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MOHD. SALIMUDDIN
v.
MISRI LAL AND ANOTHER

MARCH 12, 1986

B [E.S. VENKATARAMIAH AND M.P. THAKKAR, JJ.]

Bihar Buildings (Lease, Rent & Eviction) Control Act 1947, s.3 - Loan advanced by tenant in violation of Act - Tenant - Whether entitled to claim adjustment of loan amount against rent accrued subsequently.

C Words & Phrases - Doctrine of pari delicto - Meaning and applicability of.

D The appellant-tenant had advanced a sum of Rs.2,000 to the landlord in order to secure the tenancy under an agreement which provided that loan amount was to be adjusted against the rent which accrued subsequently. The respondent-landlord filed a suit against the appellant-tenant for eviction on the ground of arrears of rent. The lower appellate court dismissed the suit holding that the tenant was not in arrears of rent since the amount advanced by the tenant was sufficient to cover the landlord's claim of arrears. But, the High Court in appeal by E the respondent-landlord set aside the judgment of the lower appellate court holding that the loan advanced by the tenant was in violation of the prohibition contained in s.3 of the Bihar Buildings (Lease, Rent & Eviction) Control Act and, therefore he was in arrears of rent and liable to be evicted.

F Allowing the appeal,

G HELD : 1.(i) The tenant was not in arrears of rent. The judgment and decree passed by the High Court are set aside and the judgment and decree of the lower appellate court are restored. [626 G]

H 1(ii) A greater judicial sin than the sin of treating the 'oppressor' and the 'oppressed' on a par, or that of rewarding the oppressor and punishing the oppressed, whilst

Administering the law designed to protect the oppressed cannot be conceived. The Court would be guilty of committing this sin if it upholds the view that the tenant who advances a loan to the landlord in order to secure the tenancy (in violation of the prohibition to do so embodied in the statute enacted for his benefit) is in pari delicto. [624 B]

In the instant case, the parties to the contract were unequal. It was the landlord, who was in the position of an oppressor, who wanted to exploit the situation obtaining in the context of the acute housing shortage which prevailed. The tenant had either to yield to the unlawful demand of the landlord, or go without a roof, for otherwise, the landlord would not have granted the lease. The relevant provision prohibiting the payment of rent in advance embodied in the Rent Act was enacted precisely to protect the tenant from such exploitation. To deny access to justice to a tenant who is obliged to yield to the unlawful demands of the landlord in this scenerio by invoking the doctrine of pari-delicto is to add insult to injury, and to negate the very purpose of the provision designed for his protection. The doctrine of pari delicto embodying the rule that a party to a transaction prohibited by law cannot enforce his claim in a court of law is not attracted in a situation like the present. [624 H; 625 A-D]

2. The doctrine of pari-delicto is not designed to reward the 'wrong-doer' or to penalize the 'wronged', by denying to the victim of exploitation access to justice. The doctrine is attracted only when none of the parties is a victim of such exploitation and both parties have voluntarily and by their free will joined hands to flout the law for their mutual gain. [625 D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 917 of 1986.

From the Judgment and Order dated 5.9.1985 of the Patna High Court in Decree No. 300 of 1983.

S.K. Sinha for the Appellant.

P.P. Singh for the Respondents.

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The Judgment of the Court was delivered by

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THAKKAR, J. One cannot conceive of a greater judicial sin than the sin of treating the 'oppressor' and the 'oppressed' on a par. Or that of rewarding the oppressor and punishing the oppressed whilst administering the law designed to protect the oppressed. We would be guilty of committing this sin if we uphold the view that the tenant who advances a loan to the landlord in order to secure the tenancy (in violation of the prohibition to do so embodied in the statute enacted for his benefit) is in pari delicto. And that the Court will not assist the tenant in claiming adjustment of the loan amount against the landlord's claim for rent.

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The lower appellate Court dismissed the respondent-landlord's suit for eviction against the appellant-tenant holding that the tenant was not in arrears of rent. The following facts are not in dispute:-

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1) The tenant had advanced a sum of Rs. 2000 under an agreement which interalia contained a stipulation that the loan amount was to be adjusted against the rent which accrued.

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2) The amount so advanced by the tenant was sufficient to cover the landlord's claim of arrears.

3) If the loan amount was accordingly adjusted towards the rent which accrued, the tenant was not in arrears of rent.

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The High Court has taken the view that since the loan advanced by the tenant was in violation of the prohibition contained in the Rent Act, [Section 3 of the Bihar Buildings (Lease, Rent and Eviction) Control Act.] the tenant was not entitled to claim adjustment of the loan amount against the rent which accrued subsequently. The tenant was therefore in arrears of rent and liable to be evicted according to the High Court.

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The view taken by the High Court is unsustainable inasmuch as the High Court has lost sight of the fact that the parties to the contract were unequal. The tenant was acting

under compulsion of circumstances and was obliged to succumb to the will of the landlord, who was in a dominating position. If the tenant had not agreed to advance the loan he would not have been able to secure the tenancy. It was the landlord who was in the position of an oppressor who wanted to exploit the situation obtaining in the context of the acute housing shortage which prevailed. The tenant had either to yield to the unlawful demand of the landlord or go without a roof, for, otherwise, the landlord would not have granted the lease. The relevant provision prohibiting the payment of rent in advance embodied in the Rent Act was enacted precisely to protect the tenant from such exploitation. Obviously, he had to succumb to such exploitation, the protective law notwithstanding, as he would have been obliged to remain roofless. The law extended the protection but did not guarantee the roof. To deny access to justice to a tenant who is obliged to yield to the unlawful demands of the landlord in this scenario by invoking the doctrine of pari delicto is to add insult to injury, and to negate the very purpose of the provision designed for his protection. The doctrine of pari-delicto is not designed to reward the 'wrong-doer', or to penalize the 'wronged', by denying to the victim of exploitation access to justice. The doctrine is attracted only when none of the parties is a victim of such exploitation and both parties have voluntarily and by their free will joined hands to flout the law for their mutual gain. Such being the position the said doctrine embodying the rule that a party to a transaction prohibited by law cannot enforce his claim in a Court of law is not attracted in a situation like the present. The law enunciated by this Court in **V.S. Rahi and Anr. v. Smt. Ram Chambeli** [1984] 2 S.C.R. p. 290, to which one of us (Venkataramiah, J) was a party fully buttresses this proposition. Says the Court speaking through Venkataramiah, J :-

"The above view is fully in consonance with the spirit behind the rule of oppression which is recognised as an exception to the doctrine that a party cannot recover what he has given to the other party under an illegal contract. 'It can never be predicted as pari delicto where one holds the rod and the other bows to it'. (Per Lord Ellenborough in **Smith v. Cuff** [1817] 6 M & S 160 at 165). Cases which call for appropriate relief to be given to an

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innocent party where 'one has the power to dictate, the other has no alternative but to submit are not uncommon. Cheshire and Piffot's Law of Contract (10th Edn.) refers to another type of case belonging to this category."

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At page 338 of that treatise is the following passage:

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"Another type of case where the parties are not regarded as equally delictual is where the contract is rendered illegal by a statute, the object of which is to protect one class of persons from the machinations of another class, as for example where it forbids a landlord to take a premium from a prospective tenant. Here, the duty of observing the law is placed squarely upon the shoulders of the landlord, and the protected person, the tenant, may recover an illegal premium in an action for money had and received, even if the statute omits to afford him this remedy either expressly or by implication. In the words of Lord Mansfield :

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Where contracts or transactions are prohibited by positive statutes, for the sake of protecting one set of men from another set of men; the one from their situation and condition being liable to be oppressed and imposed upon by the other; there the parties are not in pari delicto; and in furtherance of these statutes, person injured after the trans^d action is finished and completed, may bring his action and defeat the contract."

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The lower appellate Court was therefore right, and the High Court wrong. The tenant was not in arrears of rent.

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The appeal succeeds. The judgment and decree passed by the High Court are set aside and the judgment and decree of the lower Appellate Court are restored. The suit for eviction stands dismissed. No costs.

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M.L.A.

Appeal allowed.