Shriyaskumar Vs Laxman

Civil Revision Application No. 500 of 1982

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Aug. 30, 1985

Acts Referred:
Provincial Small Cause Courts Act, 1887 â€" Section 27A, 27B

Citation: AIR 1986 Bom 183 : (1985) 2 BomCR 697 : (1986) MhLj 736

Hon'ble Judges: Puranik, J

Bench: Single Bench

Advocate: A.V. Mohta, for the Appellant; U.P. Deopujari, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This revision raises a short but interesting question of interpretation of Ss. 27A and 27B of the Provincial Small Cause Courts Act, 1887, in its

application to the State of Maharashtra relating to distress warrant proceedings under Chapter IV-A of the said Act.

2. To appreciate this question, it would be necessary to advert briefly to the facts in this case. The non-applicant is the landlord and the applicant is

his tenant, on a monthly rent of Rs. 300/-. The tenant-applicant was in arrears of rent for the period August 1978 to January 1981. The non-

applicant-landlord filed a regular suit No. 129/81 claiming arrears of rent of Rs. 8,700/- from the applicant-tenant. While this suit was pending,

further arrears became due form the applicant-tenant for the period 16-1-1981 to 16-6-1981. The non-applicant-landlord, therefore, served a

notice on 9-7-1981 calling upon the applicant-tenant to pay off the arrears of rent for the period January 1981 to June 1981 within 15 days as

required by the proviso to S. 27B of the Provincial Small Cause Courts Act. The tenant having filed to pay the same, the landlord filed a distress

warrant proceedings bearing No. 130/81 before the Judge, Small Causes Court at Nagpur.

3. In the distress warrant proceedings, the tenant-applicant appeared and filed an objection inter alia contending that the said proceedings are not

maintainable as there are arrears of rent for more than 12 months pending against him, in view of proviso (3) of S. 27A of the Provincial Small

Cause Courts Act. The learned Judge of the Small Causes Court overruled the objection of the tenant and directed issue of distress warrant for

Rs. 1,500/-. This order was passed below Exh. 1 on 10-6-1982, and it is this order which is impugned by the tenant in this revision.

4. Shri A. V. Mohta, Advocate, appeared for the applicant-tenant, while the non-applicant-landlord is represented by Shri U.P. Deopujari,

Advocate. The only question to be decided is whether, in view of the facts stated above, the present distress warrant proceedings are maintainable

before the trial Court or not.

5. Section 27A under Chap. IV-A of the Provincial Small Cause Courts Act makes the provisions applicable to the areas within the local limits of

the jurisdiction of the Court of Small Causes. Proviso to S. 27A of the above Act states that this Chapter regarding distress warrant proceedings

shall not apply to any other Court except the Small Cause Courts, that it shall also not apply to any rent due to government, that it shall also not

apply to any rent which has been due for more that 12 months before the date of the application made under S. 27B, and that it shall also not

apply to any rent which is in arrears for a period less than three months.

6. It is contended on beheld of the applicant that in the instant proceedings since the earlier claim for about three years of rent was already pending

in Civil Court, the present distress warrant proceedings for the subsequent period of six months would not be maintainable, inasmuch as this

Chapter does not apply to any rent which has been due for more than 12 months before the date of the application. I am unable to agree with the

submissions, inasmuch as the cause of action in respect of the claim for arrears of rent arises every months and the rent becomes due on the expiry

of every month. What is to be seen is that the rental arrears claimed in the distress warrant application should not have been due for more than 12

months or less than three months before the date of the application.

7. In so far as the present proceedings are concerned, the landlord had exercised the option of recovery of earlier arrears of rent by filing a regular

suit. Thereafter, every month rent was becoming due and the landlord is entitled to claim the rent as and when it becomes due. For this purpose,

the landlord has two options - (I) to file a regular suit every month to claim arrears of rent for one month which has fallen due, or (ii) to prefer

distress warrant proceedings if the rental dues are for more than three months and less than 12 months. The wording in sub-cl. (3) of the proviso to

S. 27A of the above Act is clear, inasmuch as it says"" any rent which has been due for more than twelve months"". meaning thereby the rent claimed

in the distress warrant proceedings should not have been due for more than 12 months, or under-sub-cl. (4), the rent claimed should not be less

than three months. In the instant case what is claimed is a rent due for a period less then 12 months and more than three months and, as such, the

application under S. 27B of the Provincial Small Cause Courts Art was definitely maintainable after serving a 15 days" notice upon the tenant for

that due rent"".

8. The earlier rent which was due as already been claimed by the landlord by a regular suit, but since the rent becomes due every month, the rent

claimed in the distress warrant proceedings has to be due for a period less than 12 months and more than three months. The trial Court has,

therefore, rightly negatived the contention of the applicant-tenant and proceeded with the case. there is no reason to interfere with the same.

9. In the result, therefore, the Civil Revision Application No. 500 of 1982 is dismissed. No order as to costs.

10. Application dismissed.