

Girdhari Lal vs Sunder Lal on 12 December, 1953

Equivalent citations: AIR1954ALL445, AIR 1954 ALLAHABAD 445

JUDGMENT

Chaturvedi, J.

1. This is a plaintiff's revision directed against the judgment and decree of the learned Civil Judge of Bareilly refusing to enhance the rent, and also disallowing the claim for the recovery of rent at the enhanced rate from a back date.

2. The facts of the case in brief are that the defendant opposite party has been a tenant of the plaintiff applicant for more than 15 years, and the rent previously fixed was at the rate of Rs. 38/- per month. This rent was reduced in 1936 and again in 1938. After the deduction in 1938 the rent was fixed at Rs. 31/- per month with an additional annual payment of Rs. 36/-, the total rent thus being Rs. 34/- per month. On 4-5-1948 the plaintiff gave a notice to the defendant enhancing the rent by 50 per cent. The defendant did not accept this enhancement, but agreed to the enhancement of 25 per cent. only. The present suit was consequently filed for fixation of rent at Rs. 51/- per month, which would be the rent payable if the enhancement by 50 per cent, were valid. The plaintiff claimed the arrears at the enhanced rate with effect from 18-5-1948, as the enhancement according to the notice, came into effect on this date. The total rent thus due was said to be a sum of Rs. 646/- out of which Rs. 387/8/- had been paid by the defendant, and the balance claimed was a sum of Rs. 258/8/-.

3. The defendant pleaded that he was liable to pay rent at the rate of Rs. 31/- per month only, and the annual Nazrana of Rs. 36/-, was an illegal claim; and that the defendant was ready to enhance the rent by 25 per cent, and he and the plaintiff agreed to this enhancement about the end of February 1949, so that the rent that was payable by the defendant was Rs. 38/12/-per month with effect from the above date. It was further pleaded that Rs. 38/12/- was the agreed rent and it could not be enhanced.

4. The learned Civil Judge, who tried the suit, held that the rent payable after 1938 was Rs. 34/- per month, as the additional payment of Rs. 36/- a year was also in the nature of rent and there was no illegality in fixing this additional sum to be payable annually. He thus held that the rent payable after 1938 was Rs. 34/- per month. He did not accept the defendant's case that there was any agreement between the parties, in February or March 1949, enhancing the rent by 25 per cent, and agreeing to fix it at Rs. 38/12/-per month. His finding on the point is that the plaintiff never agreed to this enhancement of 25 per cent. only.

5. The plaintiff had not alleged that the transaction fixing the rent at Rs. 34/- per month was an unfair transaction, and it appears to have been argued by the learned counsel for the defendant that, in the absence of any such allegation and proof, the agreed rent could not be enhanced. The learned Civil Judge accepted this contention of the defendant and held that it was necessary for the plaintiff to allege and prove that the transaction fixing the rent at Rs. 34/- per month was an unfair transaction and, in the absence of any such proof, the plaintiff was not entitled to have the rent enhanced.

He then considered the Question as to what was the proper rent payable for the shop in question and, after observing that the rent of a similar shop in the vicinity was Rs. 90/- per month, came to the conclusion that, taking into consideration the situation of the shop and other circumstances, the proper rent for the shop was Rs. 51/- per month, as claimed by the plaintiff; but if for some reason this amount was considered to be excessive, then the sum of Rs. 46/12/- per month would not be excessive or inadequate as the rent of the shop. He further held that the notice for enhancement given by the plaintiff in 1948 was invalid, because the plaintiff had no right to enhance the agreed rent to a figure above the annual reasonable rent, and the annual reasonable rent of the shop was Rs. 42/8/- per month. I accept these findings as findings of fact, supported as they are by evidence on the record.

6. It would appear from the above narration of facts that, according to the findings of the learned Civil Judge, the agreed rent was Rs. 34/- per month, the reasonable rent came to Rs. 42/8/- per month, and the proper rent was Rs. 51/- per month or Rs. 46/12/- per month. The question of law, however, that arises in the case is whether the plaintiff was bound to prove that the transaction, fixing the rent at Rs. 34/- per month, was an unfair transaction, as it is only on this ground that the learned Civil Judge has refused to enhance the rent. The learned counsel for the applicant has argued that the plaintiff need not have alleged or proved that the transaction fixing the rent was, in any way, unfair, and if he is able to show that the reasonable rent is inadequate, he is entitled to a decree for the enhancement of rent without proving that the agreed rent was the result of an unfair transaction.

7. I am inclined to agree with this contention of the learned counsel for the plaintiff-applicant. Section 5(4), U. P. Control of Rent and Eviction Act is in the following words : "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/- 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 1-4-1942 that the term has expired."

8. The above provisions clearly show that the landlord has been given a right to have the annual reasonable rent enhanced on the ground that it was inadequate, and the tenant has been given a right to have the annual reasonable rent reduced on the ground of its being excessive. But so far as the agreed rent is concerned, only the tenant has been given a right to bring a suit for its reduction,

if it happens to be more than the annual reasonable rent; and, in that case, he will have to show that the transaction at which the rent was arrived at was unfair. If the annual reasonable rent is higher than the agreed rent, the agreed rent can be reduced only if the transaction at which it was arrived at was an unfair one. It was never in the contemplation of the legislature that the landlord could be improperly persuaded or coerced to fix a lower rent.

As far as the landlord is concerned, Section 5(2) of the Act permits the landlord to enhance the agreed rent by his own act by giving a notice, in the case of tenancies continuing from before 1-10-1946, and thus raising the agreed rent up to the annual reasonable rent or by 50 per cent, whichever happens to be less. In case of old tenancies, it would obviously be unfair to prohibit the landlord from raising the agreed rent, and, it has, therefore, been provided that in the case of tenancies continuing from before the date of the commencement of the Act, the landlord cannot enhance it by his own act of giving a notice, up to the annual reasonable rent of by 50 per cent, whichever happens to be the lesser figure. "After this enhancement by notice, if the landlord feels that even the annual reasonable rent is inadequate, he has been given a right by Section 5(4) to bring a suit for its enhancement, and the court is entitled to enhance it to a proper figure, if it thinks that the annual reasonable rent was inadequate. The landlord is not called upon to prove at all, in such a case, that the agreed rent was the result of any unfair transaction. The decision of the learned Civil Judge on this point appears to be incorrect.

9. A Division Bench of this Court in the case of -- 'Bhim Sen v. Murari Lal', AIR 1953 All 238 (A), has also come to the same conclusion, and had held that the proviso to Sub-section (4) of Section 5 has reference only to cases in which the tenant claims that the agreed rent is higher than the annual reasonable rent, and not to cases in which the landlord seeks to increase the annual reasonable rent if there already is an agreed rent between the parties. In view of the clear authority of the Division Bench mentioned above, it is not necessary to pursue the matter any further, and the decision of the learned Civil Judge that the plaintiff should have proved the agreed rent to be unfair has to be set aside.

10. A new point, however, arose in this case during the arguments, and that point was that the agreed rent in this case being lower than the annual reasonable rent, whether it was open to the plaintiff to file a suit under Section 5(4) without, in the first instance, enhancing the agreed rent to the figure of the annual reasonable rent. In this case the plaintiff had attempted to raise the rent, by giving notice, to a figure more than the annual reasonable rent of Rs. 42/8/- a month, but this not being permitted by the law, the notice of enhancement has to be held to be invalid, with the result that the rent was not increased even up to the figure of the annual reasonable rent. See -- 'Someshwar Dayal v. Shri Dwarkadhish Ji Maha-raj', AIR 1950 All 61 (B) and -- 'Lalji Tandon v. Mrs. F. G. Rufus', AIR 1950 All 289 (C).

11. On the date of the suit, therefore, the agreed rent had not been validly raised to the amount of the annual reasonable rent, and the question arose whether, under the circumstances, a suit under Section 5(4) was maintainable at all. This sub-section, as it is worded, permits a suit by the landlord only on the ground that the annual reasonable rent is inadequate, and it gives no right to the landlord to sue for the enhancement of the agreed rent, because he can enhance it himself by giving

a notice under Section 5(2).

The plaintiff, however, in this case may have thought that, if he merely raised the rent to the amount of the annual reasonable rent and the defendant agreed to that amount, then this rent might become the agreed rent between the parties, and the agreement having been arrived at after 1-10-1946, he may not be able to have the agreed rent enhanced, even though it happened to be also the annual reasonable rent. But this difficulty, in my opinion, was really no difficulty because having enhanced the agreed rent to Rs. 42/8/- a month, he could still sue for its enhancement under Section 5(4), as the agreed rent was also the annual reasonable rent, and he has been given a right to have the annual reasonable rent enhanced.

In most of the cases, the annual reasonable rent is being paid by express or implied agreement of the parties. But this does not mean that the landlord cannot have it enhanced if it is found to be inadequate. The proper course for the plaintiff in this case was first to have the agreed rent enhanced to the figure of the annual reasonable rent of Rs. 42/8/- a month, by giving a notice under Section 5(2), because the rent payable would then have become the annual reasonable rent, and even though the defendant may have accepted the figure, the plaintiff could still sue to enhance even this rent of Rs. 42/8/- by bringing a suit under Section 5(4). This sub-section does not permit the landlord to bring a suit for the enhancement of the agreed rent, and only permits him to sue for the enhancement of the annual reasonable rent. But if the annual reasonable rent is really not payable by the tenant, there appears to be no point in permitting such a suit to be instituted.

12. The view that I have taken is somewhat technical but, in the face of the clear words of the statute, I do not think it is open to me to interpret the section in the manner so as to lay down that, even in a case where the agreed rent is below the annual reasonable rent, the landlord can bring a suit for the enhancement of the annual reasonable rent though the rent actually payable is the agreed rent.

I am conscious of the fact that this interpretation would cause hardship in a case where the annual reasonable rent is more than 50 per cent. above the agreed rent, because by his notice the landlord cannot enhance the rent to more than 50 per cent, and in such a case he cannot bring the amount to the amount of the annual reasonable rent by his own act. He would, therefore, be completely barred from bringing a suit under Section 5(4) of the Act. But this position appears to have been brought about by the fact that the legislature never contemplated the enhancement of rent by more than 50 per cent, of the agreed rent. In any case, if there is a defect in the Act causing hardship in the case mentioned above, it is not for the courts to remove that defect.

13. For the reasons given above, I am constrained to hold that the present suit was not maintainable, as the procedure provided by law was not followed by the plaintiff. If the suit for enhancement was not maintainable under Section 5(4), the suit for the recovery of rent would also have to be dismissed, as the suit was expressly brought under that sub-section.

14. I, therefore, dismiss this revision and also dismiss the applicant's suit. But the applicant having succeeded on the point which the learned Civil Judge had decided against him. I direct that the parties shall bear their own costs in both the courts.