R.C. Tamrakar And Anr vs Nidi Lekha on 16 October, 2001

Equivalent citations: AIR 2001 SUPREME COURT 3806, 2001 (8) SCC 431, 2001 AIR SCW 4245, (2002) 3 CGLJ 408, (2002) 1 JCR 75 (SC), 2002 (1) ALL CJ 661, (2001) 8 JT 612 (SC), 2001 (7) SCALE 265, 2001 SCFBRC 516, (2001) 2 RENCJ 511, (2001) 4 CURCC 198, (2001) 2 RENCR 511, (2001) 45 ALL LR 644, (2002) 1 PAT LJR 21, (2002) 2 MAD LW 539, (2002) 2 JAB LJ 69, (2001) 7 SUPREME 622, (2001) 7 SCALE 265, (2002) 1 JLJR 33, (2002) 1 CURLJ(CCR) 123

Bench: Syed Shah Mohammed Quadri, S.N. Phukan

CASE NO.:
Appeal (civil) 2784 of 1997

PETITIONER:
R.C. TAMRAKAR AND ANR.

RESPONDENT:
NIDI LEKHA

DATE OF JUDGMENT: 16/10/2001

BENCH:
SYED SHAH MOHAMMED QUADRI & S.N. PHUKAN

JUDGMENT:

JUDGMENT 2001 Supp(4) SCR 192 The Judgment of the Court was delivered by PHUKAN, J. This appeal by special leave arises from the judgment of the High Court of Madhya Pradesh at Jabalpur dated 30th January, 1997 passed in Second Appeal No. 291 of 1993. The appeal is by the tenant.

Pacts of the case are as follows :

> The sole respondent-landlady filed a suit for ejectment and recovery of arrears of rent and damages against the appellant-tenant. The grounds for ejectment were bona fide requirement for accommodation, non-payment of rent from 3.5.1985 to 31.7.1986 and also for renovation and alteration of the suit premise, as it was in the dilapidated condition. The tenant denied the title of the landlady and that he was in the arrears of rent. The tenant also denied that the suit premises was required for bona fide accommodation of the respondent and for renovation and alteration. The suit was decreed by the Additional Civil Judge. Chhindawara, but the decree was set aside by the First Appellate Court. The second appeal was carried to the High Court and by the impugned judg-ment the High Court allowed the appeal and restored the judgment of the Trial Court. That is how the parties are before us.

We have heard Mr. Shiv Sagar Tiwari, learned counsel for the appellant- tenant and Mr. K.M.K. Nair learned counsel for the respondent-landlady.

From the judgment of the Trial Court, we find that the tenant admitted in his evidence the fact of taking the suit premises on rent on also accepted the respondent as his landlord. On these facts the Trial Court held that there was relationship of landlord and tenant between the parties. This finding has not been disturbed by the First Appellate Court and the High Court. Regarding default in payment of rent it was averred that the tenant was in arrears of rent from May 3, 1985 to 31st of July, 1986 amounting to Rs. 1493 and the rent was Rs. 100 per month. The Trial Court from the evidence of the tenant and his son held that, as they could not say who paid the rent and for how many months, the tenant was in arrears of rent amounting to Rs. 1493. The First Appellate Court on the ground that the tenant deposited rent in the Appellate Court, held that he could not be treated defaulter of rent.

Under clause (a) of sub-section (1) of Section 12 of M.P. Accommodation Control Act, 1961 (for short 'the Act'), if a tenant has neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months from date on which notice of demand for arrears of rent has been served on him by the landlord, eviction can be ordered. Admittedly, the tenant did not pay the arrears of rent after receipt of the notice.

Sub-sections (1) and (5) of Section 13 of the Act which are relevant for our purpose and are quoted below :

" 13(1). On a suit or any other proceeding being instituted by a landlord on any of the grounds referred to in Section 12 or in any appeal or any other proceeding by a tenant against any decree or order for his eviction, the tenant shall, within one month of the service of writ of summons or notice of appeal or of any other proceeding, or within one. month of institution of appeal or any other proceeding by the tenant, as the case may be, or within such further time as the court may on an application made to it allow in this behalf, deposit in the court or pay to the landlord, an amount calculated at the rate of rent at which it was paid for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month. Previous to that in which the deposit or payment is made; and shall thereafter continue to deposit or pay, month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate till the decision of the suit appeal or proceedings as the case may be.

13(5). It" a tenant makes deposit or payment as required to sub-section (1), or sub-section (2) no decree or order shall be made by the Court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the Court may allow such cost as it may deem fit to the landlord." Reading both the sub-sections together, we are of the opinion that the benefit of

> sub-section (5) shall be available to a tenant provided he tenders the arrears of rent or deposit it in the court within one month of service of writ of notice or notice of appeal or any other proceeding or within one month of the institution of the appeal or any other proceeding by the tenant or within such further time as the court may on an application made to it allow in this behalf. In the case in hand the tenant did not deposit the arrears of rent either prior to filing of the suit or during its pendency before the Trial Court. In the First Appellate Court rent was deposited and it was not clear whether he continued to deposit the rent as per sub-section (1) of Section 13. The First Appellate Court set aside the findings of defaulter on the ground that the rent was deposited in the Appellate Court. The High Court was of opinion that after the Trial Court passed the decree holding that the tenant was in the arrears of rent, mere depositing the amount without filing an application for extension of time for payment of all the arrears of rent due, the finding of the Appellate Court that tenant was not a defaulter is not sustainable. The High Court further recorded that the First Appellate Court did not give any finding that entire amount of arrears of rent was paid. This finding of the High Court cannot be faulted in view of clear provision of sub-section (1) of Section 13 and, there-

fore, tenant is not entitled to get protection under sub-section (5).

Regarding bona fide requirement of the landlady, the Trial Court after appreciation of the evidence on record held that premises in question was required by the landlady for bona fide occupation for residential purpose for herself. The First Appellate Court set aside the finding on the ground that need of the landlady was not bona fide as her son has constructed a house where she could stay. Though the tenant left the suit premises on his transfer to a place called Sivani where he has been provided accommodation by his employer, where he is living with his wife and he has also a house at Sivani, the First Appellate Court erroneously took into consideration that the suit premises is required for accommodation of his ailing grandmother and his son, who is doing business in the suit premises. These are absolutely extraneous considera-tion as while considering the bona fide need of the landlord under the Act, the court need not take into consideration these facts.

Law is well settled that it is for the landlord to decide how and in what manner he should live and that he is the best judge of his residential require-ment. In deciding the question of the bona fide requirement, it is unnecessary to make an endeavour as to how else landlord could have adjusted himself. Though the son of the landlady is doctor and has constructed his own house, the landlady wants to stay in the suit premises. It is not the case of the tenant that landlady has any other suitable accommodation. Therefore, the High Court rightly set aside the finding of the First Appellate Court holding that landlady could not be compelled to reside with her son as her case was that she wanted to stay by herself in the suit premises because of her health condition and the climatic condition of that place suits her.

As the landlady has been able to make out a case for eviction under the Act, the tenant is liable to be evicted.

The Presiding Officer for the First Appellate Court viz., 3rd Additional District Judge, Chhindawara, Sivani, Jabalpur who allowed the appeal of the tenant has filed the present application for expunging the remarks made against him in the impugned judgment by the High Court.

Time and again this Court had deprecated the practice of passing unsa-voury remarks against subordinate judicial officers by High Courts but unfor- tunately the direction of this Court has not percolated down to High Courts.

As far as back in the year 1963 in Ishwari Prasad Mishra v. Mohd. Isa, [1963] 3 SCR 722, this Court speaking through Gajendragadker, J. (as he then was) in the context of dealing with strictures passed by the High Court against one of its subordinate judicial officers stressed the need to adopt utmost judicial restraint against using strong language and imputation of corrupt motives against lower judiciary because the Judge against whom imputations are made has no remedy in law to vindicate his position. In K.P. Tiwari v. State of M.P., [1994] Supp. 1 SCC 540, this Court made the following observations in this context :

> "The higher courts every day come across orders of the lower courts which are not justified either in law or in fact and modify them or set them aside. That is one of the functions of the superior courts. Our legal system acknowledges the fallibility of the Judges and hence provides for appeals and revisions. A Judge tries to discharge his duties to the best of his capacity. While doing so, sometimes, he is likely to err.....it has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks - more correctly up to their nostrils They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however, gross it may look, should not, therefore, be attributed to improper motive."

We also extract below the observation of this Court in Braj Kishore Thakur v. Union of India and Ors., [1997] 4 SCC 65.

> "Judicial restraint is a virtue. A virtue which shall be concomitant of every judicial disposition. It is an attribute of a Judge which he is obliged to keep refurbished from time to time, particularly while dealing with matter before him whether in exercise of appellate or revisional or other supervisory jurisdiction. Higher courts must remind themselves constantly that higher tiers are provided in the judicial hierarchy to set right errors which could possibly have crept in the findings or orders of courts at the lower tiers. Such powers are certainly not for belching diatribe at judicial personages in lower cadre. It is well to remember the words of a jurist that "a Judge who has not committed any error is yet to be born."

No greater damage can be caused to the administration of justice and to the confidence of people in judicial institutions when Judges of higher courts publicly express lack of faith in the subordinate Judges. It has been said, time and again, that respect for judiciary is not in hands by using

intemperate language and by casting aspersions against lower judiciary. It is well to remember that a judicial officer against whom aspersions are made in the judgment could not appear before the higher court to defend his order. Judges of higher court must, therefore, exercise greater judicial restraint and adopt greater care when they are tempted to employ strong terms against the lower judiciary."

The High Courts should always remember while exercising the control over the courts subordinate thereto that 'the strength of power is not displayed solely in cracking a whip on errors, mistakes or failures; the power should be so wielded as to have propensity to prevent and to ensure exclusion of repeti-tion if committed once innocently or unwittingly.....The power to control is not to be exercised solely by wielding a teacher's cane'. (Paragraph 15 of 'K' A Judicial Officer [2001] 3 SCC 54). In view of what has been said repeatedly by this Court regarding passing of adverse remarks against subordinate judicial officers by the High Court, we expunge remarks made against the applicant by the High Court in the impunged judgment as these were uncalled for. It is unfortunate that the concerned judicial officer had to approach the highest court of land spending considerable time and money. If any adverse entry has been recorded in the confidential report of the officer, it shall be deleted and treated as washed off from the record. The application is allowed:

> In the result we find merit in the present appeal and accordingly it is allowed. Cost on the parties.