

CASE NO.:
Appeal (civil) 5010 of 2003

PETITIONER:
SAYEDA AKHTAR

RESPONDENT:
ABDULAHAD

DATE OF JUDGMENT: 18/07/2003

BENCH:
V.N. KHARE CJ & S.B. SINHA

JUDGMENT:
JUDGMENT

2003 Supp(1) SCR 612

The following Order of the Court was delivered :

Leave granted.

Heard counsel for the parties.

With the consent of the parties, we dispose of this appeal finally at this stage.

The appellant herein is the landlord of premises bearing No. 50 5 Ward No. 15 Arif Nagar, Bhopal whereas the respondent herein is the tenant. The landlord filed a suit for eviction on the grounds of default in payment of rent as well as nuisance. Admittedly, the tenant neither deposited the rent within the stipulated period nor any application was moved for extension of time to deposit the same. Consequently, the trial Court decreed the suit and passed an order of eviction. The first appellate Court affirmed trial Court's decree. However, the High Court allowed the second appeal and reverses the decree. Consequently, the suit for eviction stood dismissed. The High Court was of the view that default committed by the tenant deserved condonation and the Court below ought to have given further time to deposit the arrears of rent. It is against the said judgment and order that the appellant-landlord is in appeal before us.

Section 13 of the M.P. Accommodation Control Act, 1961 reads as under:

"13.(1) On a suit or proceeding being instituted by the landlord on any of the grounds referred to in Section 12, the tenant shall, within one month of the service of the writ of summons on him or within such further time as the Court may, on an application made to it, allow in this behalf, deposit in the Court to pay to the landlord an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made shall thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate.

xxx xxxxxx

(6) If a tenant fails to deposit or pay any amount as required by this section, the Court may order the defence against eviction to be struck out and shall proceed with the hearing of the suit."

A bare perusal of the aforementioned provision would clearly go to show that although the court has the jurisdiction to extend the time for depositing the rent both for the period during which the tenant had

defaulted as well as the period subsequent thereto but there for an application is to be made. The provision requiring an application to be made is indisputably necessary for the purpose of showing sufficient cause as to why such deposit could not be made within the time granted by the Court. The court does not extend time or condone the delay on mere sympathy. It will exercise its discretion judicially and on a finding of existence of sufficient cause.

In Nasiruddin and Ors. v. Sitra Ram Agarwal, [2003] 2 SCC 577 this Court noticed the said provision as well as the decision in Shyamcharan Sharma v. Dharamdas, [1980] 2 SCC 151 and observed that the court has been conferred power to extend the time for deposit of rent but on an application made to it.

The finding of the court of appeal in this behalf is:

"The appellant has not moved any application before the court below for condoning the delay in depositing of rent. By this Court the relevant application had already been dismissed. Therefore, the appellant is not entitled to the protection of Section 12(i)(a), 12(iii) and 13(v) as has been laid down in 1989 M.P.R.C.J. 155."

The High Court in its impugned judgment did not point out as to how the court of appeal committed an error of records in arriving at the said finding. Admittedly, there had been two defaults i.e. rent for the month of November 1985 and rents for the months of May and June 1988. The High Court purported to have recorded that the appellant had applied for condonation of delay in payment of rent on 5.2.1990 in relation to default to deposit rent for the month of November 1985 and for the months of May and June 1988. An application for condonation of delay could not have been entertained on 5.2.1990 for commission of default in depositing the rent. We therefore, are of the opinion that the High Court was not correct in interfering with the findings of fact arrived at by the first appellate court.

Furthermore, as indicated hereinbefore, the plaintiff sought for a decree for eviction against the defendant also on the ground of commission of nuisance. It is true that the trial court did not frame any specific issue therefore but a bare perusal of the judgment passed by the learned trial court will clearly demonstrate that the parties were aware thereof and not only adduced evidence in that behalf but also advanced their respective submissions in relation thereto. The court of appeal formulate two specific questions for determination of the appeal. One of them being:

"Whether the appellant had created nuisance in the premises in question"?

It was held:

"On the point of nuisance, though, no issue was framed by the lower court yet it is clear on the basis of relevant pleadings and evidence produced that the parties were well familiar with the existence of the said issues. Under the circumstances, in face of the want of framing of issues, the prejudice was not caused nor the proceedings were vitiated, it is not proper to remand the case back in view of the decision of the Supreme Court reported as A.I.R. 1963 SC 884

Thereafter the court of appeal considered the pleading of the parties as also the materials brought on record by the parties to the suit on the said issue and held.

"The evidence produced by the respondent proves that the appellant had created nuisance because quarrelling falls under the mischief of nuisance (AIR 1954 Madras 514.)"

In its impugned judgment, the High Court did not advert to the said

question at all. It set aside the aforementioned findings purported to be on the ground that no issue was framed by the trial court on the point of nuisance. The High Court in the second appeal could not have without sufficient and just reason interfered with the concurrent findings of fact of the courts below. We are, therefore, of the opinion that the judgment of the High Court cannot be sustained.

In view of the matter, the appeal succeeds and is allowed. The judgment under challenge is set aside and the decree of the trial Court is restored.

There shall be no order as to costs.

JUDIS