

PETITIONER:
KAMALA BAKSHI

Vs.

RESPONDENT:
KHAIRATI LAL

DATE OF JUDGMENT: 30/03/2000

BENCH:
S.S.M/Quadri, S.N.Phukan

JUDGMENT:

SYED SHAH MOHAMMED QUADRI, J.

This appeal of landlady, by special leave, is directed against the order of the High Court of Delhi in C.R.No.1002 of 1996 dated November 28, 1996. This case had a chequered career. The present controversy is an off-shoot of the earlier litigation between the parties. To appreciate the question involved in this case, it will be necessary to set out briefly the facts giving rise to this appeal. On March 2, 1960, the respondent who is a tailor, occupied premises No.26, Faiz Bazar, Darya Ganj, Delhi (hereinafter referred to as the suit premises) of H.S.Sharma, the father of the appellant. The said Sharma and the respondent entered into an arrangement pursuant to which he executed a document, Ext.P-1, on March 28, 1960 (Ext.P-1, however, bears the date June 28, 1960), purporting to join as Manager of the tailoring business said to be of H.S.Sharma, which was being carried on in the suit premises. The said arrangement could not continue for long. On June 10, 1966, the said Sharma filed a suit claiming mandatory injunction against the respondent on the ground that he was a licensee in the suit premises in the capacity of Manager, which having been terminated he had no right to remain there and that he be directed to remove himself from the premises and further to restrain him from entering into the suit premises. The respondent contested the suit denying that he was a licensee. He pleaded that he was carrying on his tailoring business therein as a tenant on a monthly rent of Rs.30/-. Ext.P-1, it was alleged, was executed to circumvent the provisions of the Delhi Rent Control Act, 1958 (for short the Act) and that it was not a valid document. The Trial Court accepted the case of H.S.Sharma and decreed the suit, as prayed for, on December 21, 1974. The respondent went in appeal before the learned District Judge who reversed the decree of the Trial Court believing the case set up by the respondent that he was a tenant of the suit premises on a monthly rent of Rs.30/-. Challenging the judgment of the learned District Judge dated April 16, 1979, Rajinder Kumar Sharma son of H.S. Sharma filed R.S.A.No.29 of 1980 in the High Court of Delhi. The finding of the Appellate Court that the said Sharma was the landlord and the respondent was the tenant, was upheld but the quantum of rent payable by the respondent was modified to Rs.140/- by the High Court on September 5, 1991. In the meanwhile, the said Sharma died

leaving the appellant and her brother Rajinder Kumar Sharma as his legal representatives. The appellant claims title to the suit premises on the basis of a family settlement. On August 19, 1992 the appellant issued notice to the respondent demanding rent for the period from March 28, 1960 to July 28, 1992 amounting to Rs.54,320/-. The respondent paid rent for the period of three years prior to 1.9.1992 and disowned his liability to pay arrears for the earlier period. The appellant filed petition under Section 14(1)(a) of the Act for eviction of the respondent from the suit premises for non-payment of arrears of rent for the said period in the court of the Additional Rent Controller, Delhi. The respondent pleaded that the arrears of rent for the period of three years immediately preceding the demand notice dated August 19, 1992 were paid by him to the appellant; with regard to the rest of the period, it was pleaded, that the arrears were not legally recoverable. By its order dated September 4, 1996, the Additional Rent Controller dismissed the petition holding that as the respondent had paid arrears of rent at the rate of Rs.140/- per month for the period of three years immediately preceding the demand notice and the arrears of rent for the rest of the period was not legally recoverable, there was no cause of action for the appellant to file the petition. Against the said order dated September 4, 1996, the appellant filed C.R.No.1002 of 1996 in the High Court of Delhi, which was dismissed on November 28, 1996. It is the correctness of that order of the High Court that is canvassed in this appeal. Ms.Rachna Joshi Issar, learned counsel appearing for the appellant, strenuously argued that for the first time the rent of the suit premises @ Rs.140/- per month was determined by the High Court on September 5, 1991 so earlier to that judgment the appellant could not have claimed the rent as such the rent legally payable would be the arrears from March 28, 1960, the date of Ext.P-1, but not for a period of three years prior to the date of the said judgment of the High Court. The Additional Rent Controller and the High Court, submitted the learned counsel, erred in holding the arrears of rent from the date of Ext.P-1 till September 1989 to be barred by limitation. Mr.Sudhir Chandra, learned senior counsel appearing for the respondent, contended that the cause of action for recovering the rent accrued to late Sharma each month after March 1960 when the rent became payable and that once the period of limitation started running it would not stop, therefore, the claim for recovery of rent from March 28, 1960 till September 1, 1989 was barred by limitation and as such not legally recoverable; the learned Additional Rent Controller and the High Court committed no error in law in dismissing the petition of the appellant. The short question that arises for consideration in this appeal is : what is the meaning of the expression legally recoverable arrears of rent in Section 14(1)(a) of the Act? It will be useful to refer to Section 14(1)(a) here : 14. Protection of tenant against eviction - (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant :

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely

- (a) that the tenant has neither paid nor tendered the

whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in Section 106 of the Transfer of Property Act, 1882 (4 of 1882).

A perusal of the provision shows that it postulates making an order of eviction by any Court/Controller in favour of the landlord and against a tenant for non-payment of arrears of rent legally recoverable within two months of the service of notice of demand, claiming the arrears of rent, on the tenant by the landlord. It may be pointed out that if the claim of the appellant for recovery of arrears of rent was not enforceable in a court of law for having become barred by limitation, the amount ceases to be legally recoverable. Here the appellant will be entitled to recover only that much of the arrears of rent for which she can sue in a court of law. For recovery of arrears of rent Article 52 of the Indian Limitation Act prescribes a period of three years from the date the arrears become due. Now, the question is narrowed down to this : when did the rent of the suit premises become due? In the absence of any contract to the contrary the rent of a building payable monthly will become due at the end of each month. Ms. Issar did not join issue on that. She, however, vehemently argued that before the determination of the rent by the High Court in the Second Appeal at the rate of RS.140/- per month, the appellant could not have recovered any rent; therefore, the rent of the suit premises from the commencement of the tenancy became due only on the date of the judgment of the High Court. She relied on the decision of the Privy Council in Rangayya Appa Rao vs. Bobba Sriramulu & Ors. [27 ILR Madras 143]. That was a case where the landholders granted a patta of agricultural land to the tenant at a particular rate of rent. But Section 7 of the Madras Rent Recovery Act, 1865 enacted, inter alia, that no suit brought and no legal proceedings taken to enforce the terms of a tenancy shall be sustainable in a civil court unless pattas and muchilkas have been exchanged or patta has been tendered which the tenant was bound to accept, or unless both parties had agreed to dispense with such document. If a patta was tendered and the tenant refused to accept it, the landholder had the option to proceed in a summary suit before the Collector for the acceptance of the patta. In such a suit, it was for the Collector to settle the terms of tenancy including the rent in accordance with the principles laid down in the Act. An appeal was provided from the Collectors decision to the Civil Court. It was on those facts the Privy Council held that it was necessary for the landholder to take proceedings under the said Act to have the proper rate of rent ascertained, so the period of limitation in a suit for arrears of rent would run from the date of the final decree determining the rent, and not from the close of the fasli year for which the rent was payable. The learned counsel sought to derive support from the judgment of the Delhi High Court in Ram Sarup & Anr. Vs. Smt. Raj Dulari [AIR 1974 Delhi 23]. In that case during the pendency of the proceedings for eviction of the tenant, the court fixed the interim rent at the rate less than the contracted rent. The eviction petition was dismissed in default. Thereafter, the landlord claimed the amount representing the difference in the contractual rent and the interim rent fixed by the court. It was held by the High Court that so long as the interim order was in force the landlord could not have recovered the rent at the

contractual rate, therefore, the cause of action to recover the arrears of rent arose on the termination of the proceedings. The other decisions of the High Courts cited by the learned counsel also laid down the same principle and it is futile to multiply the decisions here. Learned counsel also cited the judgment of this Court in Maimoona Khatun & Anr. Vs. State of U.P. & Anr. [1980 (3) SCR 676]. That case related to claim of arrears of salary. A Government employee was dismissed from service. After his reinstatement, he did not receive his salary and while in service he died. In the suit filed by his legal representatives for the recovery of the arrears of salary, the Trial Court held that the employee was entitled to his pay for the period in question. The decree of the Trial Court was confirmed by the Appellate Court but the High Court found that the claim was barred by limitation, though it upheld the findings that the employee was illegally prevented from discharging his duty. On appeal to this court it is held that where an employee is dismissed or removed from service and is reinstated either by the appointing authority or by virtue of the order of dismissal or removal being set aside by a civil (competent) court, the starting point of limitation will be the date when the right has actually accrued. Such a right accrues on the date of the reinstatement by the appointing authority; where no suit is filed or the date of the decree if a suit is filed and decreed. And till that stage is reached the right to recover arrears of salary does not accrue at all as no question of suing for the arrears of salary will arise. It may be pointed out that in Rangayya Appa Raos case (supra), the right to recover the rent did not accrue till the rent was determined by the Collector. So also in the case of Ram Sarup & Anr (supra), the right to recover the difference of rent stood suspended during the pendency of the proceedings by virtue of the order of the court, so the right did not accrue till the proceedings terminated. In the last mentioned case on his dismissal from service the Government employee lost the right to claim the salary and that he became entitled to claim salary only after the order of termination of his services was set aside by this court. Those cases are clearly distinguishable from the instant case. A distinction must be drawn between cases in which by virtue of an order of the court a right accrues to a party to the lis, and cases in which the court merely lays bare the truth well within the knowledge of the parties. In the former category the cases referred to above fall and in the latter cases of the kind of the instant case fall. What happened here is that the parties actually entered into a transaction of tenancy but camouflaged the relationship of landlord and tenant by executing a document purporting to create a relationship of employer and employee and in the litigation that ensued between the parties the court had to discern the truth and declare the real position in which the parties stood to one another. Such a declaration by the court relates back to the date on which the parties entered into the arrangement/agreement under which the suit premises was put in possession of the respondent. It is true that in this case during the operation of the judgment of the trial court, holding that the respondent is a trespasser, the appellant could not have claimed any rent till the same was set aside by the appellate court holding that the respondent was a tenant of the suit premises which was confirmed by the High Court in Second Appeal on September 5, 1991. But that was the making of the appellants father himself in the earlier round of litigation. This case presents a good

example of how an arrangement made to circumvent the provisions of the Act to deprive the respondent of his legal rights thereunder rebounded to disable the appellant of what she could otherwise be legally entitled to. Here the cause of action has accrued to the appellants father to claim the rent from the respondent from the inception of the tenancy on the basis of the true state of affairs which they camouflaged but which was finally discovered and declared by the court. In the result, we hold that the judgment of the High Court, under appeal, does not suffer from any illegality. The appeal is without any merit and it is accordingly dismissed. There shall be no order as to costs.

JUDIS