

RAM DEO

v.

UMRAO SINGH

November 15, 1979

[R. S. SARKARIA AND O. CHINNAPPA REDDY, JJ.]

*U. P. (Temporary) Control of Rent and Eviction Act 1947—Section 3(1)(a)—Scope of*

In respect of arrears of rent the respondent-landlord and the appellant who was his tenant entered into an agreement on June 13, 1960 that the tenant would pay every month Rs. 50/- representing Rs. 25/- as arrears of rent and Rs. 25/- towards the current rent. For sometime the appellant made the payments in accordance with the agreement but thereafter fell in arrears. The respondent served a notice of demand upon the appellant on August 21, 1961. Eventually the respondent instituted a suit for damages and eviction of the appellant from the premises.

The appellant pleaded that the arrears of rent due at the date of notice were Rs. 75/- only which did not exceed three months rent and that the balance of the amount demanded represented only past arrears covered by the agreement in respect of which the landlord had waived his right of ejection.

Dismissing the suit the trial court held that only three months rent was in arrears and no ground for eviction had been made out under section 3(1)(a) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947.

On appeal the Civil Judge was of the view that the rent in arrears on the date of agreement did not lose its character as "arrears of rent" merely because there was an agreement to pay it in instalments. The High Court affirmed the finding of the Civil Judge.

In appeal to this Court it was contended on behalf of the appellant that out of Rs. 150/- due to the respondent on the date of his notice only Rs. 75/- was due towards the arrears of rent for three months preceding the notice while the balance of Rs 75/- was a distinct liability under the agreement and therefore, could not be treated and tacked on as arrears of rent to the rent due for the three months preceding the date of notice, for the purpose of section 3(1)(a) of the Act.

Allowing the appeal and accepting the appellant's contention,

**HELD :** 1. The appellant was not in "arrears of rent for more than three months" within the meaning of section 3(1)(a) of the Act and therefore was not liable to be evicted under the clause. [71 F]

2. As a result of the agreement dated June 13, 1960 the pre-agreement arrears lost their original character of "arrears of rent" and assumed the character of a consolidated debt, which under the terms of the agreement, was payable by the debtor (appellant) in monthly instalments. The agreement

**A** brought into being a new cause of action and created a liability against the tenant, independent and distinct from that founded on the rent note or the lease of the premises. The arrears of three instalments due under the agreement had ceased to be "arrears of rent" and could not be tacked on to the rent due for three months preceding the date of notice, for the purpose of the section.

[71 A-B]

**B** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2601 of 1969.

Appeal by Special Leave from the Judgment dated 21-8-1969 of the Allahabad High Court in Second Appeal No. 2693/63.

*W. S. Barlingay and R. C. Kohli* for the Appellant.

**C** *S. L. Aneja and K. L. Taneja* for the Respondent.

The Judgment of the Court was delivered by

**D** SARKARIA, J. This appeal by special leave is directed against a judgment, dated August 21, 1969, of the High Court of Allahabad, affirming on second appeal the judgment of the Civil Judge, Dehra Dun. It arises out of these facts :

**E** Umrao Singh, respondent herein, who died during the pendency of proceedings in this Court and is substituted by his legal representatives, instituted a suit on September 26, 1961 against Ram Deo, appellant herein, for damages and for eviction from House No. 122B, Choharpur, District Dehra Dun. Umrao Singh was the landlord of the suit premises. Ram Deo was occupying the premises at a monthly rent of Rs. 25.

**F** On June 13, 1960, a sum of Rs. 600 was due to the respondent from the appellant as arrears of rent and an agreement was executed between the parties on that date, according to which, the tenant had to pay Rs. 50 every month to the respondent, to wit Rs. 25 towards liquidation of the compounded arrears of rent, and Rs. 25 per month towards the current rent falling due. The appellant fell in arrears again. Thereupon, the respondent served a notice of demand upon the plaintiff on August 21, 1961, requiring him to pay Rs. 380 as the arrears of rent (Rs. 5 being balance due from the period April 10, 1960 to May 9, 1960 and Rs. 370 for the period from May 10, 1960 to August 9, 1961) within one month from the receipt of the notice.

**G** The tenant-appellant pleaded that the parties had acted upon the said agreement dated June 12, 1960, and on settlement of accounts in April 1961, a sum of Rs. 305 was alleged to be due to the respondent. Thereafter the appellant made another payment of Rs. 50 to the respondent on June 6, 1961. On September 27, 1961 appellant tendered to the respondent a sum of Rs. 200. The respondent did not

accept this tender, and instead, instituted the suit for damages and eviction of the appellant from the said premises. **A**

The tenant further pleaded that the arrears of rent due at the date of notice was Rs. 75 only which did not exceed three months' rent, that the rest of the amount (Rs. 75) demanded represented only past arrears covered by the agreement in respect of which the landlord had waived his right of ejection. **B**

The trial court held that from Ex. A-2, it was clear that only three months' rent was in arrears and therefore, no ground for eviction had been made out under Section 3(a) of the U.P. (Temporary) Control of Rent and Eviction Act No. III of 1947 (hereinafter referred to as the Act). With this reasoning, the trial court dismissed the respondent's petition for eviction. **C**

On appeal, the Additional Civil Judge, Dehra Dun, by his judgment dated May 29, 1963, reversed the finding of the Munsif and held that the rent which was in arrears upto June 13, 1960 and which was the subject-matter of the agreement of that date, did not lose its character as "arrears of rent" merely because there was an agreement to pay the same in instalments. On these premises, he allowed the appeal and directed eviction of the tenant. **D**

The tenant carried a further appeal to the High Court. The High Court affirmed the finding of the Civil Judge and dismissed the appeal. Hence this appeal by the tenant. **E**

Dr. Barlingay, learned counsel for the appellant has advanced two contentions. First, that out of the amount of Rs. 150 due to the respondent at the date of the notice, Rs. 75 was due under the agreement dated June 12, 1960, and that amount could not be treated as arrears, of rent and tacked on to three months current rent in arrears, for the purpose of clause (a) of Section 3(1) of the Act. It is argued that the liability to pay the past amount of Rs. 75 arises out of the aforesaid agreement which furnished an independent cause of action different from that founded on the rent note or the lease of the premises. Second, that Section 114 of the Transfer of Property Act will be applicable to the situation because this is a matter on which the Rent Act is silent. Since the tenant has cleared all the arrears of rent on the first hearing of the suit, he could not be evicted in view of the provisions contained in Section 114 of the Transfer of Property Act. **F**

In reply, Mr. Aneja submits that the pre-agreement arrears of rent did not lose their original character as arrears of rent, merely because the landlord had agreed to allow the tenant to clear them in instal- **G**

**A** ments. It is emphasised that what was intended to be an accommodation could not be turned into a handicap for the landlord. It is argued that since on the date of the demand notice served upon the appellant, the latter was admittedly liable to pay Rs. 150; Rs. 75 towards the rent of 3 months prior to August 12, 1961 and Rs. 15 towards the rent of three months preceding the demand notice, he was in arrears of rent for a period of "more than three months" within the meaning of clause (a) of Section 3 of the Act, and, as such, was liable to be evicted.

We will now deal with the first contention canvassed by Dr. Barlingay.

**C** The material part of Section 3 of the Act reads as follows :

"3(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 :—

(a) That the tenant is in arrears of rent for more than three months and has failed to pay the same to the landlord within one month of the service upon him of a notice of demand.

**E** (b) to (g) .....

In order to make out a ground for eviction under clause (a) of Section 3(1), the landlord must establish three facts : (i) that the tenant is in arrears of rent; (ii) that such arrears are of rent for more than three months; and (iii) the tenant has failed to pay the same to the landlord within one month of the service upon him of a notice of demand. If any one of these factual ingredients is not established, no order of eviction can be passed under this Clause. In the present case, there is no dispute that at the date of the notice, the tenant owed an amount of Rs. 150 to the landlord, out of which Rs. 75 represented three months' rent preceding the notice. There is also no dispute that the balance of Rs. 75 due from the tenant related to the period prior to the agreement, dated June 12, 1960, and under the agreement, the tenant was bound to pay the same in three monthly instalments, which he had, in breach of the agreement, failed to pay. Controversy centres round the question, whether this balance of Rs. 75 could also be treated as "arrears of rent" and tacked on to the arrears of rent relating to the three months preceding the notice for the purpose of clause (a) of Section 3(1) of the Act. In our opinion, the answer to this question must be in the negative. As a result of the aforesaid

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agreement, the pre-agreement arrears lost their original character as "arrears of rent" and assumed the character of a consolidated debt which, under the terms of the agreement, was payable by the debtor (appellant) in monthly instalments. The agreement had in respect of the past arrears, brought into being a new cause of action and created a liability against the tenant, independent and distinct from that founded on the rent note or the lease of the premises. Consequently if the appellant, in breach of the agreement, defaulted to pay any instalment, the remedy of the respondent (creditor) would be to file a suit for the recovery of the amount due on the basis of the agreement, dated June 12, 1960. Thus, the arrears of three instalments due under the agreement had ceased to be "arrears of rent" and could not be tacked on to the arrears of three months rent due at the date of the notice, for the purposes of clause (a) of Section 3(1).

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C

The proposition can be tested by taking an example. Supposing, the appellant had defaulted to pay four monthly instalments of Rs. 25 each in accordance with the aforesaid agreement, but had regularly paid the rent as it fell due every month for the post-agreement period. Will the respondent in such a situation be entitled to sue for the eviction of the tenant on the ground that he has committed four successive breaches and defaults under the said agreement? The answer is an obvious 'No'. The respondent's remedy in such a situation, will only be to sue for the recovery of the amounts due on the foot of the aforesaid agreement.

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In the light of the above discussion the conclusion is inescapable that for the purposes of clause (a) of Section 3(1) the appellant was in arrears of rent for three months, only. In other words, he was not in "arrears of rent for more than three months" within the meaning of clause (a), and, as such, was not liable to be evicted under that clause. The High Court and the first appellate court were in error in holding to the contrary.

F

In the view we take, it is not necessary to deal with the second contention canvassed by Dr. Barlingay.

In the result, we allow this appeal, set aside the decree of the High Court and dismiss the respondent's suit. In the circumstances of the case however, we leave the parties to pay and bear their own costs in this Court.

G

P.B.R.

Appeal allowed.

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