Supreme Court of India
N.M.Engineer vs Narendra Singh Virdi on 18 July, 1994
Equivalent citations: 1995 AIR 448, 1994 SCC (5) 261
Author: S Mohan
Bench: Mohan, S. (J)

PETITIONER:
N.M.ENGINEER

Vs.

RESPONDENT:
NARENDRA SINGH VIRDI

DATE OF JUDGMENT18/07/1994

BENCH:
MOHAN, S. (J)
BENCH:
MOHAN, S. (J)
SINGH N.P. (J)

CITATION:
1995 AIR 448 1994 SCC (5) 261
JT 1994 (5) 454 1994 SCALE (3)246

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by MOHAN, J.- The brief facts leading to this appeal are as under.

2. The appellant is the owner of a bungalow situated at Mundhva Road, Ghorpadi, Poona. On 10- 11-1957, the first appellant and his wife Banoobai (since deceased) leased out the said premises to Respondent I under a rent note on a monthly rent of Rs 130.

3. The first respondent fell into arrears of rent for the period commencing from 1-8-1963 to 31-3-1964. By notice dated 22-4-1964, Appellant I and his wife terminated the tenancy of the first respondent and demanded arrears of rent under Section 20(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Act').

4. On the expiry of the period of notice, the appellant and his wife filed a Suit No. 2267/64 for possession of the premises under Section 12(3)(a) of the Act. The respondent- tenant contested the suit. He also raised the question of standard rent and claimed for fixation of standard rent. The learned trial Judge by his order dated 26-7-1965,fixed standard rent at Rs 130 per month and decreed the suit. On appeal by the respondent, the same was allowed by the learned District Judge by his order dated 16-4-1966. Thereupon Special Civil Application No. 46 of 1967 was preferred in the High Court. That was dismissed on 6-10- 1970.

5. On 3-10-1966, the wife of the first appellant, Banoobai, died. The first appellant in his capacity of co- owner as also the heir of his wife together with her other heirs, served a notice dated 2-5-1967 calling upon the first respondent to pay arrears of rent for the period commencing from 1- 11- 1966 to 30-4-1967 within a month. The first respondent did not pay the said arrears. That necessitated the appellant to file the present suit for possession and for recovery of arrears of rent. In the said suit, the legal representatives of the deceased Banoobai were made pro forma defendants 2 to 5. On 8-6-1967, they released all their rights, title and interest in favour of Appellant 1.

6. Pending suit, an application for amendment was taken out raising the tone of nuisance against the first respondent. The trial court decided both suits and standard rent application by its order dated 29-9-1973 and held that the standard rent of the premises was Rs 130 per month. The suit was decreed in favour of the appellant under Section 12(3)(a) and (b) of the Act. The first respondent preferred an appeal which was dismissed. Thereafter he preferred two special civil applications one against the decree for possession and the other against the standard rent application. The learned Single Judge of the High Court heard both the matters together and dismissed the suits as not maintainable. It is under these circumstances, the present civil appeal has come before this Court.

7. Mr V.M. Tarkunde, learned counsel for the appellant argues that first and foremost the point of arrears of rent in the hands of transferee becomes a debt, is not taken either in written statement filed by the respondents nor any issue was framed. Such a point cannot be decided under Article 227.

8. The first appellant is a co-owner and is entitled to give notice. Such a notice is valid as laid down in Sri Ram Pasricha v. Jagannathl and Subhendu Prosad Roy Choudhury v. Kamala Bala Roy Choudhury2. Even otherwise as collector of rent, he is entitled to issue notice. The notice is not challenged on the ground that more rent is demanded or rent of six months was not due.

9. Section 12(3)(a) of Rent Act operates on a different footing and applies only in following case:

(i) When the arrears of rent are more than 6 months;

(ii) Rent is payable by month of month;

(iii) Notice served on the tenant;

(iv) No dispute regarding standard rent.

In other cases, Section 12(3)(b) is applicable. The cases covered thereunder are for arrears of rent of less than six months.

10. In opposition to this, learned counsel for the respondent Mr E.C. Agrawala argues that the notice dated 2-5-1967 was, not valid. Firstly, on the date of the said notice, the rent for six months had not become due for payment within the meaning of Section 12(2) of the Act, therefore, Section 12(3)(a) would not apply. Secondly, the rent claimed in the notice was at the monthly rate of Rs 130 whereas before the date of issuance of notice, Small Cause Court in Miscellaneous Application No. 258/67 had fixed the interim rate of rent at the rate of Rs 87 per month. The same having been deposited, 1 (1976) 4 SCC 184: (1977) 1 SCR 395 2 (1978) 2 SCC 89 there were no arrears. Thirdly, on 8-6-1967, the property was leased out in favour of the appellant and the pro forma respondents had relinquished their share but in the said relinquishment deed, no assignment much less a specific assignment of rent was made in favour of the appellant. In the absence of such an assignment, the appellant could not recover it as rent.

11. On a defective notice, the suit could not be validly maintained as laid down in Chimanlal v. Mishrilal. This judgment has been relied upon in a recent decision of this Court reported in Chase Bright Steel Ltd. v. Shantaram Shankar Sawant4. Where therefore, mere chose-in action is claimed under Section 109 of the Transfer of Property Act, the transferee is not entitled to arrears of rent.

12. The appellant having failed in his case under Section 12(3)(a), cannot seek to rely on Section 12(3)(b). Under Section 12(3)(a), there was a dispute about the amount of rent. There were no arrears for six months outstanding and there is no negligence on the part of the respondent-tenant in making the payment thereof. The notice is bad on that account. The notice referred to under Section 12(3)(b) is entirely different. Thus, no exception could be taken to the impugned judgment.

13. We now proceed to consider the respective submissions. We appreciate the arguments of Mr Tarkunde that the arrears of rent in the hands of transferee becomes debt was not taken either in the written statement filed by the respondent nor was any issue framed by the courts below. Therefore, under Article 227, such a point could not be raised. It is purely a question of law arising on the admitted facts and hence under Article 227 such a point could validly be raised. The cases cited in the judgment have no application. In India Pipe Fitting Co. v. Fakruddin M.A. Baker5, it was held:.(SCC pp. 589-90, paras 7-8) "It is possible that another court may be able to take a different view of the matter by appreciating the evidence in a different manner, if it determinedly chooses to do so. 'However, with respect to the learned Judge (Vaidya, J.) that will not be justice administered according to law to which courts are committed notwithstanding dissertation, in season and out of season, about philosophies. We are clearly of the opinion that there was no justification for interference in this case with the conclusions of facts by the High Court under Article 227 of the Constitution. We are also unable to agree with the High Court that there was anything so grossly wrong and unjust or shocking the court's 'conscience' that it was absolutely necessary in the interest of justice for the High Court to step in under Article 227 of the Constitution. Counsel for both sides took us through the reasonings given by the High Court as well as by the courts below and we are unable to hold that the High Court was at all correct in exercising its 3 (1985) 1 SCC 14: (1985) 2 SCR 39 4 (1994) 4 SCC 89: JT (1994) 2 SC 192 5 (1977) 4 SCC 587 : (1978) 1 SCR 797 powers under

Article 227 of the Constitution to interfere with the decisions of the courts below. In our opinion, the High Court arrogated to itself the powers of a court of appeal, which it did not possess under the law, and has exceeded its jurisdiction under Article 227 of the Constitution."

So, as we have observed above, it is purely a question of law.

14. Now we come to the validity of the notice. That takes us to Section 12, the material part is as under:

> "12. (2) No suit for recovery of possession shall be instituted by a landlord against tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882.
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> 12. (3)(a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the Court shall pass a decree for eviction in any such suit for recovery of possession.
>
> (b) In any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court."

15. For the institution of the suit, a valid notice is necessary. This Court had occasion to deal with the aspects in Chimanlal v. Mishrilal3. This Court held as under: (SCC p. 18, para 8) "The notice referred to in Section 12(1)(a) must be a notice demanding the rental arrears in respect of accommodation actually let to the tenant. It must be a notice (a) demanding the arrears of rent in respect of the accommodation let to the tenant and (b) the arrears of rent must be legally recoverable from the tenant. There can be no admission by a tenant that arrears of rent are due unless they relate to the accommodation let to him. A valid notice demanding arrears of rent relatable to the accommodation let to the tenant from which he is sought to be evicted is a vital ingredient of the conditions which govern the maintainability of the suit, for unless a valid demand is made no complaint can be laid of non-compliance with it, and consequently no suit for ejectment of the tenant in respect of the accommodation will lie on that ground."

16. Therefore, we now proceed to consider whether the suit notice is a valid one. The notice is dated 2-5-1967. On 8- 6-1967, a lease deed came to be executed in favour of the appellant by the pro forma defendants. The suit came to be filed on 14-6-1967. The question is whether the notice conforms to

Section 12(3)(a). A notice claims rent at the rate of Rs 130. In fact, the rent had been fixed as Rs 87 on 22-4-1967. The rent fixed by the court had been duly deposited by the respondent covering all the arrears. The rent claimed in the notice was Rs 800 (including Rs 20 as notice charge).

17. In the light of the above, the question would be whether notice is in conformity with Section 12(3)(a). This section consists of the following:

> (i) The rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases;
>
> (ii) If such rent or increases are in arrears for a period of six months or more;
>
> (iii) If the tenant neglects to make payment.

If all these conditions are satisfied, a decree for eviction could be passed.

18. In this case, no doubt, the rent is payable by the month but there is a dispute as to the amount of standard rent. As seen above, on 24-4-1967 (sic 22-4-1967) in Miscellaneous Application No. 258/67, the Small Cause Court had fixed the interim rent at the rate of Rs 87 as per order dated 24-4-1967 (sic 22-4-1967). The same had been deposited by the tenant and therefore there were no arrears outstanding.

19. That being so, it cannot be said that the tenant had neglected to pay the rent. Then again as on the date of notice, there were no arrears of rent outstanding for a period of six months or more. What is important to be noted is that the lease deed was executed on 8-6-1967 in favour of the appellant. In that lease deed, nowhere is any assignment of rent. Section 109 of the Transfer of Property Act reads as under:

> "If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him: Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee."

In view of the proviso, the appellant-assignee is not entitled to rent before the assignment. The rent is merely a debt. In this connection, it would be useful to quote para 7 of the plaint filed by the appellant. It reads:

"7. Defendants 2 to 5 have released all their rights, title and interest in the suit bungalow in their capacity as her legal representatives of the deceased Banoobai N. Engineer wife of the plaintiff on 8-6-1967 by a registered lease deed. It is therefore not necessary to implied them as co- plaintiffs in the suit. They have however been joined as pro forma defendants in this suit in order to avoid any objections on the part of the defendants that the suit is bad for non-joinder of necessary parties."

20. Therefore, whatever might have been due prior to deed of lease dated 8-6-1967, could not constitute arrears of rent. It was mere actionable claim. That being so, the notice does not satisfy the requirements of Section 12(3)(a), more so in this case, as stated above, the arrears at the rate of Rs 87 had been deposited. It is not open to the appellant to call upon Section 12(3)(b).

21. For the foregoing reasons, we hold that no exception could be taken to the impugned judgment. The civil appeal is dismissed. However, there shall be no order as to costs.