Supreme Court of India
Devkaran Nenshi Tanna vs Manharlal Nenshi on 14 July, 1994
Equivalent citations: 1994 AIR 2747, 1994 SCC (5) 681
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
DEVKARAN NENSHI TANNA

Vs.

RESPONDENT:
MANHARLAL NENSHI

DATE OF JUDGMENT14/07/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
RAY, G.N. (J)

CITATION:
1994 AIR 2747 1994 SCC (5) 681
1994 SCALE (3)459

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. This appeal by special leave arises from the judgment of the Gujarat High Court in Civil Revision Application No. 1226 of 1972, dated 22/23-111975. The facts for the purpose of disposal of his appeal lie in a short compass.

2. The appellant landlord laid a claim for arrears of rent and the respondent shot back by filing an application under Section 11 of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 for short 'the Act', for determination of the standard rent. On a compromise the standard rent was fixed at Rs 211 per month and the application was dismissed as not pressed. Later the appellant filed regular suit for possession and for arrears which was decreed and on appeal it was confirmed. The defence of the respondent was that there was bona fide dispute as to standard rent and an application under Section 12(3)(a) read with Section 11(1)(c) would lie and so he made the

application and even before an adjudication was made, he deposited the arrears subject to fixation of standard rent so as to avoid decree of eviction. So there was no default. Civil court held that the application would not lie under Section 12(3)(a) and the tenant was liable to eviction. Thus though the respondent was unsuccessful in two courts below, in the revision, the High Court allowed the revision and held that the standard rent fixed on earlier occasion at Rs 211 per mensem was illegal and accordingly the defence under Section 12(3)(c) would be available to determine the standard rent and accordingly dismissed the suit.

3. The contention of Shri Verma, learned Senior Counsel for the appellant is that fixation of the standard rent by order of the court dated 30-6-1964 was on a consideration of the facts and circumstances of the case. It is an adjudication on application of mind by the court and that, therefore, the standard rent fixed at Rs 211 per mensem having been allowed to become final and allowed the application dismissed as withdrawn, the respondent committed default in the payment of the rent. On receipt of the notice demanding payment of the rent, the respondent admittedly filed an application under Section 11 of the Act for fixation of the standard rent without any dispute existing between the parties regarding the standard rent as on that date before making the application. Unless there is a dispute in fact, existing as on date, the tenant is not entitled to make an application under Section II of the Act and it cannot be used as a device to avoid decree of eviction. Having filed an application, after fixation of the rent under a compromise and allowed it to be withdrawn, it is not permissible for the respondent to plead that there was no default. Application for fixation of the standard rent would, therefore, be an abuse of the process of the court.

4. There is no dispute that the rent payable is monthly. Section 12(3)(a) of the Act contemplates the existence of a dispute and payment of rent by the month. If there are arrears for a period of 6 months or more, then only the landlord gets a right to issue the notice. If there is no dispute as regards the payment of the rent by the month and the arrears thereof for six months and more, Section 12(3)(a) has no application. The tenant cannot invoke the aid of Explanation (1) to Section 12 of the Act unless there is a dispute as regards standard rent or permissible increases.

5.The order passed by the civil court on 30-6-1964 is only on a compromise between the parties, the parties cannot contract out of the statute and agree for any standard rent. It is the duty of the court to adjudicate the rent agreed by the parties whether it be the standard rent as prescribed under the Act. The court had not done that. As soon as a notice was issued by the appellant calling upon the respondent to pay the arrears of the rent, an application was filed under Section 11 of the Act for determination of the standard rent. Along with the application, by way of a petition, the respondent deposited all the arrears as an abundant caution. Though the Act gives right to the tenant to await the adjudication of the standard rent and to deposit the same thereafter; as an abundans cautela the tenant had deposited the amount claimed by the landlord and filed the application. The question arises whether the tenant-respondent is entitled to file an application for fixation of the standard rent under Section 11(1) of the Act. Section 11(1) of the Act reads thus "In any of the following cases the court may, upon an application made to it for that purpose, or in any suit or proceedings, fix the standard rent at such amount as, having regard to the provisions of this Act and the circumstances of the case, the court deems just

(e) Where there is any dispute between the landlord and the tenant regarding the amount of standard rent."

6. It is difficult to accept the contention of Mr Verma that there must be a preexisting dispute as on the date of filing an application and thereon alone the tenant is entitled to make an application under Section 11. The dispute may arise in diverse forms. One such example is as follows : As an illustration, we can definitely say that when the landlord issued a notice to the tenant calling upon the tenant to pay the arrears of rent as contemplated under Section 12(3)(a) of the Act, it is open to the tenant to cause a reply issued denying his liability to pay the rent as demanded and plead therein that the standard rent is much less than the rent demanded by the landlord and that, therefore, he is not liable to make payment of the rent demanded by the landlord. In that event, he is entitled to make an application to the court under Section 11 (1)(e) which squarely becomes applicable for determination of the standard rent. This situation of a dispute having arisen is not contested by the counsel. May be the court ultimately in a given case, may not agree with the tenant of the claim made for determination of the standard rent and agree with the claim of the landlord of the rent demanded by the landlord to be the standard rent. But that does not mean that there exists no dispute as regards the standard rent claimed between the parties. Accordingly, we are of the considered view that there is no need for a preexisting dispute to subsist before invoking the jurisdiction of the court under Section 11(1)(e) of the Act. Filing an application for determination of the standard rent itself is a dispute entitling the tenant to take the benefit of Section 12(3)(a). Therefore, the tenant was right in making an application under Section 11(1)(e) of the Act.

7.The question then is whether the tenant can make successive applications for fixation of the standard rent. It is true, as rightly contended by Shri Verma, that once a standard rent has been determined by the court, after applying its mind to all the facts and circumstances after adjudicating the dispute, under Section 11(1)(e) or permitted increases, then unless that order is reversed or set aside by the appropriate appellate court or the revisional court or on appeal by this Court, parties are bound by the adjudication of the standard rent and to make payment thereafter. But in a case where adjudication was merely passed on a compromise between the parties, the question emerges whether the tenant is precluded to invoke the defence under Section 12(3)(a) of the Act. This point is squarely covered by the judgment of this Court in Prithvichand Ramchand Sablok v. S. Y Shindel. Therein this Court had stated that : (SCC p. 277, para 4) "a decree passed on the basis of a compromise by and between the parties is essentially a contract between the parties which derives sanctity by the court super adding its seal to the contract. But all the same the consent terms retain all the elements of a contract to which the court's imprimaturs is affixed to give it the sanctity of an executable court order. We must, however, point out that the court will not add its seal to the compromise terms unless the terms are consistent with the relevant law. But, if the law vests exclusive jurisdiction in the court to adjudicate on any matter, e.g., fixation of standard rent, the court will not add its seal to the consent terms by which the parties have determined the standard rent unless it has applied its mind to the question and has satisfied itself that the rent proposed by consent is just and reasonable. In such a case it is the independent satisfaction of the court which changes the character of the document from a mere contract to a court's adjudication which will estop the tenant from contending otherwise in any subsequent proceedings and operate as res judicata. If the standard rent is fixed solely on the basis of agreement between the parties, such a

decree in invitum will not preclude the tenant from contending in any subsequent proceeding that the rent is excessive and require the court to fix the standard rent."

In the order dated 30-6-1964 the court passed the following order "Parties compromise read and recorded. As per consent terms of parties, the standard rent is fixed at Rs 21 1.00 (two hundred and eleven) per month.

No order for cost."

8.This is clearly indicative of the fact that the court did not apply its mind to the factum whether the terms agreed by the parties are just and reasonable and whether it would be the standard rent consistent with the provision of the Act. Shri Dholakia, the teamed Senior Counsel for respondent is right in his contention that the order should disclose the application of court's mind to the facts and then to the determination of the standard rent on the basis of the terms, other evidence or records and the consent of the parties is consistent with the Act and should record its satisfaction. It is settled law that the Act is a welfare legislation and parties cannot contract out of the statute and the seat of approval of the court does not superadd its sanctity, nor receive its legality or validity or sanctity without due adjudication. In this case, as seen such adjudication and a satisfaction was not reached by the court below. The respondent is not precluded to make an application when the notice was issued by the appellant demanding payment of the arrears of the standard rent. Thereby, it is not a case where the tenant had abused the process of the court and made 1 (1993) 3 SCC 271, 277 any successive application despite the standard rent fixed by the court at Rs 211 by order dated 30-6-1964. The High Court, therefore, was right in holding that the defence under Section 12(3)(a) is available to the tenant and rightly allowed the revision and set aside the decree of the lower courts and dismissed the suit.

9. It is further contended by Shri Verma that the respondent had committed successive defaults and that, therefore, Section 12(3)(b) also applies and since it was not decided, matter requires remand for further adjudication. We do not consider that the submission is well-founded. Therefore, we do not accede to this contention.

10. The appeal is accordingly dismissed, but without costs.