Keshodass Wadhumal Advani vs Syed Murtaza Ali Khan on 29 October, 1951

Equivalent citations: AIR1952ALL318, AIR 1952 ALLAHABAD 318

JUDGMENT

P.L. Bhargava, J.

1. This is an application for review of a judgment, delivered by a learned single Judge of this Court in two connected Civil Revisions, filed under Section 115, Civil P. C. on the ground of some mistake or error apparent on the face of the record and also on the ground that there is other sufficient cause for granting the review. On behalf of the opposity party a preliminary objection has been raised as to the maintainability of the application on the ground that there is no mistake or error apparent on the face of the record, nor is there any other sufficient cause for granting a review. This objection relates to the merits of the application and will be dealt along with the merits of the case.

2. The facts and circumstances leading to the filing of the aforesaid revisions were these: The applicant, Sri Keshodass Wadhumal Advani, who is a displaced person from Sind in West Pakistan and is a registered refugee in Lucknow, needed accommodation for his residence. On 14th February 1948, he rented a portion of the house, described as Crown Gate, No. 2393, on the Jagat Narain Road, Lucknow, belonging to the opposite party, Syed Murtaza Ali Khan, on BS. 170 per mensem and paid Rs. 900 in advance. The applicant continued to pay the agreed rent for nearly 15 months, after which disputes arose between the parties.

3. It appears that the applioant subsequently realised that the agreed rent was excessive and the transaction of rent was unfair. Accordingly, on 13th August 1949, he instituted a suit in the Court of Munsif, North Lucknow, for fixation of rent under Sub-section (4) of Section 5, U. P. (Temporary) Control of Rent and Eviction Act, III [3] of 1947. In the suit filed by the applicant it was alleged in the plaint that the opposite-party had represented to him that the monthly reasonable rent of the accommodation let out to him was Rs. 170 per mensem; that according to the municipal assessment the reasonable annual rent of the accommodation was Rs. 600 and on that basis the monthly rent worked out to Rs. 50; that, as the applicant was not given possession over one of the eight rooms let out to him, the reasonable rent of the accommodation actually in his occupation worked out to Rs. 43-8-0 per mensem: and that as the opposite party had failed to carry out the necessary repairs according to his promise the rent of the accommodation be fixed at Rs. 40 per mensem. In the oral pleadings recorded on the date of issues, it was stated on behalf of the applicant:

> "that the first assessment of the house in suit was made in 1940, so far as is in his knowledge, and the rate of rent fixed was Rs. 300 per annum but on an appeal by the defendant it was reduced to Rs. 180 per annum."

4. The allegations of the applicant in the plaint were denied by the opposite-party, who contended that the house was constructed in 1947 and completed in April 1947: that the applicant instead of occupying the entire accommodation himself subdivided it into four portions and sublet three portions on Rs. 50 each and the Municipal Board of Lucknow, had for the first time, assessed the newly constructed building in four tenements on a total rent of RS. 170 per mensem; that the transaction of rent was not unfair and the agreed rent was not higher than the reasonable rent; and that the applicant was not entitled to any abatement thereof. On these pleadings the learned Munsif framed two issues :

> 1. Was the house in suit constructed in 1947 and completed in April 1947 as alleged by the defendant ?
>
> 2. Whether the transaction was unfair and the rent fixed excessive as alleged in para. 7 of the plaint ? If so, its effect ?
>
> 6. The learned Munsif found that the house was not constructed and completed in 1947 as alleged by the opposite party; that the municipal assessment was incorrect and the transaction of rent was unfair; and that the agreed rent was excessive as alleged by the applicant. Accordingly, he decreed the suit and fixed the rent at Rs. 40 per mensem, payable from the date of the suit.
>
> 7. Both the parties were dissatisfied with the decree passed by the trial Court and they filed two separate revisions against the decision of the learned Munsif. They were heard together and disposed of by the same judgment, which is under review.
>
> 8. The learned single Judge held that Sub-section (4) of Section 5, Control of Rent and Eviction Act contemplates two kinds of cases; the first case is when the reasonable annual rent is inadequate from the point of view of the landlord, or excessive from the point of view of the tenant and the second case is where there is an agreed rent but the tenant claims that it is higher than the reasonable annual rent that:
>
> "In the two classes of cases the right is given to the landlord and the tenant to institute a suit for fixation of rent and it is only in the latter case that the Court cannot very the agreed rent in favour of the tenant unless it is satisfied that the transaction was unfair";
>
> and that the present suit was a case of reduction of the agreed rent on the ground that the transaction was unfair and it did not fall within the first class of cases and clearly fell within the second class "because the agreed rent was alleged to be higher than the reasonable annual rent." The learned Judge further held that the trial Court had no jurisdiction to examine the correctness or the propriety of the assessment by the Municipal Board and "all that the Court was required to do was to determine whether the transaction was unfair; that this error in assuming jurisdiction had permeated the

> entire finding in the case; and that the applicant had failed to discharge the burden of the issue laid upon him and his suit for abatement of the agreed rent could not succeed.
>
> The learned Judge also observed :
>
> "In this view it is unnecessary to consider the other issue whether the building was constructed before or after 1946, and what would be the annual reasonable rent under Section 6 of the Act."

Accordingly, the revision filed by the opposite-party was allowed and the one filed by the applicant was rejected. In the result, the suit was dismissed.

9. A right to obtain a review of judgment is conferred upon any person considering himself aggrieved (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred, (b) by a decree or Order from which no appeal is allowed, or (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him. (Vide Rule 1 of Order 47, Civil P. C.) This being a case of a person, who considers himself aggrieved by a decree from which no appeal is allowed, the applicant desires to obtain a review of the judgment on account of mistake or error apparent on the face of the record and also because there is other sufficient cause for review.

10. The expression "mistake or error apparent on the face of the record" used in Rule 1 of Order 47, Civil P. C., obviously means that the alleged mistake or error must appear upon the face of the record and it should not be necessary to enter into any elaborate discussion to establish that the view expressed in the judgment under review is mistaken or erroneous. The mistake or error may relate to a point of law or fact. If any mistake or error relating to a point of law is alleged it must appear that the view expressed in the judgment is contrary to any well established rule or any relevant provision of law and it would not be sufficient to show that on a different set of reasoning or interpretation of a provision of law another view was possible. If the view taken is contrary to any well settled rule or provision of law, it would be possible to say, on a perusal of the record, that there is a mistake or error apparent on the face of the record. On the other hand, if the point if debatable, and two views are possible, it would not be possible to say, on a perusal of the record only, that there is a mistake or error apparent on the face of the record. Similarly if any mistake or error on a point of fact is alleged it must appear on a perusal of the record and it should not be necessary to take into consideration other extraneous matters.

11 Learned counsel for the opposite party has in this connection urged that an erroneous view of the law on a debatable point or a wrong exposition of the law or a wrong application of the law or a failure to apply the appropriate law cannot be considered a mistake or error apparent on the face of the record, and he has invited our attention to a decision of this Court in Ram Baksh v. Mt.

Rajeshwari Kunwar, A. I. R. (35) 1948 ALL. 213 and also to a decision of the Calcutta High Court in P. Bardhan v. B. Sarkar, 53 cal. W. n. 869. In the first case Waliullah J. observed:

> "The expression 'mistake or error apparent on the face of the record' in Rule 1 of Order 47, Civil P. C., is in my judgment, not limited to mere errors of fact. It may also include errors of law. The law must be definite and the error in regard to it must be apparent i. e. patent upon the face of the record. It follows, therefore, that even an erroneous view of the law on a debatable point or a wrong exposition of the law, when it (the law) is not definite or clearly ascertained, would be no mistake or error apparent upon the face of the record in an application for review. An error cannot be characterized as apparent i. e., patent upon the face of the record if e. g., it is one which would be apparent only to a person who has made the necessary research into the case law. It is an error which can be seen at once by a mere perusal of the record without reference to any other matter and without the aid of any argument or reference to authorities in order to carry conviction....."

12. In the second case, it was held that in order to attract the operation of Order 47, Rule 1, Civil P. C., the error must be one which is blatant and obvious and which does not require any elaborate discussion for its establishment.

13. The proposition of law laid down in these cases has not been disputed by the learned counsel for the applicant. In some of the cases cited on behalf o! the applicant a view more or less to the same effect was taken; for instance in Nate-sa Naicker v. Sambanda Chettiar, A. I. R. (28) 1941 Mad. 918 which was cited by the learned counsel for the applicant, it has been held that when there is a well-known authority and by some unfortunate oversight the Judge has gone palpably wrong by the omission of those concerned to draw his attention to the authority, it may in a proper case, in the light of Murari Rao v. Balavanth Dikshit, 46 Mad. 955, be a ground coming within the category of an error apparent on the face of the record. The other case to which our attention was invited by the learned counsel for the applicant is Murari Rao v. Balavanth Dikshit, 46 Mad. 955 to which reference was made in the case cited earlier.

14. Learned counsel for the applicant has relied upon another decision of this Court in Kamta Chaudhary v. Lal Chandra Mool Pratap, A. I. R. (32) 1945 ALL. 284. In that case Allsop J. had observed:

> "....A Court cannot admit an application for review merely upon the ground that it has made a mistake in law, but I think if the mistake is an obvious one due to failure to notice particular section of an Act, or part of such a section, it would be too much to say that the obvious error could not be corrected by the Court."

Bearing in mind the rule of law referred to above, we now proceed to consider the argument advanced on behalf of the applicant that there is mistake or error apparent on the face of this record. The first ground of review mentioned in the application filed by the applicant is that the learned Judge's finding that it was not necessary to consider whether the house in suit was constructed

before or after 1947 constitutes an error apparent on the face of the record, as that was the main defence taken in the case by the opposite party. Sir Iqbal Ahmad, on behalf of the opposite party, has pointed out that he had placed his own interpretation of Sub-section (4) of Section 5, Control of Rent and Eviction Act for consideration before the learned single Judge and he had accepted that interpretation; and that even if it can be shown that the learned Judge had wrongly accepted his contention, it cannot be said that there is some mistake or error apparent on the face of the record. The argument, which was put forward on behalf of the opposite party before the learned Judge, and which has been repeated before us, is that Section 5 (4) of the Act contemplates two classes of cases : (1) suits for fixation of rent by the landlord or the tenant, who claims that the annual reasonable rent is inadequate or excessive; and (2) suits for fixation of rent by the tenant, who claims that the agreed rent is higher than the annual reasonable rent. In accepting the above argument it cannot be said that the learned Judge committed any mistake or error apparent on the face of the record. It has, however, been pointed out on behalf of the applicant that after accepting the above interpretation of Sub-section (4) of Section 5 of the Act, the learned Judge was in law bound to decide the question whether the house, a portion of which was let out to the applicant, was constructed before 1-7-1946, or thereafter in year 1947 as alleged by the opposite party and that, when the learned Judge observed that, in the view of law which he had taken, it was unnecessary to consider whether the building was constructed before or after 1946, it amounts to an error apparent on the face of the record.

15. As has already been pointed out above, the learned single Judge had held that the present suit was a case of reduction of the agreed rent on the ground that the transaction was unfair and that the case clearly fell within the second portion of Section 5 (4) of the Act because the agreed rent was alleged to be higher than the annual reasonable rent. In this view of the matter in order to give relief to the applicant it was necessary for the Court to decide: (1) What was the agreed rent of the accommodation? (2) What was the reasonable annual rent of the accommodation ? (3) Whether the agreed rent was higher than the reasonable annual rent; and (4) If so, what was the reasonable rent to be fixed. In the present case there was no dispute about the agreed rent. It was Rs. 170 per mensem. There was, however, dispute about the reasonable annual rent.

16. The expression "reasonable annual rent" has been defined in Section 2, Sub-section (f) of the Control of Rent and Eviction Act, as follows:

> " 'Reasonable annual rent' in the case of accommodation constructed before 1-7-1946, means:
>
> (1) if it is separately assessed to municipal assessment, its municipal assessment plus 25 per cent. thereon;
>
> (2) if it is a part only of the accommodation so assessed, the proportionate amount of the municipal assessment of such accommodation plus 25 per cent. thereon;
>
> * * * *."

> "Municipal assessment" has been defined in Sub-section (e) of Section 2 of the same Act as:
>
> "the annual rental value assessed by the Municipal Board ... in force on 1-4-1942 in respect of accommodation which was assessed on or before such date and the first assessment made after 1-4-1912 in respect of accommodation which was assessed for the first time after such date."

Consequently, in view of the pleadings of the parties, in order to determine the "reasonable annual rent" it was necessary for the Court to decide, whether the house had been constructed before 1-7-1945 and whether it had been assessed by the Municipal Board before or after 1-4-1942. The parties definitely realised the importance of the former question in the case and for that reason an independent issue, which is issue 1, was framed in respect thereof.

17. In relation be certain points which arose for consideration in connection with the determination of the "reasonable annual rent" it has been urged before us, some mistakes are apparent on the face of the record. Firstly, it has been pointed out, that the learned single Judge confined his attention to the allegations contained in Para. 6 of the plaint. That paragraph runs thus:

> "According to municipal assessment record the annual reasonable rent of the portion of house in suit is Rs. 600 a year for 8 rooms, i e , Rs. 50 a month and for 7 rooms the reasonable rent will be Rs. 43 12 0 per month but house requires, repairs hence rent be fixed at Rs. 40 a month only.
>
> The allegations in the paragraph mentioned above were denied by the opposite-party. Admittedly the house or the accommodation let out to the applicant was never assessed by the Municipal Board on an annual rental value of Rs. 600; although at the time of the revision of assessment in the year 1948 the assessment proposed was on an annual rental value of Rs. 600. On the date of issues, as already stated, it was stated on behalf of the applicant that the first assessment of the house in suit was made in 1910 on an annual rental value of Rs. 180. This statement in the oral pleadings seems to have escaped the notice of the learned Judge. In order to establish that the house bad been first assessed in the year 1940 the applicant produced Ex. 1, an extract from the relevant entry in the assessment list prepared by the Municipal Board. On behalf of the opposite-party, it was alleged that the house was constructed in the year 1947 and it was for the first time assessed in the year 1948 on an annual rental value of Rs. 2,040. The trial Court held that the house was not constructed in the year 1947; that the house had been assessed on an annual rental value of Rs. 300 in the year 1940 and that the proposed assessment on an annual rental value of RS. 600 of the year 1948 was the municipal assessment which should be taken into consideration in fixing the reasonable annual rent.

18. In this state of affairs, and in view of the clear provision of law, it was absolutely necessary for the Court to decide the question whether the house was constructed before or after 1-7-1946, and

when the learned Judge observed that it was unnecessary to consider this question, there crept in the judgment an error apparent upon the face of the record. Further after having decided the question about the time when the house was constructed, it was necessary to decide whether the house had been assessed prior to 1-4-1942 and whether any municipal assessment was in force on the said date. If the house had been constructed and assessed by the Municipal Board in the year 1940 and that assessment was in force on 1-4-1942, that assessment only could have been taken into consideration. On the other hand, if the house had been constructed in the year 1947 and it was for the first time assessed by the Municipal Board in the year 1948 that assessment, would have been relevant. In view of the fact that it was wrongly assumed that the relevant municipal assessment upon which the applicant relied was the proposed assessment of the year 1988 and also in view of the fact that the statement in the oral pleadings that the house had been assessed in the year 1940 was overlooked, another error had crept in the judgment under review.

19. The learned Munsif was undoubtedly wrong when he proceeded to examine the correctness or the propriety of the municipal assessment of the year 1948; but for the purposes of this case consideration of the municipal assessment of the year 1948 was absolutely irrelevant. In view of the provisions contained in Section 2 (e), Control of Rent and Eviction Act if the house had been constructed before 1-7-1946 the only relevant municipal assessment for the purposes of this case was the one of the year 1940 ; and when the learned Judge accepted the municipal assessment of the year 1918 without deciding the question whether the house had been constructed before or after 1-7-1936, there crept in his judgment an error which is apparent on the face of the record.

20. It is clear, therefore, that the reasonable annual rent" was not determined in the manner provided by law, even though the "agreed rent was alleged to be higher than the annual reasonable rent", according to the statement of fact in the judgment under review. It was necessary to do so even on the interpretation placed upon Sub-section (4) of Section 5, Control of Rent and Eviction Act by the learned Judge and the failure to do so constitutes an error apparent on the face of the record. In the absence of a proper determination of the "reasonable annual rent", it was not possible to determine the crucial point in the case whether the agreed rent was higher than the "reasonable annual rent."

21. The finding of the trial Court on the question whether the house had been constructed before or after 1-7-1946, was a finding of fact and that finding does not appear to have been and could not be challenged in revision before the learned single Judge; and Sir Iqbal Ahmad stated before us that he had assumed for the purposes of his arguments that that finding was correct. If that finding of fact is accepted, then the house had been built prior to 1-7-1946, and it had been assessed by the Municipal Board in the year 1940 and the assessment then made was in force on 1-4-1912. If the "reasonable annual rent" was to be determined on the basis of that assessment, the agreed rent was, undoubtedly, much higher than the "reasonable annual rent" determined in the manner laid down in Section 2 (f) of the Act. The failure to record a finding to that effect is an error apparent on the face of the record.

22. The next question which had to be decided in the case related to the determination of the issue whether the transaction of rent was unfair. The very first ground, urged on behalf of the applicant,

in support of the contention, that the transaction was unfair, was that the agreed rent was in excess of the "reasonable annual rent" on the basis of the assessment made in 1940. In this connection the learned single Judge, while referring to the assessment of the year 1940, only pointed out that the trial Court was wrong in thinking that the assessment was on the basis of an annual rental of Rs. 300 as, in fact, on appeal the assessment was actually made on the basis of an annual rental value of Rs. 180. Instead of accepting the assessment of the year 1940 as the basis for calculation of the "reasonable annual rent" in accordance with the provisions of Section 2 (f) of the Act, the learned Single Judge held in contravention of the said provisions of law that the assessment of the year 1948 should have been taken into consideration. This was an error apparent on the face of the record.

23. The next ground, urged on behalf of the applicant, in support of the contention that the transaction was unfair, was that the opposite party had taken undue advantage of the plight and the needs of the applicant and that the applicant by paying Rs. 990 in advance had submitted to the extortionate demand of the opposite party. This ground was accepted by the trial Court; and it was not rejected by the learned Single Judge.

24. The third ground put forward on behalf of the applicant was that the opposite party was guilty of misrepresentation and fraud, inasmuch as he told the plaintiff that the monthly reasonable rent was Rs. 170. The trial Court seems to have accepted that plea as it was of the opinion that the opposite party was in a position to dominate the will of the applicant, who was in mental distress at the time of the transaction. The Court further pointed out that the rate of rent being excessive, the bargain was hard and unconscionable. The learned Single Judge described the finding of the trial Court on this part of the case as interesting and observed :

> "The use of these expressions and the manner in which the finding is arrived at show that the Munsif did not understand the implications of his words and failed to apply a judicial mind tothe question before him."

25. The learned single Judge may or may not have been justified in forming the opinion which he did about the merits or demerits of the finding recorded by the trial Court and we are not concerned with it, but the fact remains that the finding was not expressly overruled.

26. The last ground, urged in support of the contention that the transaction was unfair, was that the applicant was required under the terms of the lease to pay house and water-tax in addition to the agreed rent. There was a written agreement which the opposite party had deliberately withhold. We say deliberately as no satisfactory explanation for its non-production is available on the record. In this connection it was pointed out by the learned Single Judge that, even if the applicant's allegation was correct, that was a matter of contract between the parties and a condition to charge house and water-tax from a tenant did not necessarily render the contract hard and unconscionable. The applicant did not contend that the condition by itself was hard and unconscionable. He had relied upon that condition only to show that the transaction of rent was unfair. The learned Judge further observed in this connection: "Admittedly the taxes have not been paid by the plaintiff on the basis of Rs. 170 per mensem." It was pointed out by the learned counsel for the applicant that this statement of fact was not correct, inasmuch as there was a receipt filed by the applicant which showed that he

had paid the rent on the basis of Rs. 170 per mensem. This was said to be an error on a point of fact apparent on the face of the record.

27. The learned Munsif inspected the house and he seems to have also taken into consideration the condition of the house in determining whether the transaction of rent was fair or unfair. He has observed in his judgment:

> 'But the condition of the house is very bad at present and the same needs immediate repairing As reported by me in my inspection report dated 2 9-1950, the house is bad, the flooring is concrete made and moisty, several, walls and corner walls are cracked at several places, roofs are leaking at few places and there is dump inside almost all the rooms.
>
> Then the learned Munsif has quoted the opinion of an expert--the Municipal Engineer--who stated before him :
>
> "....From my point of view if all the cracks, plasterings and floar etc. are repaired and put in order, it will easily cost Rs. 5 to 6 thousand...."

Having regard to the existing condition of the building the learned Munsif found that Rs. 40 per mensem was "fair, just and reasonable rent" of the accommodation; or in other words the transaction of rent at Rs. 170 per mensem for such accommodation was unfair. This determination of reasonable rent was in the manner laid down and in accordance with the provisions of Section 6, Control of Rent and Eviction Act; and it was absolutely necessary when the agreed rent was alleged and shown to be higher than the reasonable annual rent and it was not unnecessary as observed by the learned Single Judge.

28. The above discussion would show that the judgment under review suffers from mistakes or errors apparent on the face of the record. Sir Iqbal Ahmad has contended that the alleged mistakes or errors may apparently be due to wrong decisions on a point of law or fact; but they being based upon conscious reasoning do hot constitute mistakes or errors apparent on the face of the record. If there is a mistake or error apparent on the face of the record, we are not concerned with the fact whether the decision is based upon conscious or unconscious reasoning or on account of something else. Here we may refer to a decision of the Federal Court in Jamna Kuer v. Lal Bahadur, A. I. R. (37) 1950 F. C. 131 where it was pointed out that where there is an error apparent on the face of the record, whether the error occurred by reason of the counsel's mistake or it crept in by reason of an oversight on the part of the Court, is not a circumstance which can affect the exercise of jurisdiction of the Court to review its decision. In this case we find that the clear provisions of the Control of Rent and Eviction Act relating to the determination of the "reasonable annual rent," the pleadings of the parties, the issue relevant thereto, the evidence in the case and the findings of the trial Court thereon were overlooked, with the result that such mistakes and errors have crept in as are evident on the face of the records.

29. The above discussion further shows that the agreed rent was higher than the "reasonable annual rent" determined in the manner provided by Section 2 (e) and (f), Control of Rent and Eviction Act, that the transaction of rent was unfair, and that the finding of the trial Court that the reasonable monthly rent was RS. 40 is not vitiated on any ground.

30. In our opinion, therefore, the application for review ought to be granted. The application is, accordingly, allowed, the decision of the learned Single Judge in civil Revision No. 256 of 1950 is set aside and the said revision is dismissed with costs. The order of the learned Single Judge dismissing the Civil Revision No. 230 of 1950, which is not the subject-matter of review, will stand.

The costs of this application for review shall be borne by the parties.