

Bhim Sen And Anr. vs Murari Lal on 20 September, 1951

Equivalent citations: AIR1953ALL238, AIR 1953 ALLAHABAD 238

JUDGMENT

Mootham, J.

1. The opposite party is the landlord of three shops. Each of the applicants is a tenant of one of the shops for which he paid an agreed rent of Rs. 10/- a month. The landlord being of opinion that neither the agreed rent nor the reasonable annual rent of these shops was adequate, brought a suit against each of his tenants under Sub-section (4) of Section 5, U. P. (Temporary) Control of Rent and Eviction Act, 1947, claiming in each case that the reasonable annual rent of the accommodation let to the tenant should be enhanced. The learned Munsif by his order dated 13-12-1948, increased the rent in one case to Rs. 24/- a month and in the two other cases to Rs. 20/- a month. It is that order which is the subject of the present applications.

2. Sub-section (4) of Section 5 reads as follows :

"(4) If the landlord or the tenant, as the case may be, claims that the 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/- provided that the Court shall not vary the agreed rent unless it is satisfied that the transaction was unfair, and in the case of lease for fixed term made before 1-4-1942, that the term has expired."

It is argued that the proviso to this section operates as a bar to a suit of a landlord who seeks for an increase in the reasonable annual rent in a case in which there already is an agreed rent between the parties unless the landlord can satisfy the Court that the agreement was unfair. That is the only point which arises in this case.

3. In my opinion this sub-section makes provision for two classes of cases : first, cases in which a landlord or tenant seeks an enhancement or reduction of the reasonable annual rent (the sub-section refers to an "annual reasonable rent" but it is not in dispute that what is meant is the "reasonable annual rent" as defined in Section 2(f)), and, secondly, cases in which the tenant claims that the agreed rent is higher than the reasonable annual rent and that it should be reduced. It appears to me clear, on a plain reading of the sub-section, that the proviso has reference only to claims which come within the second class. The expression "agreed rent" in the proviso relates back to a similar phrase in the earlier part of the sub-section and links the proviso with the second of the

two classes of cases to which I have referred. Some argument has been based upon the word "vary" in the phrase "vary the agreed rent", it being contended that had the proviso related only to the second class of case the word "reduce" would have been used. Had the phrase been "increase or reduce the agreed rent" the position would have been different, but in my opinion the use of the word "vary" instead of "reduce" does not throw doubt upon the meaning and effect of the proviso.

4. These applications must therefore be dismissed with costs.

Agarwala, J.

5. Sub-section (4) of Section 5 is rather clumsily worded. In order to understand the sub-section one has to bear in mind the definition of "reasonable annual rent" as given in Section 2(f) of the Act. Accommodations are divided into two classes, those constructed before 1-7-1946, those constructed after 1-7-1946. Reasonable annual rent in the case of an accommodation constructed after 1-7-1946, has to be determined by the District Magistrate under Section 3 (a). When the accommodation was constructed before 1-7-1946, then one has to see whether the accommodation was assessed to municipal assessment. If it was assessed, the reasonable annual rent will be such assessment plus 25 per cent, thereon. In the case of a part of an accommodation being let out the proportionate amount of the assessment will be taken into consideration, and 25 per cent will be added thereto to get at the annual reasonable rent. If, however, there was no assessment, then again one has to see whether the accommodation was held on rent between 1-4-1942 and 30-5-1946, or was not held between those dates. If it was held on rent between these dates then the annual reasonable rent is fifteen times the rent for one month nearest to & after 1-4-1942, which means the rent plus 25 per cent thereon. If the accommodation was not so held on rent then the District Magistrate has to determine the reasonable annual rent under Section 3 (a).

6. Having got at the meaning of reasonable annual rent, let us proceed to find out what is laid down in Section 5. Clause (1) deals with the rent payable for any accommodation. What is the rent payable for an accommodation to which the Act applies? It is the rent agreed upon between the parties. Then the section considers the cases in which the rent can be either enhanced at the instance of the landlord or reduced, at the instance of the tenant. When can the rent be enhanced at the instance of the landlord? The landlord may have the enhancement of rent in two ways. He may enhance it of his own will by serving a notice in writing upon the tenant. This is provided for in Clause (2). If the landlord takes recourse to this procedure then there are limitations upon his power of enhancement. These limitations are two-fold. Firstly, the enhanced rent should not exceed the reasonable annual rent; and secondly, it should not also exceed 50 per cent of the rent, if any payable on 1-10-1946. This is the date from which the Act operates.

7. If the landlord is not satisfied with the enhancement up to the annual reasonable rent but wants to enhance it further he cannot do so by a mere notice. He must resort to a suit to be filed 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/-. This is provided for in Clause (4). What are the powers of the Court in such a suit? There is no limit fixed so far as enhancement is concerned, provided that considerations provided for in Section 6 are

borne in mind. It is not necessary to mention those considerations. If the tenant sues for reduction of rent, it may be reduced to any extent. But the Court must be satisfied that the transaction was unfair, and in the case of lease for a fixed term before 1-4-1942 that the term has expired.

8. Proviso 1 to Sub-section (2) and the proviso to Sub-section (4) have created some difficulty of interpretation. Proviso 1 to Sub-section (2) does not give a new definition of annual enhanced rent different from that given in Section 2(f). It merely puts down an upper limit up to which the rent may be enhanced by the landlord at his will by a mere notice. In such a case even though the rent is reasonable rent as defined in Section 2(f) it should not be more than 50 per cent, of the rent payable on 1-10-1946. The proviso to Sub-section (4) : "Provided that the Court shall not vary the agreed rent unless it is satisfied that the transaction was unfair, and in the case of lease for a fixed term made before 1-1-1942, that the term has expired"

refers only to the claim by a tenant that the rent is higher than the annual reasonable rent. The words "agreed rent" in the proviso have reference to the same words occurring in the subsection earlier and, therefore, the proviso referred to is a limitation only upon the claim of the tenant. It is not a limitation upon the claim of the landlord for enhancement of the rent, because the suit of the landlord for enhancement of rent is on the ground not that the agreed rent is low, but that the reasonable annual rent is low, and in such a case there would be no point in laying down that the Court must be satisfied before it varies the rent that the transaction was unfair. Question of the transaction being unfair arises when the tenant had been forced to take the accommodation on rent on excessive rent, (rate?) because he could not get other suitable accommodation. It can hardly be said that the landlord was obliged to let out an accommodation by reason of an unfair transaction. The proviso, again, referring as it does to the transaction being unfair so far as agreed rent was concerned can have no reference to a claim based upon the ground that the annual reasonable rent is low. The word 'vary' in the context in which it appears, must mean 'reduce' and not 'enhance'.

9. Sub-section (4), however, omits to mention a case in which the landlord, though satisfied with the annual reasonable rent, is yet not satisfied that the rent plus 50 per cent thereof under the proviso to Sub-section (2) is fair. In the present case, the Court below has found after taking into account relevant circumstances, that, the fair rent for the accommodation in dispute would be Rs. 24/- in one case and Rs. 28/- in the other two cases This enhanced rent is no doubt more than 50 per cent of the rent payable on 1-10-1946, but that is not a relevant consideration when the enhancement is sought by a suit under Sub-section (4). The Court below has not found that the original transaction of letting out the accommodation on rent to the tenant was unfair. This again is irrelevant. I agree with my learned brother in dismissing these applications in revision.