

(1993) 07 SC CK 0069

In the Supreme Court Of India

Case No : Civil Appeal No. 1138 Of 1975

Zeinab Bai Husseinbhai (Smt) and Others

APPELLANT

Vs

Navyug Chitrapat Co. Ltd. and Another

RESPONDENT

Date of Decision : 27-07-1993

Acts Referred:

Transfer of Property Act, 1882 — Section 114

Citation : (1993) 4 SCC 202

Hon'ble Judges : S. C. Agrawal, J;K. Ramaswamy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K. Ramaswamy and; S.C. Agrawal, JJ.-The controversy in this appeal is no longer res integra. This Court in Pradesh Kumar Bajpai v. Binod Behari Sarkar (dead) by Lrs.¹ following the judgment in V. Dhanapal Chettiar v. Yesodai Ammal² held that the benefit of Section 114 of Transfer of Property Act no longer is available to a tenant after the case comes within the four corners of the Rent Control Act. It is not in dispute that in terms of the covenants in the contractual tenancy the tenant/respondent had committed default in payment of the rent. In terms thereof the lease has been determined. Thereafter the tenant is entitled only to the protection of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947. The building is governed by the said Act. So when the contract came to a terminus the statutory tenancy begins to operate. The tenant is, therefore, entitled to the protection of Section 12. Sub-section (3)(a) envisages that he should pay and continue to pay the rent in terms thereof. If he commits default in payment of the rent, on issuance of a notice for payment it is obligatory on the part of the tenant to pay the rent or contest the claim for arrears by issuance of reply and to file an application for fixation of the standard rent. Admittedly neither of the actions has been done by the tenant. Therefore, he became liable for ejectment under Section 12(3)(a) of the Bombay Rent Act. Accordingly, the landlord filed an application for eviction. The Rent Controller dismissed the

petition. On appeal, the appellate court allowed and granted ejectment not only on ground of default but on other two grounds also and accordingly ordered eviction. On further proceedings having been taken under Article 227, the High Court set aside the order giving the benefit of Section 114, T.P. Act exercising discretion relieving the tenant from liability of forfeiture under Section 111(g).

2. In V. Dhanapal Chettiar case this Court held that determination of the lease in accordance with Section 106 of the Transfer of Property Act is unnecessary and that if a case is made out for eviction under the Rent Act, it itself is sufficient and it is not obligatory to determine the lease by issue of notice as required under Section 106 of T.P. Act. This Court further held that even if the lease is determined by forfeiture under the T.P. Act, the tenant continues to be a tenant, that is to say, there is no forfeiture in the eyes of law. The tenant becomes liable to be evicted and forfeiture comes into play only if he has incurred the liability to be evicted under the State Rent Act and not otherwise ... one has to look to the provisions of law contained in the four corners of any State Rent Act to find out whether a tenant can be evicted or not. The theory of additional protection has been stretched too far and without a proper and due consideration of all its ramifications. In Bajpai case¹ this Court further held that the notice was based on default of payment of rent for more than 3 months and called upon the tenant to vacate the premises if he fails to pay the rent as required under Section 3 of the U.P. Act. The notice was not based on the forfeiture of the lease. On default in the payment of rent for two months the landlord is entitled to enter into possession. It was therefore, held that the benefit of Section 114 of T.P. Act was not available to the tenant. Thus the same is the position on the facts in this case. It is clear that the landlord/appellant exercised the right in the contract and terminated the contract when the tenant committed default in the payment of the rent. Consequently the Rent Act came into operation and became applicable to the tenant. Since the tenant committed default in the payment of the rent thereafter he is not relieved from the default by applying Section 114 of the T.P. Act. The High Court committed grave error of law in coming to the conclusion that the benefit of Section 114 be extended to the respondent/tenant. Accordingly the appeal is allowed. The order of the High Court is set aside and that of the appellate court in Appeal No. 634 of 1968 is restored. Consequently the respondent became liable to be ejected. In the circumstances parties are directed to bear their own costs.