Lallan Parsad vs Sharda Parsad on 16 October, 1952

Equivalent citations: AIR1953ALL316, AIR 1953 ALLAHABAD 316

JUDGMENT

Desai, J.

1. This is an appeal by a tenant against whom a decree for arrears of rent and ejectment from a house has been passed. No permission of the District Magistrate was obtained for the appellant's ejectment : the suit for ejectment was filed on the ground that he had wilfully defaulted in paying the arrears within a month of the receipt of a notice demanding the same.

2. It is admitted that originally the rent of the house in dispute was Rs. 16 per month. The case of the respondent is that by mutual agreement that rent was enhanced to Rs. 20 per month with effect from 1-9-1947 and that the appellant failed to pay the arrears in spite of a notice demanding the same. The appellant denied the enhancement of the rent from Rs. 16 to Rs. 20 per month.

3. The trial Court held that the rent had not been enhanced but the lower appellate Court held that it had been enhanced. The lower appellate Court attached importance to the fact that in reply to the notice demanding the arrears at the enhanced rate, the appellant in his reply did not deny or repudiate the agreement of enhancement. All that he said in his reply was that it made 'excessive demand' and contained 'incorrect allegations.' This does not necessarily mean that he denied the existence of the agreement to enhance the rent to Rs. 20 per month. He did not say anything about the enhancement or the agreement to enhance or the rate of rent in his reply. Had it not been a fact that he agreed to pay Rs. 20 per month with effect from 1-9-1947, he would have said so clearly in his notice instead of resorting to such ambiguous pleas that the notice made an excessive demand and that it contained incorrect allegations. The lower appellate Court was quite justified in inferring from the appellant's failure specifically to deny the alleged enhancement by agreement that the enhancement existed. When it said that 'the defendant did not reply to the notice repudiating the agreement' it did not mean that he did not give any reply to the notice ; it only meant that the reply, if any was given, did not repudiate the agreement. It is a finding of fact which is binding in second appeal that the rent was enhanced to Rs. 20 per month.

4. I do not accept the contention that it was not open to the parties by mutual agreement to enhance the rent. Section 5 (2), U. P. (Temporary) Control of Rent and Eviction Act does not exhaustively lay down the ways in which the (agreed) rent can be enhanced. It does not bar other lawful ways to enhance the rent. It uses the word 'may' suggesting that it is at the option of the landlord to use other means of enhancing the rent. The enhancement that is contemplated by Section 5 (2) is enhancement by unilateral action or which can be imposed upon fine tenant against his will. But it is always open to the parties by agreement between themselves to enhance the rent; no restriction on this right has been imposed by the Act. As a matter of fact if the parties agree to pay and receive a

higher rent, that becomes the agreed rent and at once becomes liable to be paid by the tenant under Section 5 (l). Section 5(2) deals with enhancement of the agreed rent, i. e., enhancement in the absence of an agreement. No question of notice can possibly arise when the tenant not only knows everything about the enhancement, but has also accepted it as binding. Thus enhancement by mutual agreement has greater effect than enhancement imposed upon the tenant under Section 5 (2) of the Act. I hold that the enhancement to Rs. 20 P. M. did not become invalid because no notice as contemplated by Section 5 (2) was given.

5. The appellant next contended that even if the enhancement were valid, he did not commit wilful default in not paying the arrears at the enhanced rate. This argument is devoid of force. The appellant committed default inasmuch as he did not pay the arrears. He intended to commit the default : it is not that he did not intend to commit the default but the default occurred through accident or circumstances beyond his control. Why he intended to commit the default is wholly immaterial. He might have thought that the enhancement was invalid and that he was not liable to pay at the enhanced rate but that would not make the default anything but wilful. I do not wish to say anything more because I have dealt with this question in detail in Second Appeal No. 1807 of 1952, D/. 8-10-1952.

6. Lastly, the appellant invoked the benefit of Section 114, T. P. Act, but it has no application in the present case.

7. I, therefore, agree that the appellant committed wilful default. The appeal is dismissed.

8. Leave to appeal to a Division Bench is refused.