
(1963) 02 BOM CK 0001

In the Bombay High Court

Case No : Civil Revision Application No. 321 of 1961

Shri Sadawrat Sansthan

APPELLANT

Vs

Deorao Zinguji Khandke

RESPONDENT

Date of Decision : 20-02-1963

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958
— Section 11, 15, 19

Citation : (1963) 65 BOMLR 656 : (1963) MhLj 860

Hon'ble Judges : Paranjpe, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Paranjpe, J.—This is a plaintiffs' application for the revision of a small causes decree which was passed for Rs. 45.39 nps in place of the plaintiffs' claim for Rs. 452.22 nps.

2. The plaintiff-trust owns two fields Nos. 94/4 assessment Rs. 13-10-9 and 15/2 assessment Rs. 5-12-0. These two fields were leased out by the plaintiff-trust to the defendant's father for the year 1957-58 for a lease-money of Rs. 400. The fields were again let out to the defendant himself for the year 1958-59 for a lease-money of Rs. 400. The agreement in both these lease-deeds was that the lease-money was to be paid on December 1, 1957 and 1958, respectively. On November 29, 1957, the defendant paid Rs. 200 towards the lease money of the year 1957-58. On February 16, 1959, he paid a further sum of Rs. 225 to the plaintiff.

3. The plaintiff-trust has based its suit on the following allegations: After the payment of Rs. 200 on November 29, 1957, the defendant's father was liable for payment of the balance Rs. 200 plus interest Rs. 33 thereon. The amount of Rs. 225 paid on February 16, 1959; was appropriated towards the lease-money of the year 1958-59 and, therefore, the plaintiff had to recover Rs. 233 for the previous year's lease-money and Rs. 219.22 nps for the second year's lease-

money. It, therefore, filed the suit for Rs. 452.22 nps.

4. The defendant had contested the suit on the following grounds: The payment of Rs. 225 on February 16, 1959, was towards the lease-money of both the years and the plaintiff had no right to appropriate that amount towards the lease-money of the second year, while keeping the first year's lease-money in arrears. Thus, the full amount of the previous year was paid and u/s 11 of the Bombay Tenancy and Agricultural Lands (Vidarbha, Region and Kutch Area) Act, 1958, the plaintiff was not entitled to more than four times the land revenue. There was no agreement to pay the lease money of the two years on the first of December.

5. At the stage of evidence, the parties did not lead any evidence but filed pursis to say that the lease-deeds filed by the plaintiff may be admitted in evidence. The learned trial Judge did not record any finding regarding the date or dates on which the lease money for the two years had become payable. He, however, applied Sections 11 and 15 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958, and passed a decree only for Rs. 45.39 nps. Hence, the plaintiff has come up in revision.

6. This case raises an important question regarding the interpretation of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958, to which I shall refer as the Act hereafter.

7. Section 11 of the Act on which the learned advocate for the defendant was relying and Sections 132(2) and (3) on which the learned advocate for the plaintiff was relying are in the following terms:

11. Notwithstanding any agreement, or usage or any decree or order of a court or any law, the maximum rent payable by a tenant shall not exceed-

(a) three times the land revenue on the land in respect of which announcement of the Settlement has been made at any time within thirty years immediately preceding the commencement of this Act or is made at any time after such commencement;

(b) four times the land revenue on the land in any other case.

132. (2) Nothing in Sub-section (1) shall, save as expressly provided in this Act, affect or be deemed to affect-

(i) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(ii) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability or anything done or suffered before the commencement of this Act, and any such proceedings shall be instituted, continued" and disposed of, as if this Act had not been passed.

(3) Notwithstanding anything contained in Sub-section (2)-

(a) all proceedings for the termination of the tenancy and ejectment of a tenant

or for the recovery or restoration of the possession of the land under the provisions 6T the enactments so repealed, pending on the date of the commencement of this Act before a Revenue Officer or in appeal or revision before any appellate or revising authority shall be deemed to have been instituted and pending before the corresponding authority under this Act and shall be disposed of in accordance with the provisions of this Act, and

(b) in the case of any proceeding under any of the provisions of the enactments so repealed, pending before a civil court on such date, the provisions of Section 125 of this Act shall apply.

8. The learned trial Judge had relied on the decision in *Surendra v. Ramrao* [1957] N.L.J. 424 for coming to the conclusion that Section 11 of the Act, which prescribes the maximum limits of lease money payable was retrospective in operation. According to him, Section 132(2) did not control or override Sections 15 and 19 of the Act, and contradictory positions would arise if both the sections came into operation together, as he thought they should do. He was of the view that it was open to the tenant to move the Revenue Officer for fixing the reasonable rent u/s 11 and allowing the plaintiff to sue under colour of Section 132(2) would defeat such an application u/s 11. He was further of the view that applying Section 11 of the Act should bar a suit which would be permissible u/s 132(2). Shri Ahmed for the defendant supported that reasoning.

9. In *Surendra v. Ramrao*, the Division Bench had held Section 9-B of the Berar Regulation of Agricultural Leases Act, 1951, to be retrospective in operation, mainly, because of the clause therein "notwithstanding any agreement, usage, decree or order of a court or any law". The same expression has been used in Section 11 of the present Act. Shri Ahmed, therefore, argued that Section 11 also must be held to be retrospective in operation. In making that submission, he has lost sight of an important fact, namely, that the Berar Regulation of Agricultural Leases Act, 1951, which had contained the impugned provision in Section 9-B did not contain any provision like Section 132(2) as was to be found in the present Act. If the Berar Regulation of Agricultural Leases Act, 1951, had contained any such limiting provision like Section 132(2) in the present Act, it may have been permissible to adapt the analogy of the reasoning in *Surendra's* case for the purposes of the present case. It would, however, be seen that the present Act is a much more comprehensive legislation than the Berar Regulation of Agricultural Leases Act, 1951, and has special and specific provisions like Sections 131 and 132(2). Even Shri Ahmed could not dispute that the present Act will have to be construed in the light of all its provisions and it would not be permissible to ignore Section 132 for interpreting Section 11 on the lines of Section 9B of the Berar Regulation of Agricultural Leases Act. The reasoning in *Surendra v. Ramrao* would, therefore, not be helpful in coming to a decision about the provision of law applicable to the facts of the present case, which would have to be considered in the light of Section 132(2) also.

10. Shri Ahmed then laid stress on the expression "save as expressly provided in

this Act" in the opening para. of Section 132(2) to urge that the matter relating to the extent of the lease money was expressly provided for in Sections 11, 15 and 19 and, therefore, the other provisions in Section 132(2) will not be applicable to the matter of the lease money payable, as laid down in Sections 11, 15 and 19. It will have to be remembered in this context that Sections 11, 15 and 19 make provisions for the specific matters of lease money and the other sections in this Act make provision for different subjects dealt with therein. These general provisions in the entire Act cannot come within the ambit of the expression "save as, expressly provided in this Act" in Section 132(2). If all the general provisions in Sections 1 to 130 in the Act were to be treated as express provisions for the purpose of the opening clause of Section 132(2) the remaining portion of Section 132(2) would become otiose and entirely inapplicable. That would clearly not be a correct interpretation. As was pointed out by Mr. Justice Kotval in *Balmukund v. Demaji* [1960] N.L.J. 443, in connection with Section 125 of the Act, the provisions in Sections 11, 15 and 19 are in the nature of general provisions, whereas Section 132(2) makes a special provision. The maxim *generalia specialibus non derogant* would come into operation. These general provisions in Sections 11, 15 and 19 cannot affect the special provisions in Section 132(2). Shri Ahmed was unable to point out any authority for his proposition that the general provisions in Sections 11, 15 and 19 should prevail as against the special provision in Section 132(2).

11. The reasoning of the learned trial Judge showed that he was impelled to take his view on account of certain problematic difficulties which he considered as being probable. I am afraid, those difficulties were not relevant for the purpose of interpreting the provisions of Section 132(2). That reasoning, as also the argument of Shri Ahmed on behalf of the defendant, seemed to be based on a presumption in favour of retrospectivity. However, it is settled law that retrospectivity cannot be presumed unless there is some declared intention of the Legislature-clear and unequivocal-or unless there are some circumstances rendering it inevitable that we should take the other view, we are to presume that an Act is prospective and not retrospective : (vide p. 360 in *Craies on Statute Law*). Shri Ahmed could not indicate anything in this Act to show that the Legislature intended to make Sections 11 and 15 retrospective. In fact, there is internal evidence in the Act itself to show that the Legislature did not mean or intend to make the provisions in Sections 11 and 15 retrospective. Section 132(5) prescribes that notwithstanding anything contained in Sub-section (2), all proceedings for the termination of the tenancy and ejectment of a tenant or for the recovery or restoration of the possession of the land under the provisions of the repealed enactments, pending on the date of the commencement of this Act shall be deemed to have been instituted and pending before the corresponding authority under the present Act and shall be disposed of in accordance) with the provisions of this Act. It is to be remarked that suits or proceedings for recovery of rents are not included in Section 132(3). This Section 132(3) is the express provision referred to in the opening para. of Section 132(2) with respect to

certain types of suits, but not suits with respect to recovery of rents. Consequently, the suits for recovery of rents are not expressly provided in the Act and have not been included in Section 132(3) because the Legislature did not mean or intend to make Sections 11 and 15 retrospective in operation.

12. Shri Ahmed then submitted that though the provisions in Sections 11 and 132(2) would have to be read together, there appeared to be an apparent conflict between Section 11 and Section 132(2) and consequently, this apparent conflict should be resolved by acting on Section 11 and thereby necessarily ignoring Section 132(2). That line of reasoning would really not amount to saying that the two sections should be read together. That reasoning, in fact, means that one section should be ignored or should be treated as if it does not exist in the statute book.

13. With respect to the apparent conflict between Sections 125(7) and 132(2) the following effective remarks have been made in para. 9 in *Balmukund v Demaji* (p. 446):

...It seems to me that this apparent conflict can only be resolved by holding that Section 125 must be read subject to Section 132 of the Act. I say so because Section 132 deals with only a special class of cases which are affected by the repeal of the enactments in Schedule I, whereas Section 125 applies to all suits. Since there is a special provision in regard to suit and rights of a special class viz., suits and rights affected because of the repeals, the provisions of section 132 must prevail in such cases.

Thus, these provisions of Section 132(2) will have to be treated as being operative and not the provisions of Section 11 under which the defendant was seeking protection.

14. Shri Ahmed for the defendant was trying to distinguish *Balmukund v. Demaji* and my decision in *Swraswatibai Eknath v. Balkisandas Pandusa* (1962) Civil Application No. 325 of 1961, on the ground that the leases in those cases were for the year 1957-58 and not for the year 1958-59. True enough, both these cases were with respect to the lease money for the year 1957-58 and the lease money had undisputedly become due a long time before the present Act came in force. However, the ratio decidendi in those cases was not that the lease money was for the year 1957-58 but that the right to recover it had accrued before the new Act came into force, within the meaning of Section 132(2).

15. In the present case, the learned trial Judge had not given any finding about the date on which the right to claim lease money had accrued. The plaintiff's assertion that it was agreed by the parties that the lease money was to be paid on December 1, 1958, was denied by the defendant. However, the parties led no evidence and only filed a pursis to say that the lease-deeds were admitted and should be exhibited in the case. That would mean that the agreement was to pay the lease money on December 1, 1958, as mentioned in the lease-deed for the year 1958-59. As soon as the lease-money became payable on December 1,

1958, the plaintiff got a right to file a suit within the meaning of Section 132(2) and that had occurred about a month before the new Act came into force. Under these circumstances, there could be no doubt that the right of the plaintiff to recover the lease-money for the year 1958-59 was saved by Section 132(2).

16. Shri Ahmed was submitting in this connection that u/s 12, the defendant could have moved the revenue officer for commutation of the rent in accordance with Section 11, and if that were done, the Tahsildar would have been in his right in fixing the rent at four times the assessment. That contingency had not happened and is only a problematic one. Even if the defendant were to move the Tahsildar or even if the Tahsildar were to fix the rent, the rights; which the plaintiff could and did get by Section 132(2) could not have been affected or overridden. Shri Ahmed then urged that u/s 19(1)(1)(a)(i) the rent should have been paid in any year upto March 31, 1959, because that section was to be operative notwithstanding any agreement to the contrary. He, therefore, submitted that the cause of action did not accrue before the new Act: came into force, and, therefore, the plaintiff cannot be allowed to claim more-than four times. This argument obviously begs the question. It assumes that the other provisions of the Act are available to the defendant on the assumption that Section 132(2) does not come into operation. I have already shown above that Section 132(2) comes into operation and, therefore, the other provisions of the Act would not be applicable and there would be no question of interpreting the agreements exhs. P1 and P2 for finding out what should be deemed to be the date on which the payment became due. Here the matter was settled by the agreement of the parties that the payment was to be made on December 1, 1958, and the non-payment on that date, gave a right to the plaintiff to file his suit and he became protected by Section 132(2). Under these circumstances, the learned advocate for the defendant was not right in postulating the applicability of the other provisions of the Act to the defendant when the defendant was debarred from applying those provisions by virtue of Section 132(2).

17. In the view that I am taking, I find that the learned trial Judge had clearly erred in applying Section 11 of the Act to the present case. The suit will be governed by the terms of agreement, and the plaintiff's full claim will have to be decreed, subject to the deduction of Rs. 35.30 nps paid by the defendant as land revenue as mentioned in para. 3 of the pursis dated February 16, 1961, and to a further deduction of Rs. 24 for the land revenue of 1958-59 paid by the defendant as mentioned in para. 9 of the judgment of the trial Court. Thus, on deducting Rs. 59.30 nps from the plaintiff's claim of Rs. 452.22 nps, the plaintiff's claim will have to be decreed for Rs. 392.92 nps.

Accordingly, the application for revision is allowed. The decree for Rs. 45.39 nps is quashed and is replaced by a decree for Rs. 392.92 nps and corresponding costs in the trial Court. Under the circumstances of this case, I make no order for costs of this revision.