be incorrect, it seems desirable to re-state what Section 5 means to avoid possibility of its being misunderstood in future. It is necessary, however, to point out in this connection that Narain Das v. Chhotu, (1949 A. L. J. 459 : A. I. R. (37) 1950 ALL. 90) was decided under the Act as it stood before its amendment by Local Act, XLIV [44] of 1948) and that the present suit is also governed and is being decided in accordance with the provisions of the Act as it then stood. The Act as it then stood may be described as the unamended Act.

10. Section 5 of the Act controls the rent payable for an accommodation. The unamended section provides that the rent payable for an accommodation shall be the rent mutually settled between the landlord and the tenant, but that where there is no such agreed rent, the landlord shall be authorised to fix it at an amount not exceeding the 'reasonable annual rent'. It further authorised the landlord to enhance the agreed rent, subject to certain conditions, upto an amount not exceeding the

'reasonable annual rent' by his own unilateral act of giving a notice in writing to the tenant. It does not confer any corresponding right upon the tenant to reduce the agreed rent. It then provides for suits for the fixation of rent under three contingencies ; (1) where there is no principal assessment on the accommodation ; (2) when the landlord considers that the 'reasonable annual rent' is inadequate, and (3) when the tenant considers that the 'reasonable annual rent' is excessive.

11. The landlord and the tenant both have been authorised to sue for fixation of rent under the first contingency. The provision for fixation of rent under the first contingency appears to have been rendered necessary by reason of the fact that the 'reasonable annual rent' has been defined with reference to municipal assessment and as such nothing can be said to be the 'reasonable annual rent' of an accommodation upon which there is no municipal assessment, so that the landlord cannot possibly fix the rent of such an accommodation.

12. The suit provided for under the second contingency is, in effect, a suit for enhancement of rent. The necessity for such a suit arises only when the landlord desires to enhance the rent beyond the 'reasonable annual rent', for, if the agreed rent is below the 'reasonable annual rent' the landlord may enhance it to that limit without recourse to any suit. It may be that where the 'reasonable annual rent" exceeds by more than 50 per cent. the rent payable on 1.10-1946, the landlord may not be able to enhance the rent even upto the limit of the 'reasonable annual rent' by his own unilateral act, but if in such a case the landlord institutes a suit for fixation of rent' at the rate of 'reasonable annual rent,' I gravely doubt whether it would be a suit for fixation of rent on the ground that the 'reasonable annual rent' is inadequate. The position would be different if the object of the suit be to have the rent fixed at an amount above the 'reasonable annual rent'.

13. The suit provided for under the third contingency is, in effect, a suit by the tenant for the abatement of the rent. It is to be noted in connection with such a suit that the Court has been denied the right to fix the rent below the agreed rent, so that such a suit by a tenant will be futile where the rent payable is the agreed rent. It would thus appear that where the rent payable is agreed rent it is not possible for the tenant to obtain an abatement of that rent either by his own act or by a suit under Section 5 (4) of the Act.

14. In Narain Das v. Chhotu, (1949 A. L. J. 459 : A. I. R. (37) 1950 ALL. 90) (Ubi Supra) the tenant had sued for the abatement of rent of an accommodation upon which there was municipal assessment. It was, therefore, not a suit for fixation of rent on the ground that there was no municipal assessment on the accommodation. It could only be maintained as a suit based on the ground that the 'reasonable annual rent' was excessive, but, as already observed, where an agreed rent is payable the Court is powerless to reduce the rent below the agreed rent. If the plaintiff in Narain Das v. Chhotu, (1949 A.L.J. 459 : A. I. R. (37) 1950 ALL. 90) was paying the agreed rent and his desire was to have the rent fixed below that, the suit was not maintainable, for the Court could not grant him that relief. It was alleged by the landlord in that case that the agreed rent was payable for the accommodation. There was no finding on this point by the Court below. It was held under those circumstances that the suit was not maintainable.

15. Narain Das v. Chhotu, (1949 A. L. J. 459 : A. I. R. (37) 1950 ALL. 90) is an authority only for the proposition that where agreed rent is being paid or is payable, a suit by the tenant for the abatement of rent is not maintainable under Section 5 (4) of the unamended Act. Anything further said in that case was nothing but obiter and should not be considered to contain an authoritative exposition of law.

16. Learned counsel for the applicants submits that except when there is no municipal assessment upon an accommodation which is not the position in the present case, a suit under Section 5 (4) of the unamended Act lies only on the ground that the 'reasonable annual rent' is either inadequate or excessive and on no other ground, and that, therefore, the observations, 'It is not maintainable when no question of reasonable rent arises', even though obiter, state the law correctly. He contends that in the present case no question of 'reasonable annual rent" is involved and, therefore, the suit is not maintainable.

17. As already stated hereinbefore, the sentence just quoted above does, in my opinion, state the law correctly, for a suit which can be maintained only on the ground that the 'reasonable annual rent' is inadequate or excessive must be a suit which involves some question relating to the 'reasonable annual rent'.

18. I do not agree with the learned counsel, however, in his submission that the present case does not involve any question of 'reasonable annual rent'. The landlords in this case are not entitled to claim rent at the rate of Rs. 75 per month by reason of any agreement. They claim it on the ground that they are authorised to enhance the agreed rent upto the limit of the 'reasonable annual rent', and that the rent that they claim is below that limit, although more than what was agreed to be paid. The tenant is not in a position to resist the payment of the rent claimed by the landlords and unilaterally fixed by them, without showing that the 'reasonable annual rent' of the accommodation is excessive and that the landlords should, therefore, not be permitted to enhance it even to the extent to which they have actually enhanced it. It is only by showing that the 'reasonable annual rent' is excessive that the tenant can obtain the relief that he should not be made to pay anything beyond what was agreed upon between the parties.

19. I do not think it is correct to say that a suit under Section 5 (4), lies only when the 'reasonable annual rent' is being paid or is payable. It lies generally in all such cases in which the Court can grant a relief to the plaintiff on the ground that the 'reasonable annual rent' is either inadequate or excessive. In my opinion, therefore, the present suit is maintainable and that there is no force in the contention put forward by the learned counsel for the applicants.

20. It is obvious that the condition of the accomodation is deplorable and that it is not even worth the agreed rent. The Court below has not reduced the rent, as it could not reduce it below that amount. The decision of the Court below, therefore, does substantial justice between the parties. Under the circumstances even if I had come to the conclusion that the contention put forward by the learned counsel for the applicant was sound, I would have declined, in the exercise of my discretion, to interfere with the decision of the Court below.

21. The application in revision la dismissed with costs.