

Gyan Chand vs Kunjbeharilal And Ors. on 6 December, 1976

Equivalent citations: AIR1977SC858, (1977)3SCC317, [1977]2SCR324, AIR 1977 SUPREME COURT 858, 1977 3 SCC 317, 1977 (2) RENCER 212, 1977 2 SCR 324, 1977 RENTLR 685

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Bench: P.K. Goswami, Syed M. Fazal Ali, Y.V. Chandrachud

JUDGMENT

P.K. Goswami

1. The facts of the case relating to this appeal by special leave have been fully descri

2. However, so far as the question of law that arises in this appeal, we would like to c

3. The question of law that arises in this appeal is as to whether an application for sp

13A. Special provisions relating to pending and other matters : Notwithstanding anything

(a) no court shall, in any proceeding pending on the date of commencement of the amendin

(b) in every such proceeding, the court shall, on the application of the tenant made wit

(c) the provisions of Clauses (a) and (b) shall mutatis mutandis apply to all appeals, o

(d) no court shall in any proceeding pending on the date of commencement of the amending

(e) no decree for eviction passed by any court before the commencement of the amending 0

(f) the provisions of Clause (d) shall mutatis mutandis apply to all appeals, or applica

Explanation : For the purposes of this section:

- (a) 'amending Ordinance' means the Rajasthan Premises (Control of Rent and Eviction) (Amending Ordinance) Act 12 of 1965.
- (b) 'Proceeding' means suit, appeal or application for revision.
4. Even in the original Act passed in 1950 Section 13(1)(a) was there with two provisos.
5. By the Amending Rajasthan Act 12 of 1965 Section 13A was introduced. Sub-section (4) thereof provides that the decree of eviction shall be subject to the provisions of Section 13A.
6. Section 13A is selective enough. Only one type of eviction decree which is solely based on the ground of overcrowding is covered by Section 13A.
7. The decree of eviction with which we are concerned in this appeal is founded on the ground of overcrowding.
8. There is a two-fold submission by the learned Counsel for the appellant. First, in view of the Explanation to Section 13A, the application for special leave is not a proceeding within the meaning of Section 13A.
9. With regard to the first submission it may be pointed out that an application for special leave is not a proceeding within the meaning of Section 13A.
10. In view of the connotation of the word "proceeding" as given under the Explanation to Section 13A, the application for special leave is not a proceeding within the meaning of Section 13A.
11. We will now deal with the second submission of the appellant which is the alternative submission.
12. It is submitted by the appellant that even if an application for special leave is not a proceeding within the meaning of Section 13A, it is a proceeding within the meaning of Section 13A(b) and (c).
13. Under Order XVI, Rule 11 of the Supreme Court Rules, on the grant of special leave to appeal, the appellant is required to file an application for special leave.
14. The question of limitation provided under Section 13A(b) and (c) is important and the appellant's submission is that the application for special leave is not a proceeding within the meaning of Section 13A(b) and (c).
15. We may next deal with the question whether Section 22 of the Act is of assistance in this regard.
16. Before we proceed further we may turn to some of the material provisions in the Act.
17. Section 6 provides for fixation of standard rent and under Sub-section (1) thereof the standard rent shall be fixed by the Government.
18. Section 12 provides for dealing with disallowance of amenities by the landlord by the tenant.
19. From a conspectus of the above provisions it will be seen that there are two types of proceedings, one which is a proceeding within the meaning of Section 13A(b) and (c) and the other which is not.

20. The word court, however, is not defined in the Act but for purposes of Sections 19A,

21. As is clear from the above narration that there is a dichotomy of forums under the A

22. In the above background of the provisions in the Act Section 22 which provides for a

22 (1). From every decree or order passed by a court under this Act. an appeal shall lie

(2) No second appeal shall lie from any such decree or order;

Provided that nothing herein contained shall effect the powers of the High Court for Raj

(3) Any person aggrieved by an order of the Magistrate may. within fifteen days from the

23. It is very significant that while Section 22(1) qualifies the decree or order as bei

24. Section 22(1) refers to every decree or order passed by a court under this Act. The

25. It is, therefore, clear that the Act provides for the institution of actions in two

26. It is manifest from a perusal of the scheme of the Act that appeals or applications

27. With regard to execution proceedings, it would appear that these are outside the sch

28. We are of opinion that the appellant cannot take advantage of Section 13A in this ap

S. Murtaza Fazal Ali, J.

29. This appeal by special leave involves a question of law regarding the ambit and scope of Section 13A of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 as amended by Ordinance learned Counsel 26 of 1975 dated September 29, 1975 which was later replaced by an Act.

30. The appeal arises in the following circumstances.

31. The defendant/appellant along with his two brothers Padam Chand and Tara Chand had taken on lease a shop at a monthly rent of Rs. 60/- from the plaintiffs/respondents as far back as September 1, 1961. The shop was situated in Tripolia Bazar, Jaipur City (Rajasthan). The plaintiffs served a notice of eviction under Section 106 of the Transfer of Property Act on the appellant and his two brothers terminating the tenancy and directing them to vacate the premises. As the tenants did not vacate the premises, the plaintiffs instituted the present suit in the Court of the Munsiff East, Jaipur City, claiming eviction of the appellant, and his two brothers on the ground that they had not paid or tendered rent for a period of six months from Magh Shukla 1. Smt. 2021. In the plaint the plaintiffs also averred that the shop was required by them for their own use and occupation and that the tenants had sublet the shop to Rajasthan Bartan Bhandar without the consent of the plaintiffs. We might mention here that these two grounds taken by the plaintiffs have been held by all the Courts to be completely disproved, and the suit was decreed by the District Judge and the High Court mainly on the ground that the tenants had defaulted in payment of rent for a period of six months and were, therefore, liable to be ejected under the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - hereinafter referred to as the Act'. It appears that after summonses were served on all the three defendants including the appellant, two of the brothers of the appellant, viz., Padam Chand and Tara Chand put in their appearance, but the appellant despite the service did not put in his appearance. In fact the counsel who was appearing for the other two defendants had been instructed to appear for the appellant also, but the Vakalatnama was not signed by the appellant. The appellant appears to have taken advantage of this lacuna in contending that he had not participated in the proceedings of the trial Court. On February 14, 1966 the defendant Tara Chand moved an application under Section 13 of the Act praying to the Court that the rent due may be determined and the defendants may be directed to deposit the rent. The Court accordingly determined the rent on March 1, 1966 and directed the defendants to deposit a sum of Rs. 398-75 paise on or before April 19, 1966. As the rent was not deposited, the plaintiffs moved an application for striking out the defence of the defendants against eviction for their failure to comply with the provisions of Section 13(4) of the Act. The Court accordingly by its order dated December 14, 1966 struck out the defence of the defendants. It may be pertinent to note that although the appellant had not put in his formal appearance he understood the order of the trial Court dated December 14, 1966 striking out the defence and treated the same as having been passed not only, against his brothers Padam Chand and Tara Chand, the two defendants, but also against himself and accordingly he along with his brothers preferred an appeal against that order to the Senior Civil Judge, Jaipur City on October 30, 1967. This appeal was ultimately dismissed and then the three defendants filed an application for revision before the High Court which was also dismissed by the High Court by its order dated September 19, 1968. Thus it is manifest that the appellant was fully aware of the proceedings that had taken place as also of the order that had been passed against the defendants striking out their defence. When the record was received back by the trial Court, Shri Tata Chand Jain Advocate of the defendants informed the Court on November 26, 1968 that he was holding brief only on behalf of the two defendants Padam Chand and Tara Chand and not on behalf of the appellant Gyan Chand. The Court accordingly passed an order that the suit was to proceed ex parte against the appellant. On November 30, 1968 the appellant filed an application for setting aside the ex parte order passed against him and this application found favour with the trial Court and was accordingly allowed. The appellant was allowed to file his written statement which he filed on January 27, 1969. Thereafter the appellant applied to the Court for determining the rent due to

the plaintiffs but that application was rejected on the ground that no amount of rent was payable as the entire rent due had already been paid by the other two defendants. Thereafter the plaintiffs filed an application before the trial Court for striking out the defence against Gyan Chand as he had not complied with the order under Section 13(4) of the Act passed by the Court previously. The trial Court, however, did not pass any orders on that application and ultimately dismissed the suit holding that there was no default.

32. It may be stated at the outset that when the appellant applied for setting aside the ex parte order he gave no explanation whatsoever for his non-appearance in the suit, after the summonses were served on him but merely tried to explain his absence on November 26, 1968. We have already pointed out that the appellant knew very well that the defence had been struck out by an order of the Court and had actually joined in the appeal and the revision filed by the other two de-defendants. In spite of that for two years he kept quiet and gave no explanation whatsoever for not appearing before the Court and participating in the proceedings until November 30, 1968. This delay of two years which has been seriously commented upon by the High Court has not been explained satisfactorily by the appellant.

33. After the suit was dismissed by the trial Court, the plaintiffs filed an appeal before the Additional District Judge who allowed the appeal holding that the defendants were defaulters and accordingly decreed the suit. The grounds of sub letting and personal requirement as alleged by the plaintiffs were, however, held not proved. Thereafter there was second appeal to the High Court which affirmed the judgment of the District Judge and maintained the decree passed by the District Judge. The High Court has rightly pointed out that the conduct of the appellant in not giving any explanation for not participating in the proceeding despite service of the summonses speaks volumes against him. The argument of the appellant that the entire proceedings should be cancelled as they had taken place in his absence was rightly rejected by the High Court. In view of the current findings of fact recorded on this point by the District Judge and the High Court, we are not at all inclined to interfere, in this appeal by special leave, with the merits of the case decided by the Courts below. We are satisfied that the appellant was not diligent at all and has to thank his stars if the decision of the Courts below went against him. In these circumstances, we do not propose to enter into merits of the appeal.

34. Mr. Jain, however, raised a pure question of law flowing from the amendment by which Section 13A was introduced in the Act by virtue of Ordinance learned Counsel 26 of 1975. Mr. Jain submitted that the statutory benefit conferred by Section 13A would have to be extended to the appellant before this Court also and since the rent due had already been paid and the appellant was prepared to pay the costs and interest, the suit should be dismissed. In order to appreciate this point, it may be necessary to state the sequence of facts. The High Court dismissed the second appeal of the appellant on September 5, 1975. Against this judgment, the appellant filed an application for special leave in this Court on September 23, 1975. Six days later i.e. on September 29, 1975, Ordinance learned Counsel 26 of 1975 dated September 29, 1975, introduced Section 13A by amending the Act. On October 28, 1975 the appellant filed a Civil Miscellaneous Petition in this Court praying that the Court may issue directions under the newly amended Section 13A(c) of the Act. On November 14, 1975 this Court granted special leave. On December 11, 1975 another Civil

Miscellaneous Petition was filed by the appellant renewing his prayer for directions to be given by this Court under Section 13A of the Amending Act. The significance of these Civil Miscellaneous Petitions appears to have been that if the special leave petition was not treated as an appeal, then the moment the special leave was granted by this Court the appeal stood admitted by this Court and, therefore, the second application was filed for directions under Section 13A of the Act as amended.

35. Mr. Agarwala counsel for the 'respondents has vehemently contended that Section 13A of the Act would have absolutely no application to appeal by special leave filed in this Court. In order to appreciate this point it may be necessary to examine the language and the circumstances under which Section 13A was introduced. It would appear that before the introduction of Section 13A by virtue of the Ordinance, there was no provision in the Act which prohibited, the Court from passing any decree if at any stage the tenant was prepared to deposit the entire rent, costs and interest as directed by the Court. The Legislature in pursuance of its socialistic policies attempted to liberalise the conditions of tenancies so as to give the tenants special protection against frivolous evictions. With this object in view, the Ordinance appears to have been passed which was later on replaced by an Act. In the Statement of Objects and Reasons accompanying the amending Act it is mentioned that the Legislature decided to provide relief to tenants occupying premises in urban areas and in Clause (6) of the said statement, the following observations are made:

In relation to pending suits and proceedings for ejectment on ground of defaults, an opportunity had been given to tenants to deposit the arrears of rent within thirty days and upon such deposit no decree for ejectment will be passed on such ground against them.

Thus a perusal of Clause (6) of the Statement of Objects and reasons would clearly show that the intention of the Legislature was to confer certain benefits on the tenants to pending suits and proceedings for ejectment only on ground of defaults by giving them an opportunity to deposit the arrears within a specified time. It is nowhere mentioned in Clause (6) that this benefit was to be extended beyond the frontiers of the State in appeals which were not ordinary remedies but which were special remedies provided for under the Constitution. Thus the scope of the amendment was to confine the protection given to the tenants within the limits of the hierarchy of courts mentioned by the Act, and to the Courts in the State of Rajasthan. It may be noticed that the Statement of Objects and Reasons does not even give a hint that the benefit conferred by Section 13A would be available even in the execution proceedings after the decree had been passed.

36. We shall now analyse Section 13A of the Act against the background of the main objective of the Legislature. Section 13A of the Act as introduced by Ordinance learned Counsel 26 of 1975 and later replaced by the Act runs thus:

13A Special provisions relating to pending and other matters : Notwithstanding anything to the contrary in this Act as it existed before the commencement of the ordinance or in any other law:

(a) no court shall, in any proceeding pending on the date of commencement of the amending ordinance pass any decree in favour of a landlord for eviction of a tenant on the ground of non-payment of rent, if the tenant applies under Clause (b) and pays to the landlord, or deposits in court, within such time such aggregate of the amount of rent in arrears, interest thereon and full costs of the suit as may be directed by the court under and in accordance with that clause;

(b) in every such proceeding, the court shall, on the application of the tenant made within thirty days from the date of commencement of the amending ordinance, notwithstanding any order to the contrary, determine the amount of rent in arrears upto the date of the order as also the amount of interest thereon at six per cent per annum and costs of the suit allowable to the landlord; and direct the tenant to pay the amount so determined within such time, not exceeding ninety days, as may be fixed by the court, and on such payment being made within the time fixed as aforesaid, the proceeding shall be disposed of as if the tenant had not committed any default;

(c) the provisions of Clauses (a) and (b) shall mutatis mutandis apply to all appeals, or application for revisions, preferred or made after the commencement of the amending ordinance, against decrees for eviction passed before such commencement with the variation that in Clause (b), for the expression "from the date of commencement of the amending ordinance", the expression "from the date of the presentation of the memorandum of appeal or application for revision" shall be substituted;

X X X Explanation : For the purposes of this section:

(a) "amending ordinance" means the Rajasthan Premises (Control of Rent and Eviction) (Amendment) Ordinance, 1975; and

(b) "Proceeding" means suit, appeal or application for revision.

Section 13A contemplates only three kinds of proceedings, namely, suits, appeals and applications for revision and these proceedings must be under the Act itself. Clause (a) of Section 13A of the Act provides that no court after the commencement of the amending ordinance shall pass any decree on the ground of nonpayment of rent if the tenant applies and pays to the landlord the entire rent in arrears, interest and full costs of the suit. Clause (b) requires that such an application is to be made within thirty days of the commencement of the amending ordinance on which the Court would determine the rent in arrears and direct interest to be paid at the rate of six per cent per annum. Clauses (a) and (b) obviously do not apply to the present case, because the proceedings were not pending in any court when the ordinance or the Act came into force. Reliance was, however, placed on the word "proceeding" as appearing in Clauses (a) and (b) in order to plead an argument that the word "proceeding" was wide enough to include not only suits, but appeals at all stages. This argument in our opinion is based on a serious misconception of the interpretation of the word "proceeding". The Legislature has not left the connotation of the word "proceeding" in doubt

because Clause (b) of the explanation clearly indicates what "proceedings" contemplated by Section 13A in Clauses (a)(b) and (c) are. The explanation clearly shows that "proceeding" means suit, appeal or application for revision. A logical interpretation of Clause (b) of the explanation would clearly reveal that the Act itself has limited the scope of the proceeding to suits, appeals or applications for revision under the hierarchy of the statute. In other words, the explanation refers only to such proceedings as may be pending in any suit, appeal or application for revision under the Act.

37. Section 22 of the Act runs thus:

22. Appeals and Revisions :- (1) From every decree or order passed by a Court under this Act, an appeal shall lie to the Court to which appeals ordinarily lie from original decrees and orders passed by such former court.

(2) No second appeal shall lie from any such decree or order;

Provided that nothing herein contained shall affect the powers of the High Court for Rajasthan in revision;

X X X x Section 22 provides for an appeal to the Court where an appeal ordinarily lies, i.e. the Court of the District Judge in the instant case and thereafter an application in revision to the High Court. The use of the words "such proceeding" in Clause (b) of Section 13A fortifies our conclusion that the proceedings contemplated by Section 13A are really the proceedings referred to in the explanation which means proceedings in the nature of suits, appeals or applications for revision as referred to in Section 22 of the Act. In these circumstances we are unable to agree with the learned Counsel for the appellant that proceedings in this Court would fall within the ambit of Clauses (a) and (b) of Section 13A of the Act.

38. It was then submitted that at any rate Clause (c) of Section 13A would apply to the facts of the present case and the appellant should be given the benefit of that provision. It is true that Clause (c) applied the provisions of Clauses (a) and (b) mutatis mutandis to appeals and applications for revision. It may be noticed, however, that this benefit is not conferred even in the execution proceedings arising out of decrees passed in suits or appeals and upheld in revisions. The true interpretation of Clause (c) of Section 13A would, therefore, be that this clause also contemplated the same proceedings as contemplated by Clauses (a) and (b), namely the proceedings indicated in the explanation. Thus the benefit conferred by Clause (c) would apply only to appeals or applications for revisions filed under the Act as provided by Section 22 of the Act. The Legislature never intended to confer this benefit beyond the frontiers of the State.

39. It was, however, submitted that the word "appeal" is wide enough to include an appeal by special leave filed in this Court. It is, however, not possible to accept this contention. The amendment was passed some time in the year 1975 i.e. about 25 years after the Constitution had come into force. An appeal by special leave was a special remedy provided for by Article 136 of the Constitution and the State Legislature of Rajasthan must be presumed to be aware of this special remedy as also the

nomenclature of this remedy. If the intention was to extend the benefit to appeals for special leave it should have been so clearly stated in Clause (c). Furthermore, the Rules framed by the Supreme Court, the knowledge of which also must be ascribed to the State Legislature, make a clear-cut distinction between an application filed in the Court for grant of special leave and a petition of appeal after the leave is granted. It was suggested that the application for special leave to appeal may be treated as the memorandum of appeal as referred to in Clause (c) of Section 13A. It is, however, not possible to accept this contention, because the constituents and ingredients of an application for special leave to appeal are quite different from those of a memorandum of appeal preferred to an appellate Court under Order XLI Rule 1(2) of the CPC. Under Order XVI Rule 4 of the Supreme Court Rules, 1966 the petition for special leave is to contain only the necessary facts and not the grounds. It is true, Rule 11 of Order XVI of the Supreme Court Rules provides that the petition for special leave would be treated as a petition of appeal after the special leave is granted, but that also cannot be equated with a memorandum of appeal as contemplated by Clause (c) of Section 13A of the Act. In contra-distinction to the provisions of the Supreme Court Rules it would appear that Order XLI Rule 1(2) of the CPC runs thus:

The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

It would thus appear that the provisions of Rule 1(2) of Order XLI CPC require that the memorandum of appeal has to set forth under the distinct heads the grounds of objections to the decree appealed from. No such requirement is to be found in the Supreme Court Rules either for an application for special leave to appeal or in the petition of appeal which is required to be filed if certificate by High Court is granted. The Legislature must be presumed to be aware of the difference between an application for special leave to appeal and a memorandum of appeal. If the intention was to extend the benefit of Section 13A even to appeals before the Supreme Court, then apart from the word memorandum of appeal, the words "application for special leave to Supreme Court" should have been mentioned. The fact that Clause (c) of Section 13A merely mentions the words "from the date of the presentation of the memorandum of appeal or application for revision" clearly indicates that the remedies contemplated by the Act are the remedies of appeal and revision as provided for by Section 22 of the Act. In fact, as already pointed out, the benefit conferred by Section 13A of the Act does not extend even to the execution proceedings and in these circumstances it cannot be assumed that it would have applied to a Court which is beyond the frontiers of the State and to a remedy which lifts been provided not by the State Legislature but by the Constitution itself.

40. For these reasons, therefore, we reject the argument of the appellant that Clause (c) of Section 13A of the Act would apply to the present appeal and that the appellant is, therefore, entitled to the benefit of this provision on the basis of the Civil Miscellaneous Petition filed by him. We are clearly of the opinion, on an interpretation of the various clauses of Section 13A of the Act and the explanation thereto that the benefit under Section 13A has been intended by the Legislature to be

conferred only on the appellate and revisional courts and even execution proceedings have been excluded from the ambit of the protection granted.

41. For these reasons I agree with the judgment proposed by my brother Goswami, J., and dismiss the appeal but in the peculiar circumstances of the case without any order as to costs.