

## **Deshraj vs Akhtar Hussain on 12 September, 1960**

**Equivalent citations: 1961 AIR 148, 1961 SCR (1) 665, AIR 1961 SUPREME COURT 148, 1961 (1) SCJ 195, 1961 (1) SCR 665, 1960 JABLJ 994, 1961 MPLJ 201**

**Author: K.C. Das Gupta**

**Bench: K.C. Das Gupta, K.N. Wanchoo, M. Hidayatullah, Bhuvneshwar P. Sinha, J.L. Kapur, P.B. Gajendragadkar**

PETITIONER:

DESHRAJ

Vs.

RESPONDENT:

AKHTAR HUSSAIN

DATE OF JUDGMENT:

12/09/1960

BENCH:

GUPTA, K.C. DAS

BENCH:

GUPTA, K.C. DAS

WANCHOO, K.N.

HIDAYATULLAH, M.

SINHA, BHUVNESHWAR P.(CJ)

KAPUR, J.L.

GAJENDRAGADKAR, P.B.

SUBBARAO, K.

CITATION:

1961 AIR 148

1961 SCR (1) 665

ACT:

Rent, fixation of-Suit filed under ordinance after due notice Ordinance replaced by Act--Plaint returned-Fresh suit filed-Whether fresh notice necessary-United State of Gwalior, Indore and Malwa (Madhya Bharat) Accommodation Control Act, Samvat 2006 (M. B. 15 of 1950) s. 7(2).

HEADNOTE:

The appellant, after due notice to the respondent, had filed a suit for fixation of rent under the provisions of the

Accommodation Control Ordinance Madhya Bharat. In the meantime the Accommodation Control Act (M. P. 15 of 1950) came into force and the plaint filed by the appellant was returned. The appellant without serving a second notice filed a fresh suit under the Act,, which was decreed.

The respondent contended that a suit could not be instituted under the Act without a fresh notice, because of s. 7(2) of the Act.

Held, that s. 7(2) of the Accommodation Control Act (M. P. 15 of 1950) contemplates that a notice should be given but there are no words in the section which made it obligatory that the notice should be issued in terms as under the Act and be given after the Act came into force. In the instant case it cannot be said that the notice which was given by the appellant was not a proper notice.

#### JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 24 of 1956. Appeal by special leave from the judgment and order dated March 31, 1954, of the former Madhya Bharat High Court in Civil Revision No. 183 of 1952.

I. M. Lal and A. G. Ratnaparkhi, for the appellant. Rameshwar Nath and S. N. Andley, for the respondent. 1960. September 12. The Judgment of the Court was delivered by KAPUR J.-This is an appeal against the judgment and order of the High Court of Madhya Bharat at Gwalior and arises out of proceedings between a landlord and his tenant taken under the Accommodation Control Act (XV of 1950) which, for the sake of brevity, will be termed the Act.

On March 14, 1948, the appellant took two houses in Morar from the respondent at a monthly rental of Rs. 80 plus other charges at Rs. 5 per month.

On October 20, 1948, the appellant brought a suit for- fixation of rent in the court of the Cantonment Magistrate at Morar under the provisions of Accommodation Control Ordinance (Ordinance XX of 2004-S.). The Act was passed on January 25, 1950, and came into force on February 10, 1950. Because of the passing of the Act the plaint was returned on March 20, 1950, for want of jurisdiction. Thereupon on April 28, 1950, the appellant filed the suit before the Rent Controller out of which this appeal has arisen. In the suit he prayed for the fixation of fair rent at Rs. 20 per month. The respondent pleaded inter alia that the suit could not be instituted before the Rent Controller and that the suit was incompetent because no notice under s. 7(2) of the Act had been given.

Both the pleas of the respondent were overruled and the Rent Controller held that the notice which the appellant had given prior to the institution of the first suit was a proper notice and he decreed the suit and fixed the fair rent at Rs. 483 per annum. The respondent took an appeal to the District Judge who upheld the order of the Rent Controller but the question of notice under s. 7 was not

raised in that court. The respondent then filed a Revision Petition in the High Court under s. 115 of the Code of Civil Procedure and under Art. 227 of the Constitution. The High Court held that notice under s. 7 was a condition precedent to the institution of the suit; that as no such notice was given the Rent Controller had no jurisdiction to make the order. The High Court also held that the Rent Controller had passed a decree which operated retrospectively from the date of the execution of the lease deed which the Controller had no authority to decree. It was further held that the original suit was properly instituted in the civil court and the passing of the Act did not take away the jurisdiction of that court and therefore the civil court should not have returned the plaint of the appellant.

The principal question for decision is whether a suit could be instituted without a fresh notice because of s. 7(2) of the Act ? That section provides:

"Where no rent for any such accommodation has been agreed upon or where the landlord wishes to enhance, or the tenant wishes to reduce the rent agreed upon, the landlord or the tenant, as the case may be, by giving notice in writing to the other party shall proceed for having the rent fixed under subsection (4) All that this section contemplates is that a notice should be given. There are no words which make it obligatory that the notice should be issued in terms as under the Act and be given after the Act came into force nor has it prescribed any particular form. The trial court held that a proper notice had been given and therefore s. 7 was applicable. No such question was raised in appeal before the District Judge' and therefore it was not adjudicated upon. The question however was raised before the High Court. In our opinion it cannot be said that the notice which was given by the appellant was not a proper notice nor does the section mean, as contended by the respondent, that the notice had to be given as under and after the Act came into force. As we have said above it is significant that this point was never taken before the District Judge.

Lastly the High Court held that the plaint should not have been returned by the civil court because the suit for fixation of fair rent related also to a period prior to the Act. Fairly construed the order of the Rent Controller does not operate retrospectively from the date of the beginning of the lease but appears to us to be prospective and after the coming into operation of the Act the jurisdiction was vested in the Rent Controller and not in the civil court. This point therefore has no substance.

In the result this appeal is allowed and the judgment and order of the High Court are set aside and that of the trial court restored. The appellant will have his costs throughout.

Appeal allowed.