

IMDAD ALI  
v.  
KESHAV CHAND AND ORS.

FEBRUARY 19, 2003

[V.N. KHARE, CJ, S.B. SINHA AND DR. A.R. LAKSHMANAN, JJ.]

*Madhya Pradesh Accommodation Control Act, 1961:*

*s. 12(3), proviso—Shop—Tenant committing default in payment of rent—Availing benefit of proviso to sub-section (3) of s.12—His heirs who inherited the tenancy again committed default—Suit by landlord for eviction—Decreed—Held, once the father of respondents had availed the benefit of proviso to sub-s.(3) of s.12, the said benefit was not available to respondent-tenants on committing a further default in payment of rent—When the heirs of a tenant acquire benefit under the Act, the same would be subject to such limitation and liability which has been provided under the Act—A successor-in-interest holds his tenancy right subject to rights and obligations of his predecessor—A person by reason of inheritance or assignment does not derive any better title than his predecessor, and thus, the right which the original tenant did not possess cannot be passed on to his successor.*

*Gian Devi Anand v. Jeevan Kumar and Ors., [1985] 2 SCC 683, followed.*

*Nasiruddin and Ors. v. Sita Ram Agarwal, [2003] 1 Scale 658; Balwant Singh and Ors. v. Anand Kumar Sharma and Ors., [2003] 2 Scale 71 and Damadilal and Ors. v. Parashram and Ors., [1976] 4 SCC 856, referred to.*

*A.S. Sulochana v. C. Dharmalingam, AIR (1987) SC 242, held inapplicable.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13275 of 1996.

From the Judgment and Order dated 1.7.88 of the Madhya Pradesh High Court in S.A. No. 621 of 1988.

U.N. Bachhawat, Alok Bachhawat and Chander Shekhar Ashri for the

**A** Appellant.

S.K. Gambhir, Awanish Sinha, Rijuraj Singh Jamwad, Anil K. Sharma and Vivek Gambir for the Respondents.

The following Order of the Court was delivered.

**B**

The short question that arises for consideration in this case is as to whether the heirs of a tenant can be deprived of the benefit of proviso to sub-section (3) of section 12 of the Madhya Pradesh Accommodation Control Act, 1961 (for short "the Act") if the heirs' father from whom they inherited the tenancy rights had availed of the benefit of proviso of sub-section (3) of Section 12 of the Act. This question arises in the following factual background.

**C**

It is not disputed that the appellant herein is the landlord of a shop in the town Neemuch. As far back as in the year 1960, one Badri Lal, father of respondents took the aforesaid shop on rent at the rate of Rs. 50 per month. It appears that Badri Lal committed default in payment of arrears of rent with the result that the appellant herein brought a suit for eviction on the ground of default in payment of arrears of rent. However, father of the respondents claimed benefit of proviso to sub-section (3) of Section 12 of the Act and deposited the arrears of rent, for this reason, the decree for eviction could not be passed against Badri Lal. It appears subsequently Badri Lal died and the respondents herein being the heirs of Badri Lal inherited the statutory tenancy and they became tenant of the said accommodation of which Badri Lal was a tenant. It appears that the respondents also committed default in payment of rent. The appellant herein brought a suit for eviction of the respondents, *inter alia*, on the ground of *bonafide* need of the disputed shop as well as on the ground of default in payment of arrears of rent. The suit was decreed on both the grounds, and the first appellate court affirmed the trial court's decree. However, the High Court, in a second appeal, set aside the judgment of courts below. Consequently, the suit stood dismissed. It is against the said judgment, the appellant-landlord is in appeal before us.

**D****E****F****G**

We have heard the learned senior counsel for the parties.

Mr. U.N. Bachhawat, learned senior counsel appearing for the appellant urged that under the scheme of the Act proviso to sub-section (3) of Section 12 of the Act confers one time benefit on the tenant and such benefit is not available once the tenant already availed of such benefit and it is not open to the heirs of the tenant to avail of such benefit for the second time. Learned

**H**

senior counsel relied upon a decision of this court in *Gian Devi Anand v. Jeevan Kumar and Ors.*, [1985] 2 SCC 683, in support of this proposition. We find merit in his submission. A

Mr. S.K Gambir, learned senior counsel appearing for respondent No. 1, on the other hand urged that the Rent Act is a legislation for the benefit of the tenant and, therefore the provisio to sub-section (3) of section 12 of the Act should be interpreted in such a manner in which the benefit must go to the tenant. According to him, the benefit is available to the individual tenant despite the fact this benefit has already been availed of by his predecessor-in-interest. B

Section 2(i) defines 'tenant' which runs as follows: C

"tenant means a person by whom or on whose account or behalf the rent of any accommodation is, or, but for a contract express or implied, would be payable for any accommodation and includes any person occupying the accommodation as a sub-tenant and also any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act: but shall not include any person against whom any order or decree for eviction has been made." D

Sub-section (3) of Section 12 of the Act reads as under: E

"12, Restrictions or eviction of tenants. -(1).....

xxx      xxx      xxx

(3) No order for the eviction of a tenant shall be made on the ground specified in clause (a) of sub-section (1), if the tenant makes payment or deposit as required by section 13: F

Provided that no tenant shall be entitled to the benefit under this sub-section if, having obtained such benefit once in respect of any accommodation he again makes a default in the payment of rent of that accommodation for three consecutive months." G

It is not disputed that the Rent, Act is a beneficial legislation for the tenant, but it is also for the benefit of the landlord. In *Nasiruddin and Ors. v. Sita Ram Agarwal*, [2003] 1 Scale 658, it was held that the Rent Act is not only enacted for the benefit of the tenant but also for the benefit of the landlord and, therefore, the provisions of the Act have to be harmoniously H

A interpreted. It was held thus:

B “In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom. In *E. Palanisamy v. Palanisamy (Dead) by LRs. and Ors.*, [2003] 1 SCC 122, a Division Bench of this Court observed:

C “.....The rent legislation is normally intended for the benefit of the tenants. At the same time, It is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters.....”

D It is also pertinent to note that the Rent Control Act is a welfare legislation not entirely beneficial enactment for the tenant but also for the benefit of landlord. [See: *Shri Lakshmi Venkateshwara Enterprises Pvt. Ltd. v. Syeda Vajhiunnissa Begum (Smt.) and Ors.*, [1994] 2 SCC 671. In that view of the matter, balance has to be struck while interpreting the provisions of the Rent Act.”

The decision of this Court in *Balwant Singh and Ors. v. Anand Kumar Sharma and Ors.*, (2003) 2 Scale 71 is also to the aforesaid effect.

E When the heirs of a tenant acquire benefit under the Act. the same would be subject to such limitation and liability which has been provided under the Act. In *Gian Devi's* case (supra), a 5-judge Bench of this Court held as under:

F “.....The heirs of the deceased tenant in the absence of any provision in the Rent Act to the contrary will step into the position of the deceased tenant and all the rights and obligations of the deceased tenant including the protection afforded to the deceased tenant under the Act will devolve on the heirs of the deceased tenant. As the protection afforded by the Rent Act to a tenant after determination of the tenancy and to his heirs on the death of such tenant is a creation of the Act for the benefit of the tenants, it is open to the Legislature which provides for such protection to make appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be enjoyed and the manner in which the same is to be enjoyed. If the Legislature makes any provision in the Act limiting or restricting the benefit and the nature of the protection to be enjoyed

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H

in a specified manner by any particular class of heirs of the deceased tenant on any condition laid down being fulfilled, the benefit of the protection has necessarily to be enjoyed on the fulfilment of the condition in the manner and to the extent stipulated in the Act. The Legislature which by the Rent Act seeks to confer the benefit on the tenants and to afford protection against eviction, is perfectly competent to make appropriate provision regulating the nature of protection and the manner and extent of enjoyment of such tenancy rights after the termination of contractual tenancy of the tenant including the rights and the nature of protection of the heirs on the death of the tenant. Such appropriate provision may be made by the Legislature both with regard to the residential tenancy and commercial tenancy. It is, however, entirely for the Legislature to decide whether the Legislature, will make such provision or not. In the absence of any provision regulating the right of inheritance, and the manner and extent thereof and in the absence of any condition being stipulated with regard to the devolution of tenancy rights on the heirs on the death of the tenant, the devolution of tenancy rights must necessary be in accordance with the ordinary law of succession.”

In the above cited case, an earlier decision of this Court by a 3-Judge Bench in *Damadilal and Ors. v. Parashram and Ors.*, [1976] 4 SCC 856 whereupon Mr. Gambhir placed reliance, was also considered.

However, in *A.S. Sulochana v. C. Dharamlingam*, AIR (1987) SC 242, it was held that :

“Examining the profile of the view taken by the High Court that the offending sub-letting must be by the tenant sought to be evicted himself, and not by his predecessor, is concerned, it appears to be blemishless. Section 10(2) opens with the words “A Landlord who seeks to evict his tenant” and provides that if the tenant has created a sub-tenancy without the written consent of the landlord, he will be liable to be evicted. Pray, who is the ‘tenant’ whom the landlord wants to evict? That tenant is the respondent. Did he violate S. 10(2)(ii)(a) and sublet the rented premises? The answer is ‘no’. It is of little use to give the answer, not he, but his predecessor, his late father, had sublet the premises. When the statute says the tenant who is sought to be evicted must be guilty of the contravention, the Court cannot say, will suffice guilt of his predecessor in interest’. The flouting of the law, the sin under the Rent Act must be the sin of the tenant

A sought to be evicted, and not that of his father or predecessor in interest. Respondent inherited the tenancy, not the sin, if any, of his father. The law in its wisdom seeks to punish the guilty who commits the sin, and not his son who is innocent of the rent law offence. It being a penal provision in the sense that it visits the violator with the punishment of eviction, it must be strictly construed, for it causes less misery to be sheltered in a jail, than to be shelterless without. Be that as it may, the conclusion recorded by the High Court is fault-fee.”

B  
 Clauses (a) of sub-section (1) of Section 12 is in the following terms:

C “(1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only namely:-

D (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 prescribed manner.”

E The said Section, therefore, does not make any provision like the Tamil Nadu Building (Lease and Rent Control) Act to the effect “a landlord who seeks to evict his tenant’.

F Under the Madhya Pradesh Accommodation Control Act having regard to the interpretation clauses as noticed hereinbefore, a tenant remains a tenant so long as the tenancy continues. The thrust, in terms of sub-section (3) of Section 12 is upon ‘ any accommodation’. Default in payment of rent by a tenant, thus, is in respect of any accommodation. A further default would also be in respect of the same accommodation. Sub-section (3) of Section 12 provides for an exception to the general rule contained in clause (a) of sub-section (1) of Section 12 that in the event a tenant becomes a defaulter he is liable to be evicted. An exemption granted in favour of a tenant in terms of sub-section (3) of Section 12, if read in conjunction with the proviso appended thereto, must be held to be for one time only. Proviso appended to sub-section (3) of Section 12 controls the main provisions. The exemption contained in sub-section (3) of Section 12, thus, is not extended to a tenant who becomes a defaulter for more than once. It matters not whether such default is made by the original tenant or by his successor inasmuch as the successor-in-interest of the original tenant continues to be a tenant within the

meaning of the provisions thereof. By reason of death of the original tenant a new tenancy is not created. A successor-in-interest of a tenant holds his tenancy right subject to rights and obligations of his predecessor. He does not and cannot claim a higher right than his predecessor. It is now well-settled that a person by reason of inheritance or assignment does not derive any better title than his predecessor, and, thus, the right which the original tenant did not possess cannot be passed on to his successor. A B

In view of the aforesaid, we are of the view that once the father of the respondents had availed of the benefit of proviso to sub-section (3) of Section 12 of the Act, the said benefit was not available to the respondent-tenants on committing a further default in payment of rent. C

For the reasons aforementioned, we are of the opinion that *A.S. Sulochana's* case (supra) is not applicable in the instant case having been rendered under a different statute wherein the right of the landlord to file a suit for eviction was, as indicated hereinbefore, subject to the conditions mentioned therein. We, however, do not subscribe to the general observations made in *A.S. Sulachana's* case (supra) and to the said extent, it cannot be held to have laid down a good law and is overruled accordingly. D

For the aforesaid reasons, the appeal deserves to be allowed. We, accordingly, set aside the judgment under challenge and restore the decree passed by the trial court. The appeal is allowed. There shall be no order as to costs. E

After the order was dictated, learned senior counsel appearing for the respondent stated that in the event the respondent is required to vacate the premises immediately, he shall be put to great hardship and, therefore, some time may be granted to him to vacate the premises. Learned senior counsel appearing for the appellant-landlord has no objection for the prayer being granted. We, therefore, direct that the respondent herein shall not be evicted from the premises in dispute till 31st August, 2003 provided the respondent files an undertaking before this Court within four weeks from today. In the event the said undertaking is not filed, this part of the order shall stand automatically vacated and it will be open to the appellant-landlord to execute the decree forthwith. F G

R.P.

Appeal allowed.