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Sri Tej Chaddha Vs Smt. Sideshwari and Another

Ex. Second Appeal No. 1667 of 1972

Court: Allahabad High Court

Date of Decision: March 14, 1973

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 23 Rule 3#Contract Act, 1872 â€" Section 23#Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 â€" Section 3

Citation: AIR 1973 All 324 : (1973) 43 AWR 338

Hon'ble Judges: S. Malik, J

Bench: Single Bench

Advocate: S.N. Varma, for the Appellant; H.S. Joshi, for the Respondent

Final Decision: Dismissed

Judgement

S. Malik, J.
This is a judgment-debtor''s appeal arising out of the judgment dated 8-5-1972 of the 1st Temporary Civil and Sessions

Judge, Kanpur, confirming the order dated 18-12-1971 of the Execution Court (Munsif City), Kanpur, rejecting the appellant''s objections u/s 47

or the Code of Civil Procedure.

2. The respondents (decree-holders) filed a suit (No. 357 of 1962) u/s 3 (i) (a) of the U. P. (Temporary) Control of Rent & Eviction Act, 1947

(U. P. Act No. III of 1947) (hereinafter referred to as the Act) for the ejectment of the appellant who, admittedly, was the tenant of the

respondents of the premises in suit. After issues had been framed in the suit, the parties entered into a compromise and under Order XXIII, Rule 3

of the CPC the decree in question was passed on 7-1-1966 in terms of the compromise. Under the compromise the parties agreed that the

judgment-debtor (appellant) will vacate the premises by 31st of December, 1970 and that till then the judgment-debtor shall pay Rs. 125/- per

month as damages for occupying the premises. If the judgment-debtor failed to vacate the premises by the 31st of December, 1970, the decree-

holders will have a right to execute the decree and get the judgment-debtor evicted.

3. It was argued on behalf of the appellant that the decree passed in accordance with the compromise was a nullity as in view of the provisions of

Section 3 of the Act, the court disposing of the suit could not pass the decree for eviction of the appellant unless it was satisfied that one or more of

the grounds mentioned in Section 3 of the Act had been made out. In other words, according to the appellant, in a suit filed u/s 3 of the Act the

court deciding the suit could pass a decree only on merits after deciding the issues framed, on one or more of the grounds enumerated in Section 3

and not in accordance with a compromise entered into between the parties by applying the provisions of Order XXIII, Rule 3 of the CPC unless

under the compromise the tenant admitted one or more of the grounds enumerated in Section 3 of the Act alleged in the plaint by the plaintiff.

4. The learned counsel for the judgment-debtor-appellant in support of this contention mainly placed reliance on the observations made by this

Court in Kanhaiya Lal v. Umraro Singh 1958 All LJ 640 and Ram Agyan Singh v. Murlidhar Agarwal 1971 All LJ 79. The attention of the Court

was also drawn to the observations made by the Supreme Court in Kaushalya Devi and Others Vs. Shri K.L. Bansal, .

5. On the other hand, it was argued on behalf of the decree-holders-respondents that there is nothing in the language of Section 3 of the Act to

show that under it a court deciding a suit u/s 3 of the Act was prohibited from passing a decree in terms of a compromise within the meaning of

Order XXIII, Rule 3 of the CPC as was done in this case.

6. After carefully hearing the learned counsel for the parties and going through the rulings cited I find myself in agreement with the contention put

forward on behalf of the respondents and see no force in this appeal.

7. It may be mentioned that in neither of the two cases decided by Division Benches of this Court the question as to whether Section 3 of the Act

bars passing a decree in a suit under that section in accordance with Order XXIII, Rule 3 of the Code of Civil Procedure, was involved. Though it

is true that observations were made in the nature of obiter in both these cases regarding the effect of a compromise entered into between the

parties to a case to which provisions of the Act apply.

8. In the case reported in 1958 All LJ 640 (supra) the landlord obtained a decree for ejectment of the judgment-debtor-respondent on the 5th of

July, 1944 before the Act came into force. The decree was put into execution after the Act came into force on the ground that the tenant or in

other words the judgment-debtor had made a willful default in payment of rent. The matter finally came up to this Court in Second Appeal and the

Second Appeal was decided in terms of a compromise or an agreement entered into between the parties during the pendency of that Second

Appeal and the original decree was adjured accordingly. Subsequently, the decree-bolder tried to execute the original decree as adjusted under

the orders of this Court disposing of the Second Appeal. During the execution of the adjusted decree the bar of Section 14 of the Act was pleaded

and the matter came up before this Court again and was disposed of by the judgment cited on behalf of the appellant. If I may say so with respect,

it was rightly held in that case that Section 14 of the Act clearly bars execution of a decree passed before the Act came into force by a

compromise and the executing court has no option but to execute the decree only if one or more of the grounds specified in Section 3 of the Act

were made out. It may be mentioned that the purpose of the Act was to give protection not only to the tenants who became tenants of premises to

which the Act applied but also to tenants of such premises against whom decree for eviction had already been obtained but had not been executed

when the Act came into force. Similar protection was given to such tenants against whom suits for eviction were pending on the date the Act came

into force (vide Section 15 of the Act).

9. A perusal of the judgment disposing of the case reported in 1971 All LJ 79 (supra) will show that the Bench deciding the case considered the

effect of an agreement of lease entered into between the parties after the Act came into force in respect of an accommodation to which the Act

applied. The landlord and the tenant under the agreement agreed and declared that neither party will claim the benefit of the provisions of the Act

thereby trying to make the provisions of the Act inapplicable to the tenancy created under the agreement. The other questions directly involved in

that case and decided by the Bench are not relevant for the purposes of the instant case. The main question decided in that case was whether a

landlord could by entering into an agreement creating a tenancy bring a suit to evict the tenant in accordance with the terms of that agreement

thereby avoiding the provisions of Section 3 of the Act in respect of premises leased out under the agreement to which the provisions of the Act

applied.

10. The third ruling referred to on behalf of the appellant was Satish Kumar and Others Vs. Surinder Kumar and Others, . In that ruling the

Supreme Court considered the provisions of Section 13 of Delhi and Ajmer Rent Control Act, 1952 and held that a decree passed by a Court in

an ejectment suit in terms of a compromise, without satisfying itself if any ground for eviction within the meaning of Section 13 of that Act existed

would be a nullity and cannot be executed. If the provisions of Section 13 of Delhi and Ajmer Rent Control Act were similar to those of Section 3

of U. P. No. III of 1947, the observations made by the Supreme Court would have clinched the issue in the instant case in favour of the appellant;

but a perusal of Section 13 of Delhi and Ajmer Rent Control Act will show that under it a Court passing a decree for eviction is prohibited from

passing such a decree unless it was satisfied that the grounds for eviction enumerated in that Section existed or were made out. Section 13

provides as under:--

Notwithstanding anything to the contrary contained in any other law or any contract, no decree or order for the recovery of possession of any

premises shall be passed by any Court in favour of the landlord against any tenant (including a tenant whose tenancy is terminated) : provided that

nothing in this sub-section shall apply to any such or other proceedings for such recovery of possession if the Court is satisfied as to the existence

of one or more of the grounds mentioned in the section.

It is apparent from the language of the section that while Section 3 of the U. P. No. III of 1947 merely lays down the requirements for filing a suit

for eviction against a tenant, Section 13 of Delhi and Ajmer Rent Control Act provides that the Court must satisfy itself before passing a decree for

eviction whether one or more of the grounds mentioned in the section have been made out. The provisions of Section 13 of Delhi and Ajmer Rent

Control Act are similar to the provisions of Sections 14 and 15 of U. P, Act No. III of 1947. Therefore, the observations made by the Supreme

Court in the ruling cited cannot be applied to this case. The view taken by me was also taken by the Madhya Pradesh High Court in Smt. Chandan

Bai Vs. Surjan, .

11. Section 3 of the Act lays down:--

3. Restrictions on eviction-- (1) Subject to any order passed under Sub-section (3) no suit shall, without the permission of the District Magistrate,

be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds.....

It is clear from the language of Section 3 that it lays down under what circumstances a suit can be filed for the eviction of a tenant. After a suit has

been filed in accordance with the provisions of Section 3, it has to be decided under the provisions of the Code of Civil Procedure. There is

nothing in the language of this section to show that it bars passing a decree under the provisions of Order XXIII, Rule 3 of the CPC in a suit filed

under that section. The Supreme Court has observed in Shri Lachoo Mal Vs. Shri Radhey Shyam, , as follows :

The general principle is that everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and

protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy ..... If there is any

express prohibition against contracting out of a statute in it then no question can arise of anyone entering into a contract which is so prohibited but

where there is no such prohibition it will have to be seen whether an act is intended to have a more extensive operation as a matter of public policy.

In Halsbury''s Laws of England, Volume 8, Third Edition, it is stated in paragraph 248 at page 143:--

As a general rule, any person can enter into a binding contract to waive the benefits conferred upon him by an Act of Parliament, or, as it is said,

can contract himself out of the Act unless it can be shown that such an agreement is in the circumstances of the particular case contrary to public

policy. Statutory conditions may, however, be imposed in such terms that they cannot be waived by an agreement, and, in certain circumstances,

the legislature has expressly provided that any such agreement shall be void.

12. If the intention of the Legislature was to prohibit an agreement of the nature entered into between the parties in the instant case or to prohibit

the application of Order XXIII, Rule 3 of the CPC to a case brought under the provisions of Section 3 of the Act, there is no reason why it should

not have been expressly prohibited by the Legislature as was done in Sections 14 and 15 of the Act. In Section 14 of the Act it is laid down:--

14. Execution of pending decrees for eviction--No decree for the eviction of a tenant from any accommodation passed before the date of

commencement of this Act shall, in so far as it relates to the eviction of such tenant, be executed against him as long as this Act remains in force,

except on any of the grounds mentioned in Section 3:"" It is clear from the language of Section 14 that the Execution Court executing a decree for

eviction of a tenant could not execute the decree unless one or more of the grounds mentioned in Section 3 of the Act were satisfied. The purpose

is quite apparent. By the Act the Legislature wanted to give protection to tenants of premises, to which the Act applied and in order to do this it

was extended even to those tenants against whom the landlord had already obtained a decree for eviction but had not executed the same before

the Act came into force. "Similarly, a perusal of Section 15 will show that by clear and unambiguous language a duty was cast on the court not to

pass a decree unless in a suit for eviction pending on the date the Act came into force, one or more of the grounds mentioned in Section 3 were

established. This was also enacted to give protection to tenants against whom suits had been filed for their eviction before the Act came into force

but the same were still pending when the Act came into force. As the tenants had no protection of the nature given tinder the Act before the Act

came into force, it was made incumbent on a court passing a decree against such a tenant or executing a decree for eviction against such a tenant

not to order eviction of the tenant unless it was satisfied that one or more of the grounds enumerated in Section 3 were made out. In a suit for

eviction of a tenant filed after the Act had come into force the tenant is aware of the rights or the protection given to him as set out in Section 3 of

the Act. So when they enter into a compromise knowing full well the protection given to a tenant, with their eyes open as in the instant case, unless

there is a provision of law which clearly bars or invalidates such a compromise, I fail to see why a decree passed on the basis of such a

compromise should be held to be void.

13. It was argued that even if it be assumed, keeping in view the language of Section 3 of the Act that provisions of Order XXIII, Rule 3 of the

CPC would apply to a case filed u/s 3 of the Act, a compromise under Order XXIII, Rule 3 of the CPC cannot be acted upon by the court unless

the court was satisfied that the compromise or the agreement was lawful and that a compromise entered into between the parties during the

pendency of a suit filed u/s 3 of the Act will not be a lawful compromise unless the compromise provides for the eviction of the tenant on one of the

grounds mentioned in Section 3 of the Act; because a compromise in which a tenant agrees to his being evicted for grounds other than those

enumerated in Section 3 will be a compromise or agreement against public policy. I see no force in this contention either. The Act no doubt was

passed and Section 3 was enacted to give protection to tenants who before the passing of the Act were an oppressed class of the society at the

mercy of landlords who harassed the tenants by charging exorbitant rents, by getting them evicted whenever they were offered a higher rent and by

various other means in view of acute shortage of accommodation specially in urban areas, but after the Act was passed protecting the rights of a

tenant, it could not be said that the tenants continued to be an oppressed class. As a matter of fact, the position of a tenant after the passing of the

Act became, if not superior to his landlord, in no way inferior to him. After the passing of the Act generally it was the landlord who suffered and for

all practical purposes a landlord whose house was in occupation of a tenant under the Act practically could not exercise any of the rights which a

landlord could ordinarily have exercised before the passing of the Act and was only entitled to the rent payable by the tenant to him. Moreover, in

my view, by the Act protection was given to a class of individuals in their private capacity as tenants. I fail to see how if a tenant protected by the

Act chooses to give up that protection, it could be said that by doing so he would he infringing any public policy. In this connection the

observations made by the Supreme Court in Shri Lachoo Mal Vs. Shri Radhey Shyam, may) be quoted:

We are unable to hold that the performance of the agreement which was entered into between the parties in the present case would involve an

illegal or unlawful act. In our judgment, Section 1-A was meant for benefit of owners of buildings which were under erection or were constructed

after January 1, 1961. If a particular owner did not avail of the benefit of that Section there was no bar created by it in the way of his waiving or

giving up or abandoning the advantage or benefit contemplated by the section. No question of policy much less public policy was involved and

such a benefit or advantage could always be waived.

Their Lordships of the Supreme Court were considering the effect of the provisions of Section 1-A of the Act which obviously was enacted for the

benefit of owners of buildings which were under erection or were constructed after the 1st of January, 1951. Though the Supreme Court while

making the observations quoted was not considering the effect of the provisions of Section 3 of the Act or an agreement of the nature entered into

between the parties in the instant case, it may be pointed out that just as Section 1-A of the Act was enacted for the benefit of owners of buildings

which were under construction or were constructed after January 1, 1951, Section 3 of the Act also conferred benefits or advantages on a tenant

in occupation of an accommodation to which the provisions of the Act applied. Moreover, the provisions of Section 1-A of the Act go to show

that benefits had to be conferred on owners of buildings--under construction or constructed after January 1, 1951 as the provisions of the Act so

demoralized they would be owners of buildings that people reluctant to construct buildings in view of the provisions of the Act under which owners

of buildings, to which the Act applied, in many cases were adversely affected and their position became worse than those of their tenants.

14. Therefore, I am of the view that it cannot be said that the compromise entered into between the parties on the basis of which the decree in

question was passed under Order XXIII, Rule 3 of the Code of Civil Procedure, was illegal being against public policy. It was conceded that the

compromise could not be said to be illegal under any other law or Act.

15. In view of the reasons discussed, it could not be said that the decree passed on the basis of the compromise was a decree passed in violation

of the provisions of Section 3 of the Act or was void. The courts below, therefore, rightly rejected the objections raised by the judgment-debtor-

appellant.

16. The appeal is dismissed with costs and the stay order dated 24-7-1972 is hereby vacated.