Supreme Court of India
Kranti Swaroop Machine Tools Pvt. ... vs Smt. Kanta Bai Asawa And Others on 27 February, 1994
Equivalent citations: AIR 1994 SC 1216, JT 1994 (1) SC 277, (1994) 107 PLR 333, 1994 (1) SCALE 242, (1994) 2 SCC 289, 1994 1 SCR 377, 1994 (2) UJ 231 SC
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Bench: S Mohan, M Mukherjee
ORDER S. Mohan, J.

1. All these appeals can be dealt with under a common judgment since they they arise out of one and the same order in all the Courts. The 1st respondent landlady, Smt. Kanta Bai Asawa and her mother Smt. Godavari Bai Rathi are the owners of mulgies bearing Municipal Nos. 3.2.840/6 and 3.2.840/7, situated at Veer Sawarkar Road, Kacheguda, Hyderabad. These two mulgies were let out to appellants tenants under separate lease-deeds marked as P1 and P2 respectively in the trial court executed on 23.9.1978. Ex. P1 is in respect of mulgi bearing No. 3.2.840/6 and Ex. P2 is in respect of mulgi bearing No. 3.2.840/7. Alleging that the tenants had committed wilful default in payment of rent as well as the taxes due to the Municipal Corporation in respect of the demise premises, the landladies filed four eviction petitions bearing R.C. Nos. 291/84, 292/84, 1972/86 and 1973/86 on the file of the First Additional Rent Controller at Hyderabad. The tenants contended that they did not commit wilful default either with regard to payment of rent or municipal taxes.

2. All the petitions were clubbed together. Common evidence was adduced in R.C. No. 291/84. The Rent Controller came to the conclusion that the tenants had committed wilful default in payment of rent as well as the municipal taxes. Accordingly, all the four eviction petitions were allowed. The tenants were directed to vacate the premises within a period of two months.

3. Aggrieved by the order of eviction, appeals were preferred in R.A. Nos. 387-390/89 to the learned Chief Judge, City Small Causes Court, Hyderabad. The appellate court held that there was no basis for the trial court to conclude that the tenants had committed wilful default. For these reasons, the appeals were allowed.

4. Thereupon, revisions were preferred in Civil Revision Petition Nos. 2658, 2941, 3122 and 3129/1990 to the High Court. The learned Single Judge came to the conclusion that the lower appellate court was right in reversing the order of eviction on the ground of wilful default in payment of rent.

5. Concerning the municipal taxes, he was of the view that it could not be said that the tenants had not committed any wilful default in payment of municipal taxes. It was found that the default had been committed by the tenant in respect of tax and the same amounts to willful default in payment of rent which would entitle the landladies to evict the tenants. The revision petitions were allowed. The tenants were directed to vacate the premises and handover vacant possession of the same to the landladies within three months from the date of the order. Thus, the present civil appeals.

6. It is urged on behalf of the appellants that the High Court had gone wrong in its conclusion that the tenants had committed wilful default. The parties are governed by a contract which has been

embodied in the rent deed dated 23.9.1978. That rent deed contains several clauses which are beneficial to the tenants. Ignoring those clauses, the High Court had come to an incorrect conclusion on both of question of law and facts. Under Clause 3 of the agreement, the tenant had deposited with the landladies a sum of Rs. 10,000. That deposit was not to carry any interest. It could be adjusted at the termination of tenancy towards the rent, light bills and damages which may be found due. This deposit was to be returned to the tenants only at the time of tenants vacating the premises. Under Clause 5, it was stipulated that the non-payment of two months deposit as agreed will entitle the landladies to eject the tenants as wilful defaulter. The same is reiterated in Clause 14.

7. Under Clause 22, it had been agreed that when the tenants vacate the shop, they could remove the changes made by them and without permission of the landladies and restore to original condition at their cost. Under Clause 24, the details of re-construction through the landladies to be made at tenants cost were detailed out. As regards municipal taxes, the obligation to pay the same would arise within one month from the date of intimation by the landladies as clearly stipulated in Clause 2. In this case, admittedly, the tenants had not been intimated about the demand in relation to the municipal taxes. Therefore, the High Court is not correct wrong in concluding that there was a wilful default. It is not merely a question of default that will be material but such a default must be wilful.

8. If rent includes municipal taxes as agreed to between the parties, the High Court ought to have examined the object of the tenants depositing a huge sum of Rs. 10,000 with the landladies. The deposit was to be adjusted towards the rent also, in addition to the electricity charges or damages. Under Section 7(2)(a) of Andhra Pradesh Buildings (lease, rent & eviction) Control Act, 1960 (hereinafter referred to as 'the Act'), the landlady is forbidden to receive any premium or other like sums in excess of the agreed rent. Even if the tenants fails to ask the landladies to make adjustment of a advanced amount, eviction on the ground of wilful default cannot be ordered. Bhoja alias Bhoja Ram Gupta v. Rameshwar Agarwala and Ors. [1993] 2 S.C.C. 443 did not go into the question of wilful default. Again in Mohd. Salimuddin v. Misri Lal, , it was observed that the tenant could not evicted on the ground of default in payment of rent for two months, even if the tenant fails to ask the landlord to make adjustment of advanced amount. In view of all these, merely because a small sum by way of municipal taxes has not been paid, it does not mean that tenant is liable to be evicted. The judgment of the High Court requires to be reversed.

9. In opposition to this, learned Counsel for the respondents would submit that no doubt there is deposit of Rs. 10,000 with the landladies but that does not mean without a specific request by the tenants, it is bound to be adjusted. Even otherwise, as per Clause 3 of the rent deed, no adjustment is permissible during the tenancy. The agreement contained in this clause requiring to defray the rent, electricity bills and other damages at the time of vacating the premises is not covered by Section 7(2)(a) of the Act. The respondents relies upon the judgment in Bhoja's case (supra) particularly paragraph 21 of the judgment. Besides, the appellant is in default as he had not complied with the order dated 1.10.1993 of this Court directing to pay the arrears of rent and taxes.

10. In view of above arguments, the only question that arises for our determination is whether the appellants tenants could be deemed to have committed wilful default. The findings rendered by the High Court to which we have made a reference already, are:

(i) There is no wilful default in payment of rent.

(ii) Wilful default in payment of municipal taxes;

(iii) The plea of appellants tenants is that they were not informed of the demand, could not be accepted.

11. In this connection, we may note that Clause 2 of the rent deed dated 23.9.1978 requires the payment of municipal taxes. However, what is stated is "municipal taxes shall be paid by the tenants within one month from the date of intimation by landladies." We will proceed on the assumption that the tenants' contention in this regard is not correct.

12. But, here is a case where a sum of Rs. 10,000 is in deposit with the landladies. Clause 3 of the said rent deed reads as under:

The tenants would keep in deposit with the landladies a sum of Rs. 10,000 (rupees ten thousand only). This deposit would not carry any interest and would be adjusted at the termination of the tenancy towards the rent, light bills and damages which may be found due. The tenants has no right to ask for any adjustment to the deposit. But the deposit amount will be returned to the tenants only at the time when the tenants vacate the premises and after deducting all kinds of dues.

13. Though, it is argued that this clause did not permit adjustment, yet we find that there is an obligation to adjust from out of it, otherwise the very purpose of keeping a deposit of Rs. 10,000 for each shop is rendered nugatory. Is it necessary on the part of the tenants to require the landladies to adjust or to be precise, make a specific request in this behalf? Our answer should be in the negative.

14. In Modem Hotel, Gudur Represented by M.N. Narayanan v. K. Radhakrishnaiah and Ors. , this Court had occasion to deal with Section 7(2) of the Act. In that case, reference was made to Mohd. Salimuddin's case (supra). It was observed at page 729 as under:

This Court in Mohd. Salimuddin v. Misri Lal and Anr. , had occasion to deal with a more or less similar situation arising under the Bihar Buildings (lease, rent & Eviction) Control Act, 1947. There, a sum of Rs. 2,000 had been advanced by the tenant to the landlord stipulating adjustment of the loan amount against the rent which accrued subsequently. The landlord asked for eviction on the ground of arrears of rent by filling a suit. The trial court had decreed the suit but the lower appellate court reversed the decree by holding that the tenant was not in arrears of rent since the amount advanced by the tenant was sufficient to cover the landlord's claim of arrears. The High Court, however, vacated the appellate judgment and restored that of the trial court holding that the loan amount by the tenant was in violation of the prohibition contained in Section 3 of the Bihar Act and the tenant was in arrears of rent and liable to be evicted. This Court set aside the judgment of the High Court by saying:

The view taken by the High Court Court is unsustainable inasmuch as the High Court has lost sight of the fact that the parties to the contract were unequal. The tenant was acting under compulsion of

circumstances and was obliged to succumb to the will of the landlord, who was in a dominating position. If the tenant had not agreed to advance the loan he would not have been able to secure the tenancy.

The Court referred to the doctrine of paridelicto and held that the same was not applicable against the tenant.

In Sarwan Kumar Onkar Nath v. Subhas Kumar Agarwalla, , Salimuddin's case came for consideration. This was also a dispute under the Bihar Act were two months rent had been paid in advance by the tenant to the landlord on the stipulation that the advance amount would be liable to be adjusted towards arrears of rent, whenever necessary or required. The Court held that the tenant could not be evicted on the ground of default in the payment of rent for two months even if the tenant failed to ask the landlord to make adjustment of the advance amount in the absence of any agreement requiring the tenant-to inform the landlord as to when such adjustment is to be made. This Court said that when the Rent Act prohibited the landlord to claim such advance payment, the tenant could not be considered to be a defaulter and the doctrine of pari-delicto was not attracted to such a fact-situation. (emphasis supplied) These decisions squarely apply to the facts of the case. Yet, what is relied on by the learned Counsel for the respondent in Bhoja's case (supra), paragraph 21, it is observed at page 451- 453 as under:

On the other hand, the opinion expressed by the full bench of the Patna High Court in Gulab Chand Prasad v. Budhwanti, which has received the seal of approval of this Court in Budhwanti v. Gulab Chand Prasad, , fully supports the case of the landlord.

We are in broad agreement with the view of the full bench of the Patna High Court and the Madras High Court on the question of 'automatic adjustment' and hold that a tenant cannot save himself from the consequences of eviction under the Act on the ground of default in the payment of rent by claiming automatic adjustment of any excess rent paid consequent upon mutual enhancement of rent, even if illegal unless there is an agreement between the parties for such an adjustment. The tenant may also in a given case seek adjustment of the excess rent in the hands of the landlord against the arrears by specifically asking the landlord for such an adjustment before filing of the suit or in response to the notice to quit and even in the written statement by way of set-off within the period of limitation and by following the resisting the claim for eviction on the ground of default in payment of arrears of rent but he cannot claim 'automatic adjustment'.

Therefore, it is necessary on our part to refer to Budhwanti's case (supra). At page 538, it was held as under:

In the view we propose taking of the matter we do not think it necessary to go into the question whether the appellants had committed default in payment of rent and secondly even if they had committed default, they are entitled to adjust the excess rent paid by them over a span of 30 years without reference to the rule of "in pari de-licto.

Therefore, it is not correct to state that the ruling of the Patna High Court in Gulab Chand case (supra) got the approval of this Court in Budhwanti's case (supra). As a matter of fact in Sarwan Kumar Onkar Nath v. Subhas Kumar Agarwal, , there are observations to this effect which are apposite:

The learned Counsel for the respondent, however, relied upon a full bench decision of the High Court of Patna in Gulab Chand Prasad v. Budhwanti and Anr., A.I.R. Pat 327, in which it has been held that any excess rent paid by a tenant to his landlord in pursuance of a mutually agreed enhancement of rent which was illegal did not get automatically adjusted against all the subsequent defaults in the payment in the monthly rent under the Act. The decree for eviction passed by the High Court of Patna in the above case has no doubt been affirmed by this Court in Budhwanti and Anr. v. Gulab ChandPrasad, (1987) 1 Scale 501. But this Court affirmed the judgment of the High Court not on the ground that the tenant in that case was a defaulter in payment of rent but on the ground that the landlord required the premises for his bona fide use and occupation. This Court in its judgment observed that "in the view we propose to take...we do not think it necessary to go into the question whether the appellants had committed default in payment of rent and secondly even if they had committed default, they are entitled to adjust the excess rent paid by them over a span of 30 years without reference to the rule of in pari delicto. The reason for our refraining to go into these questions in because we find the decree for eviction passed against the appellants can be sustained on the second ground, viz. bona fide requirement of the shop for the business requirements of the members of the joint family." It is not now necessary for us to consider the correctness of the observation made by the Full Bench of Patna High Court on the question of default and the right of the tenant to claim adjustment because what was claimed by way of adjustment in the said case was a certain excess amount paid over a long period of 30 years as enhanced rent under a mutual agreement though such payment was contrary to law. But in the case before us the amount of Rs. 140 had not been paid as enhanced rent under any such agreement. It was, in fact, an amount which had been paid in advance which was liable to be adjusted whenever it was necessary or required.

In our considered view the ratio of this judgment will apply to the facts of this case.

15. Having regard to the fact that the municipal taxes per month are Rs. 18 for each premises, we do not think that tenant could be evicted when contrary to Section 7(2)(a) of the Act, the landlady has a deposit of Rs. 10,000. This ought to have been adjusted from that deposit even without a specific request by the tenant in this behalf.

16. In the result, we set aside the judgment of the High Court. The petition for eviction will stand dismissed. The civil appeals are allowed. There shall be no order as to costs.

17. If there are any other proceedings in relation to some other arrears, whatever we have observed here, will have no bearing.