

Munshi Lal vs Balmukund Singh on 26 February, 1952

Equivalent citations: AIR1953ALL231, AIR 1953 ALLAHABAD 231

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. This is a second appeal arising out of proceedings for execution of a decree for ejectment from a house. The judgment-debtor-appellant objected to his ejectment on the ground that he was protected from ejectment under the provisions of the U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947). The decree sought to be executed was passed on the basis of a suit filed on 2-6-1945. The final judgment of the appellate Court was delivered on 6-9-1946. The decree was thus passed before the Control of Rent and Eviction Act., 1947, came into force. The decree would, therefore, be governed by Section 14 and not by Section 15 of the Act. The lower appellate Court has held that the appellant had made wilful default in payment of arrears of rent and a notice had been served on the appellant making a demand of the rent from him so that the ground mentioned in Clause (a) of Section 3 of the Act existed. On this ground, execution of the decree by ejectment of the appellant has been allowed.

2. Learned counsel for the appellant has argued that the finding by the lower appellate Court that there was wilful default is not based on evidence and should, therefore, be set aside. The judgment of the lower appellate Court shows that, in the suit itself the appellant had taken up the plea that the rent for the period between October 1943 and 1-3-1944, had been paid before the institution of the suit. This plea was found to be false. The appellant thus defaulted in paying the rent and went to the extent of making a wrong allegation that he had paid it. This would be clearly a wilful default in payment of arrears of rent. It has also been found by the lower appellate Court that a notice fulfilling the requirements of Clause (a) of Section 3 of the Act has been served on the appellant before the institution of the suit. Learned counsel has argued that, under Section 14 of the Act, such notice should have been served after the presentation of the execution application and not before the institution of the suit. He has based his argument on the words used in Section 14 to the effect that "no decree.....shall, in so far as it relates to the eviction of such tenant, be executed against him as long as this Act remains in force, except on any of the grounds mentioned in Section 3."

From this language, the learned counsel infers that, the notice should have been served after the presentation of the execution application. It is obvious that this could not be the intention of Section

14 of the Act. What Section 14 requires is the existence of one of the grounds mentioned in Section 3 of the Act and this existence must relate back to the time when the decree was passed. In the present case, there is a clear finding by the lower appellate Court to show that there had been wilful default, in spite of the notice, which had continued up to the passing of the decree. In these circumstances, the objection of the appellant was rightly dismissed.

3. There is no force in this appeal which is dismissed with costs.