
(1994) 04 SC CK 0083

In the Supreme Court Of India

Case No : Civil Appeal No. 297 Of 1982

Patny and Company Pvt. Ltd.

APPELLANT

Vs

Dundoo Balakrishnamborthy and Others

RESPONDENT

Date of Decision : 05-04-1994

Acts Referred:

Citation : (1994) 5 SCC 27

Hon'ble Judges : S. Mohan, J;M. K. Mukherjee, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The appellant-tenant suffered a decree for eviction under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereafter referred to as "the Act") on two grounds (1) wilful default in payment of rent and (2) bona fide need of a non-residential building for starting a business. That decree was affirmed in the court of Appeal. The revision against the same was dismissed in limine. In assailing the findings, Mr K.K. Venugopal, learned Senior Counsel, would submit that as regards the bona fide need, the petition for eviction does not plead, much less prove the necessary requirements of Section 10(3)(e)(iii) of the Act. In other words, he has to plead that he was not occupying a non-residential building in the city or in possession of such a premises. Such a plea is totally absent. As laid down by this court in Hasmat Rai v. Raghunath Prasad Were must be pleas and proof thereof on these aspects. Therefore the petition on this ground of bona fide need was liable to be thrown out for lack of necessary pleadings,

2. As regards the arrears, there is no finding that there was wilful default on the part of the appellant-tenant. On the contrary, what has been found by the trial court is negligence or indifference. As a matter of fact the tenant had been lulled into a belief that the rent collector of the landlord would come and collect the rent. Because of this belief he did not pay the rent in due time. At no point of time, the tenant was informed that he was to pay regularly. On the contrary

there had been acceptances of the rents by the landlord at intermittent intervals. On this aspect the law has been laid down by this court in *Rashik Lal v. Shah Gokuldas*. That ratio ought to have been applied by the courts below. Then against in *S. Sundaram Pillai v. V.R. Pattabiraman* what is talked of is reckless negligence. There is no such recklessness in this case. Consequently it is submitted that the impugned judgments are liable to be set aside.

3. In opposition to this Mr K. Parasaran, learned Senior Counsel would urge that as regards arrears the appellant was issued a notice demanding arrears in the first instance for the period 1/2/1972 (sic) to 31/1/1972. In spite of such a notice, no step whatever was taken. Repeated reminders as seen from the various exhibits clearly show how the tenant had wilfully defaulted in payment of rents. In fact in the notice dated 15/10/1972, it has been clearly stated that there have been repeated and numerous wilful defaults in due payment of rents. The plea was met by stating that there was negotiation between landlord and tenant and the tenant was expecting adjustment of the amount incurred towards the repairs, as against the rent. Therefore, the plea that there was no wilful default is not correct. The courts below have rightly concluded the issue against the tenant on this aspect. This alone would be sufficient to uphold eviction. The case cited on behalf of the tenant in this regard will have no relevance because *Rashik Lal v. Shah Gokuldas* dealt with the case of habitual default. *S. Sundaram Pillai v. V.R. Pattabiraman* dealt with the scope of the provisos to Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, as to the deeming provision and the wilful default in the context. That case will have no application to the facts here.

4. Concerning the second ground, no doubt, there was no specific plea that the landlord was not occupying a non-residential building of his own nor that he was entitled to possession of any such building. Nevertheless, the parties had adduced evidence with full knowledge relating thereto and understood the scope of their case and took the trial. Hence it is too late for the tenant to resile and urge the ground of non-pleading.

5. We have carefully considered the above submissions. As regards the arrears we find that the tenant was all along contending adjustment of rent towards repairs as found from the trial court's judgment. Therefore, the plea of the tenant was that he had incurred such an expenditure on repairs which requires to be adjusted as against the rent. Besides, we also find from the records that there are several reminders calling upon the tenant to pay the rent dated 2/1/1972 even 5/6/1971 P-3, 10/7/1971 P-4, 8/9/1971 P-5, 10/1/1972 P-6, 12/6/1972 P-7, 12/7/1972 P-8, 29/9/1972 and 15/10/1972. In the last of the notices what is stated by the landlord is as follows:

"IN view of your repeated and numerous wilful defaults in due payment of rents and as my clients by my earlier notices have already terminated your tenancy with effect from the end of September 1972 my clients are not bound or prepared to receive or encash the said cheque and the same is returned to you

herewith, Further my clients bona fide intend to start a hotel business in the premises leased to you after making suitable additions and alterations to the premises. They are there, in bona fide need of the said premises for their own occupation."

6. Under these circumstances the conclusion is inescapable that the tenant had committed wilful default in payment of arrears of rent. However, what is pressed into service by Mr Venugopal is the decision of this court in Rashik Lal v. Shah Gokuldas case. No doubt there are observations in the concluding paragraph of said judgment that the landlord must inform the tenant about payment of rent where the tenant had been lulled in the belief that intermittent payments could be accepted. We have got to point out, as rightly urged by Mr Parasaran however, the language under this Act is totally different and therefore this ruling has no application. We find the conduct of the tenant not paying the rent in spite of repeated reminders to which just now we have alluded will constitute default. The case of S. Sundaram Pillai has also no application because as is rightly urged by Mr Parasaran, that dealt with the scope of the proviso under Section 10(2) of the Tamil Nadu Buildings (Lease and Rent Control) Act. Nevertheless where there is utter negligence or reckless negligence as seen from the non-payment of rent in spite of repeated reminders, the conclusion that it was wilful could easily be sustained.

7. Turning to the plea of bona fide need, no doubt there is no specific plea as is required under Section 10(3(a)(iii), yet we are unable to hold that the finding in this regard is in any way vitiated. The parties have gone to Rent Controller and understood the scope of their case. There is a statement of the landlord wherein he has stated as follows:

"WE wanted the premises for constructing a big South Indian style hotel as it is a suitable place and in view of the encouragement we got from the Tourism department. We got the adjacent premises vacated for , that purpose and till today it is kept vacant. The place is centrally located and well-suited for the hotel. We have already started a hotel in the name of Hotel Park Lane, on the western style. We want to start a big hotel with several storeys consisting of about 300 rooms in it." Unfortunately for the tenant it has not been elicited whether the adjacent premises is non-residential. No doubt law requires as laid down in Hasmat Rai v. Raghunath Prasad that there must be a specific plea and proof thereof. Even in the absence of such a plea where the evidence has been let in this case and this was not seriously challenged either in the court of Appeal or in the revisional court, we are unable to differ from that finding.

8. In the result, the Civil will stand dismissed. There shall be no order as to costs,

9. As regards time to vacate as agreed to by both the learned counsel, time is granted till 31/12/1994 to hand over vacant peaceful possession. However, this shall be subject to the usual undertaking to be filed by the tenant within four weeks from today. No costs.