2023 STPL(WEB) 59 SC
SUPREME COURT OF INDIA

(SANJAY KISHAN KAUL AND AHSANUDDIN AMANULLAH JJ.)

RAVI KHANDELWAL

Appellant

VERSUS

M/S. TALUKA STORES

Respondent

Civil appeal no. 4364 of 2023 [Arising out of SLP(C) No.9434/2020]-Decided on 11-7-2023

Eviction – Five year restriction passes by the proceedings going on for the requisite period of time – Eviction granted

Cases Referred:
Gyan Chand v. Kunjbeharilal & Ors., (1977) 3 SCC 317.]
Ashok Kumar v. Suresh Chand & Ors. [RLW 1996 (1) Raj. 380.]
Kahtoon Begum (deceased) through LRs v. Bhagwan Das & Ors. [RLW 2004 (1) Raj. 502.] .
Mahadev & Ors. v. Babu Lal & Ors. [(2006) 4 RDD 1868 Raj]
M/s. Vadhumal Kanhaiyalal & Ors. v. Hemchand & Ors. [WLC (Raj.) UC 2007 (270).]
B. Banerjee v. Smt. Anita Pan[(1975) 1 SCC 166.],
Martin & Harris Ltd. v. VIth Additional Distt. Judge and Ors. [(1998) 1 SCC 732.],
R. Rajagopal Reddy (Dead) by LRs and Others v. Padmini Chandrasekharan (Dead) by LRs[1995 (2) SCC 630.]
R. Rajagopal's[1995 (2) SCC 630.]

JUDGMENT

Sanjay Kishan Kaul, J.-Leave granted.
Procedural History:

2. The respondent is the tenant of a shop situated at Plot E-2, Kamani Mansion, Paanch Batti, MI Road, Jaipur, with the appellant as the landlord. The appellant purchased the property from its erstwhile owner, M/s Jaipur Metal Electric Co., on 30.01.1985. At the time, the tenanted premises were already under the tenancy of the respondent.

3. The appellant filed a suit for eviction on grounds of bona fide necessity before the Additional Civil Judge-I, Jaipur, on 21.05.1985. The suit was dismissed on 30.10.2002, inter alia, on a finding that the plaint was not laid in accordance with Section 14(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as 'the said Act'), which proscribed the filing of a suit for eviction within five years from the date on which the premises were let out to the tenant. The Trial Court found that the premises were leased only on 08.06.1982 by the predecessor in interest of the appellant.

4. The appellant thereafter succeeded in the first appeal before the Additional District Judge, Jaipur, in terms of the judgment dated 18.03.2004. This was based on a stated admission of the respondent that he had initially leased the shop from one Udai Lal in 1958 and, thus, the suit could not be said to be hit by the restriction under Section 14(3) of the said Act. The Court disagreed with the respondent's claim that the premises had been leased on 08.06.1982, finding that the original lease deed dated 08.06.1982 had not even been adduced before the trial court.

5. On the second appeal being preferred by the respondent, learned Single Judge of the High Court framed a preliminary question of maintainability on 04.10.2018. *[Although Section 22 of the Act proscribes the filing of a second appeal from a decree, it does not prohibit second appeals from suits for eviction filed before an ordinary court of competent jurisdiction. This was elaborated in Gyan Chand v. Kunjbeharilal & Ors., (1977) 3 SCC 317.]* This was on account of what was stated to be conflicting views on the interpretation of Section 14(3) of the said Act by Coordinate Benches of the High Court. Thus, the Single Judge referred the matter to a Larger Bench. The question of law framed was as under:

> "Whether the limitation of five years specified in Section 14(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 bars the institution of the suit itself or whether it has only the consideration of the suit and passing of a decree therein?" (sic).

6. The aforesaid question of law is answered by the impugned judgment dated 20.04.2020. The Division Bench of the High Court noted the divergent views on the interpretation of Section 14(3) of the said Act. The first view was that Section 14(3) of the said Act created a complete prohibition on filing of a suit within five years of the tenancy. This was endorsed by the Court in Ashok Kumar v. Suresh Chand & Ors. *[RLW 1996 (1) Raj. 380.]* and Kahtoon Begum (deceased) through LRs v. Bhagwan Das & Ors. *[RLW 2004 (1) Raj. 502.]* . The second view reflected in Late Mahadev & Ors. v. Babu Lal & Ors. *[(2006) 4 RDD 1868 Raj]* and M/s. Vadhumal Kanhaiyalal & Ors. v. Hemchand & Ors. *[WLC (Raj.) UC 2007 (270).]* was that irregularity of a petition filed within five years of tenancy would get cured by the decree of eviction being made after the expiry of such period. The Division Bench agreed with the former interpretation, finding that there was no ambiguity in the language of Section 14(3) of the said Act, which created a complete bar to the filing of the suit. The provision is as under:

> "14. Restriction on eviction: -
>
> (3) Notwithstanding anything contained in any law or contract, no suit for eviction from the premises let out for commercial or business purposes shall lie against a tenant on the ground set forth in clause (h) of sub-section (1) of section 13 before the expiry of five years from the date the premises were let out to the tenant."

Appellant's Contention before this Court:

7. It is canvassed by the appellant that a literal interpretation of Section 14(3) of the said Act would lead to absurdity. Instead, a purposive interpretation of the rule should be applied. The intent behind Section 14(3) of the said Act is to grant protection to the tenant against eviction for five years. However, a literal interpretation of the rule in the present case would amount to granting protection to the respondent after 38 years of filing of the suit in 1985.

8. To buttress his case, support was taken from a judgment of this Court in B. Banerjee v. Smt. Anita Pan*[(1975) 1 SCC 166.]*, where a similar clause under the West Bengal Premises Tenancy Act, 1956 was considered. In the said case, the clause proscribed the filing of a suit for eviction for three years from the date on which the landlord acquired an interest in the premises. This Court had opined that the spirit of the protection is fulfilled with the passage of three years and filing a fresh suit would lead to unnecessary multiplicity of litigation. The relevant provision is as under:

> "13. (3A) Where a landlord has acquired his interest in the premises by transfer, no suit for the recovery of possession of the premises on any of the grounds mentioned in clause (f) or clause (ff) of sub-section (1) shall be instituted by the landlord before the expiration of a period of three years from the date of his acquisition of such interest:

> Provided that a suit for the recovery of possession of the premises may be instituted on the ground mentioned in clause (f) of sub-section (1) before the expiration of the said period of three years if the Controller, on the application of the landlord and after giving the tenant an opportunity of being heard, permits, by order, the institution of the suit on the ground that the building or re-building, or the additions or alterations, as the case may be, are necessary to make the premises safe for human habitation."

9. It may be noticed that there is a slight difference in Section 14(3) of the said Act, which uses the term 'shall lie' as against the aforesaid statutory provision where the expression used is 'shall be instituted'. Further, the relevant provision in B. Banerjee's7 case was introduced by amendment retrospectively.

10. Appellant contended that 'shall lie', which is the expression used in Section 14(3) of the said Act, implies that the suit would lie defective for five years and thereafter stand cured. In this regard, the appellant relied on Martin & Harris Ltd. v. VIth Additional Distt. Judge and Ors. *[(1998) 1 SCC 732.]*, where it was noticed in the context of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, that the bar was only on deciding the suit and not filing it. A suit could thus be entertained after expiry of three years. In Vithalbhai (P) Ltd. v. Union Bank of India, *[(2005) 4 SCC 315.]* it was opined that a premature suit does not affect the jurisdiction of the Court, and the suit can be entertained after maturity, particularly if it does not prejudice the other side.

11. It was stated that the observations in R. Rajagopal Reddy (Dead) by LRs and Others v. Padmini Chandrasekharan (Dead) by LRs*[1995 (2) SCC 630.]* were not applicable, as the said case dealt with Section 4(1) of the Benami Transactions (Prohibition) Act, 1988, which provided for an absolute bar on filing of the suit unlike Section 14(3) of the said Act.

Respondent's Contentions before this Court:

12. On behalf of the respondent, it was urged that the word 'lie' used in Section 14(3) of the said Act had not been defined. The dictionary meaning of the expression would be 'For an action, claim appeal etc. to subsist; be maintainable or admissible', as enunciated in R. Rajagopal's*[1995 (2) SCC 630.]* case. Since the suit itself was not maintainable, no decree can be passed.

13. It was also urged that if the intention of the legislature was that the eviction decree can be passed after expiry of five years, then Section 14(3) of the said Act would have been worded differently.

14. The judgment in B. Banerjee's*[1995 (2) SCC 630.]* case was sought to be distinguished, as it pertained to the constitutional validity of a retrospective amendment introduced in Section 13(3A) of the West Bengal Premises Tenancy Act, 1956, and whether the said bar could be applied to pending litigation.

Our Consideration:

15. In order to analyze the expression used in Section 14(3) of the said Act, we think it is appropriate to consider the objective of this provision. This provision is for the protection of a tenant. The objective is that from the date a tenant acquires a right, he must have a right to continue in the premises for a period of five years, subject to his fulfillment of the terms and conditions of the lease.

16. When we turn to the facts of the present case, what stares us in the face is that while the suit may have been defectively instituted within five years of the tenancy, more than 38 years have now elapsed since the suit was filed. We opine that this passage of time beyond the period of five years would wash away the initial impediment against the suit. We cannot lose sight of the fact that we stare at a factual scenario where the vagaries of litigation have prolonged the suit proceedings for a period of 38 years. The plea of the respondent is that the appellant should be asked to file a fresh suit – perhaps their confidence stems from the fact that if the tenant has already been able to prolong the

proceedings for 38 years, a similar scenario would again follow. We are not able to countenance such an interpretation which would defeat the very purpose of creating an initial restriction on the filing of the suit. To say that the landlord should now, once again, restart the proceedings because the initial period of five years had not elapsed, even as now 38 years have elapsed, would be a travesty of justice.

17. Whether the expression used is 'shall lie'or 'be entertained' would really make no difference. The objective is to create an impediment in the institution and trial of the suit for a period specified under the said Act. We are in agreement with the view adopted in B. Banerjee's*[1995 (2) SCC 630.]* case that the spirit of protection is fulfilled with the passage of the prescribed time period, and the filing of a fresh suit would lead to unnecessary multiplicity of litigation. No doubt B. Banerjee's*[1995 (2) SCC 630.]* case dealt with the constitutional validity of a retrospective amendment and whether the bar could be applied to pending litigation, but that itself would not dilute its ratio.

18. We are thus of the view that the objective of Section 14(3) of the said Act, being the safeguarding of the tenant for five years, was subserved by the proceedings going on for the requisite period of time and beyond it within which the tenant could not have been evicted. As noticed, in fact the proceedings have gone on for 38 years, which itself is extraordinary.

19. We may also take note of a subsequent development which is that the said Act itself has been abrogated in the year 2001, with a new statute coming into force, i.e. The Rajasthan Rent Control Act, 2001, which does not create any similar bar.

20. We thus unhesitatingly allow the appeal and set aside the judgment of the High Court.

21. In view of the divergence of opinion; a preliminary question of law had been raised in the second appeal before the High Court. This has now been answered in favour of the appellant. We are now faced with the dilemma where the preliminary issue has been answered, and the matter is required to be remitted to the learned single Judge to be considered on merits. Conventional approach may require so. However, we cannot lose sight of the fact that the second appeal is on a question of law. A preliminary issue was framed which was opined in favour of the respondent, and this we have now reversed. The first appellate court found in favour of the appellant so far as the bona fide requirement is concerned. We, thus, see no real question of law arising in the present case which would be determined in the second appeal were we to remit the matter back, particularly as the real question relating to the interpretation of the law has been discussed by us. We also believe that so much time having passed, it would be a mockery of justice to make the parties to go through another round in the second appeal. Thus, we are of the view that a quietus should be put to this prolonged dispute spanning 38 years, on something as simple as tenancy issue and as to when the proceedings commenced. We are also armed with the extraordinary power under Article 142 of the Constitution of India to do absolute justice inter se the parties.

22. We are thus of the view that the decree of eviction passed by the first appellate court dated 18.3.2004 should be affirmed and the respondent be asked to hand over vacant and physical possession of the tenanted premises on or before 30.09.2023, and to call upon the respondent to file an undertaking in order to avail of the benefit for further occupation till 30.9.2023 within two weeks.

23. The appeal is accordingly allowed leaving the parties to bear their own costs.
