

Sm. Chand Rani vs Chaitram Mukhi on 14 August, 1953

Equivalent citations: AIR1954ALL108, AIR 1954 ALLAHABAD 108

JUDGMENT

Randhir Singh, J.

1. This is an application in revision against the order of the Munsif, Lucknow fixing Rs. 19/-p. m. as the fair rent of the premises belonging to the applicant.

2. It appears that the defendant owned a house in Aminabad and it was let out to the plaintiff. The plaintiff paid Rs. 1500/- to the defendant & the defendant informed the plaintiff that this rent had been received by him for one year. Subsequently the plaintiff sent a notice to the defendant asking him as to what the rent of the premises was & what was the period towards which the amount sent was appropriated. No reply was sent to this notice. He then instituted a suit under the Control of Rent and Eviction Act for the fixation of fair rent. The lower Court found that there was no agreed rent and that Rs. 19/- was the fair rent and decreed the claim. A plea of jurisdiction had also been raised by the defendant in the lower Court and it was contended that inasmuch as the agreed rent was in excess of Rs. 500/- the Munsif had no jurisdiction to entertain the suit. The learned Munsif, however, framed no issue on the point and has given no finding as to whether he had or had not jurisdiction to entertain the suit. The defendant has now come up in revision.

3. This application in revision originally came up for hearing before a Single Judge of this Court and the first point which was urged on behalf of the applicant before him was that the suit should have been instituted in the Court of the Civil Judge inasmuch as the agreed rent of the premises was Rs. 1500/- per year. The learned Judge doubted the correctness of the decision of another single Judge of this Court reported in -- 'Prayag Narain v. Dr. Mangha Ram', AIR 1951 All 562 (A). He, therefore, referred the case to a Division Bench.

4. The first point which has been canvassed before us on behalf of the applicant, therefore, is that this suit should not have been instituted in the Court of the Munsif and reliance is placed on the provisions of Section 5(4), Control of Rent and Eviction Act. The words 'claimed' or "payable" which are found in Section 5(4) have been interpreted to mean that, what should determine the forum should be the rent which the plaintiff claims to be required to pay and not the rent which was agreed upon or which was the annual reasonable rent. We have gone through the judgment in the reported case. The view taken by Misra J. was also followed by another single Judge in a later case vide --'Raj Bahadur v. Babu Ram', AIR 1953 All 593 (B). It appears to us that the view expressed by the learned Judges in the two cases was the correct view. The forum is usually determined by the allegations of the plaintiff and if the plaintiff claims that he should be required to pay a certain amount of rent and

not the agreed rent or the annual reasonable rent according to the Municipal assessment, this should be taken to be the basis for determining the forum.

Section 5(4), Control of Rent and Eviction Act is as follows: -

"If the landlord or the tenant, as the case may be, claims that annual reasonable rent of any accommodation to which the Act applies, is inadequate or excessive, or if the tenant claims that the agreed rent is higher than the annual reasonable rent he may institute a suit for fixation of rent in the Court of the Munsif having territorial jurisdiction, if the annual rent claimed or payable is Rs. 500/- or less; and in the Court of the Civil Judge having territorial jurisdiction, if it exceeds Rs. 500/-.....
....."

A perusal of the section, therefore, shows, that a landlord can maintain a suit if he claims that the annual reasonable rent of any accommodation to which the Act applied was inadequate. The tenant, on the other hand, is entitled to maintain a suit if he claims-

(1) that the annual reasonable rent of any accommodation was excessive; and (2) that the agreed rent was higher than the annual reasonable rent.

The suit has to be instituted in the Court of the Munsif if the annual rent 'claimed or payable' is Rs. 500/- or less. It has been argued that the word 'payable' should be interpreted to mean rent which the tenant is liable to pay under the agreement. We are unable to agree with this contention. The word 'payable' indicates that it has reference to the rent which a tenant claims to be payable and not the rent which is the agreed rent. There is no difficulty in interpreting the other word 'claimed' used before the words "or payable". This would also mean the rent which the landlord or tenant claims should be payable.

5. It also appears to us that the legislature wanted to give relief to tenants wanting to take advantage of this provision of the law. If a very high rent is agreed upon between the tenant and the landlord and the tenant feels that the transaction was unfair, he may be deprived of getting his remedy in the law Courts if he is made to pay a very high court-fee which he would have to pay if the agreed rent was made the basis for payment of court-fee. In view of the above circumstances we feel that the view taken in the two earlier cases referred to above was the correct view.

6. The other point which has been urged on behalf of the applicant is that the learned Munsif should not have gone into the question as to whether there was or was not an agreed rent. A perusal of paras. 2 and 3 of the plaint clearly shows that the plaintiff had come to the Court on the allegation that Rs. 1500/- was the agreed year rent and in fact it has been conceded in this Court by the learned Counsel for the plaintiff opposite party that Rs. 125/- per month was the agreed rent of the premises. The only question which the learned Munsif should then have decided was whether the transaction entered into between the parties with regard to the rent was unfair, and if he came to the conclusion that the transaction was unfair, he should have fixed the fair rent. The learned Munsif, therefore, did not proceed on the right lines and has given no finding as to whether the transaction

between the parties was fair or unfair. It is only if it is found that the transaction between the parties was unfair that the Court has jurisdiction to fix the fair rent.

The learned Munsif has not given a finding on this point and the application for revision must be allowed. The application in revision is allowed and the order passed by the learned Munsif fixing the rent at Rs. 19/- p. m. is set aside and the case is remanded to the Court below. The learned Munsif will frame an issue on the point whether the transaction was unfair.

He should allow the parties to adduce fresh evidence on this issue and then proceed according to law. Costs here and in the Court below shall abide the result.