

## Radhey Lal vs Mt. Lareti on 6 November, 1951

**Equivalent citations: AIR1954ALL150, AIR 1954 ALLAHABAD 150**

### JUDGMENT

Mushtaq Ahmad, J.

1. This is a judgment-debtors appeal. The suit in which the decree in execution was passed had been filed on September 17, 1945, for ejectment and arrears of rent at Rs. 3-8-0 per mensem from June 30, to September 9, 1945. The decree in the suit was passed with the consent of the parties on January 2, 1947. It provided that the judgment-debtor appellant would vacate the house by August 1, 1947, and that, if he did not do so, the decree-holder-respondent would be entitled to execute the decree for ejectment. The decree-holder's right to execute the decree after this date was not subject to any condition whatsoever, inasmuch as he could claim the defendant's ejectment after that date without any restrictions. As regards the rent payable to the plaintiff-decree-holder it was agreed that the defendant was entitled to deduct the amount spent by him on repairs, that the said amount would be determined by one Mr. Raghubar Sahai Raizada, counsel appearing for the plaintiff in the case and, lastly, that, if the amount so determined exceeded the arrears due to the plaintiff, the excess would be set off against future rent, taut that, if it was less, it would proportionately reduce those arrears.

Admittedly, no ascertainment of the amount spent by the defendant on repairs was made by Mr. Raghubar Sahai Raizada. The lower appellate Court remarked in its judgment that the plaintiff had filed several applications alleging that her counsel had msde various attempts to go to the house in order to estimate the amount spent on repairs but that for some reason or other the defendant evaded the matter. This would at least show that Mr. Raghubar Sahai was not able to ascertain the amount entirely on account of the dilatory tactics of the defendant.

2. On August 5, 1947, the decree-holder-respondent applied for the execution of the decree for ejectment. Objections were taken to this application on the ground that, under Section 14, U. P. (Temporary) Control of Rent and Eviction Act 3 of 1947, no ejectment could be ordered.

3. A few days later, on August 25, 1947, the respondent gave a notice to the appellant, demanding Rs. 91/- as rent from June 30, 1945 to August 30, (obviously meaning 31) 1947. On September 15, 1947 the appellant sent to the respondent a money Order for Rs. 28/-, which the latter refused to accept.

4. Obviously the decree-holder claimed the respondent's ejectment by his application of August 5, 1947, referred to above, on the strength of the consent decree of January 2, 1947. After he had served on the respondent the notice of August 25, 1947, just mentioned, he claimed the respondent's ejectment also on the ground that the latter had been guilty of wilful default within the meaning of

Clause (a) of Section 3 of the aforesaid Act.

5. The objections filed by the appellant were allowed by the execution Court but dismissed by the lower appellate Court in appeal.

6. The main point argued by the learned counsel for the appellant was that he could not be ejected in view of the provisions of Section 14 of the said Act. This section enacts:

"No decree for the eviction of a tenant from any accommodation passed before the date of commencement of this Act 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."

7. The section would apply only if the decree for ejectment was passed "before the date of commencement of this Act." The decree in this case, as already noted, had been passed on January 2, 1947. The Act in question received the consent of the Governor on February 28, 1947 and was published in the official gazette on March 1, 1947. Section 1 (3) of the Act provides:

it shall be deemed to have come into force on the 1st day of October, 1946.

8. The question arises: what is the date which can be said to be "the date of commencement of this Act," that is, was this date the 28th February, 1947 or the 1st October, 1946? This date, 1st October, 1946, being the date on which, according to Section 1 (3), the Act is to be deemed to have come into force is for all intents and purposes the date on which the Act must be regarded as having commenced. Once the operation of a statute is made retrospective so as to take effect from a particular date, it must, in my opinion, be taken that the Act was actually passed on that day, no matter if in point of fact it came into existence on a subsequent date, as in the present case. I would find it difficult to hold that when a certain legislative measure is made expressly retrospective as from a specified date, it should still be imagined that the same really began on a later date.

Any other view would involve the anomaly that, although the Act is made retrospective so as to take effect from a prior date, it should be regarded as having commenced on a later date, as in that case it would have to be taken that for the intervening period the Act was actually in abeyance. Such a position may not be easily intelligible, for to say that the Act came into force on a particular date and yet it should be taken to have commenced on a later . date is really to suggest a contradiction of ideas.

9. My attention has been called to two single Judge decisions of this Court bearing on this point but deciding it altogether divergently. One was the case of -- 'Abbilak Ram v. Uma Shankar', AIR 1950 All 666 (A) and the other that of -- 'Sahabuddin v. Mohan Lal', AIR 1951 All 227 (B). In the former Bind Basni Prasad J. had held that the "date of commencement of this Act" in Section 14 meant the date on which the Act was published, that is, the 1st March, 1947. On the other hand, in the latter case, the Hon. the Chief Justice took the view that the date of commencement was really the date on which the Act had come into force under Section 1(3) of the Act, namely the 1st October, 1946. I am

positively inclined to the latter view. The result of this would be that the decree in the present case which was passed on January 2, 1947 would be deemed to have been passed after and not before the date of the commencement of the Act. As such, obviously Section 14 would have no application.

10. The lower appellate Court did not pay any independent consideration to this question of the applicability or otherwise of Section 14, but, assuming the section to be applicable, proceeded to examine whether there was sufficient ground under Clause (a) of Section 3 of the Act for the appellant's ejectment, and it answered the question in the affirmative. I shall examine this question now.

11. Paragraph 2 of the plaint mentioned that the plaintiff had sent a notice to the defendant asking for arrears of rent on July 17, 1945. This allegation was admitted by the defendant in paragraph 3 of his written statement. It is common ground that no rent was ever paid by the defendant to the plaintiff after the date of this notice except that he sent a money order for Rs. 28/- as already mentioned on September 15, 1947. Later, as also mentioned, the plaintiff sent a notice to the defendant on August 25, 1947 demanding Rs. 91/- in response to which the money order just mentioned was sent, though refused. The lower appellate Court, while examining this question did not specifically refer to the precise -date of the notice which it took into consideration for the purpose of Clause (a) of Section 3 but there can be no doubt that the learned Civil Judge had in his mind the later notice of August 25, 1947, because the amount of Rs. 91/- mentioned by him as the sum demanded had been demanded only by this notice. Now Section 3 (a) reads: "No suit shall, without the permission of the District Magistrate, be filed in any civil Court against a tenant for his eviction from any accommodation, except on one or more of following grounds:

(a) That the tenant has wilfully failed to make payment to the landlord of any arrears of rent within one month of the service upon him of a notice of demand from the landlord,"

12. The notice of August 25, 1947, which the learned Civil Judge had in his mind obviously did not satisfy the conditions mentioned in the above quotation. These conditions are that, even prior to the filing of the suit, certain things should have taken place, namely, the demanding of the rent by notice and the wilful failure, of the tenant to pay it at least for a month after the date of service of the notice upon him. In the present case, the notice of August 25, 1947, which alone the lower appellate Court was thinking of and the appellant's failure to pay the amount demanded thereby, both were of dates subsequent to the filing of the suit on September 17, 1945. Therefore, on the basis of this notice and this failure it could not be said that Clause (a) of Section 3 had come into operation and that the plaintiff was entitled by the force of it to a decree for ejectment. The position, however, does not stop here, as would be clear from what follows.

13. On July 17, 1945, as I have above mentioned, the plaintiff had sent his first notice demanding arrears to the defendant. This notice was admitted in defence. Nothing was ever paid in pursuance of it. The suit was filed after the date of this notice and also after the lapse of more than one month from the date of its service, it is this notice and the defendant's failure to respond to it that in fact supply the grounds mentioned in Clause (a) of Section 3, on the basis of which, the plaintiff could

claim the defendant's ejectment. The result, therefore, is that, both because Section 14 of the Act is not applicable at all and also because, assuming it is, the defendant is liable to be ejected under Clause (a) of Section 3 of the Act, the order under appeal must be upheld.

14. It was argued by the learned counsel for the decree-holder-respondent that the judgment-debtor's contention on the basis of Section 14 is further untenable because it would have no application to a consent decree. That is to say, he stressed that, where the defendant, being presumably aware of his rights, had agreed to vacate the premises by a certain date but failed to do so, the plaintiff was entitled to eject him irrespective of any prohibitive conditions enjoined by this particular Act. Divergence is found on this point also in the two cases referred to above, and here again I am inclined to the view taken in the later decision. In my opinion, there is nothing in law to restrict the freedom of a party to agree to any terms in a compromise to be filed in a pending suit, and this position is in no way controlled or modified by anything in the statute.

I am further supported in this view by a Bench decision of the Assam High Court in -- 'Satish Chandra v. Bimalendu Sen', AIR 1951 Assam 27 (C) where the question arose under the Assam Urban Area Rent Control Act of 1949 and it was held that there was nothing in that Act which prevented the tenant from contracting himself out of the privileges allowed to him by Section 6 of the Act. It was held that, in spite of that section, it was open to the tenant to agree to vacate the premises leased by a certain date, the landlord being entitled to claim his ejectment in case he failed to do so.

15. For these reasons I uphold the decree of the lower appellate Court and dismiss this appeal with costs.

16. Leave to appeal to a Bench is granted.