

CASE NO.:
Appeal (civil) 4348 of 2007

PETITIONER:
Shri Mundri Lal

RESPONDENT:
Smt. Sushila Rani & Anr

DATE OF JUDGMENT: 18/09/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 4348 OF 2007
[Arising out of SLP (Civil) No. 84 of 2007]

S.B. SINHA, J :

1. Leave granted.

2. Relationship between the parties is landlord and tenant. Appellant herein was inducted as a tenant in a shop premises which is a part of House No. 177-E, Abu Lane, Meerut Cantt., Meerut (U.P.). Respondent purchased the said house in the year 1969. The shop, in question, was newly constructed.

3. Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter called and referred to as the "said Act") contains an exemption provision in Section 2(2) in regard to applicability thereof which reads as under:-

"Sec. 2(2) Except as provided in sub-section (5) of Section 12, sub-section (1-A) of Section 21, sub-section (2) of Section 24, Sections 24-A, 24-B, 24-C or sub-section (3) of Section 29, nothing in this Act shall apply to a building during a period of ten years from the date on which its construction is completed."

Explanation I appended to the said provision defines as to what is meant by the term "construction" in the following terms:-

"Explanation I. \026 For the purposes of this section, -
(a) the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction, and in the case of a building subject to assessment, the date on which the first assessment thereof comes into effect, and where the said dates are different, the earliest of the said dates, and in the absence of any such report, record or assessment, the date on which it is actually occupied (not including occupation merely for the purposes of supervising the construction or guarding the building under construction) for the first time :

Provided that there may be different dates of completion of construction in respect of different parts of a building which are either designed as separate units or are occupied separately by the landlord and one or more tenants or by different tenants ;

a. "construction" includes any new construction in place of an existing building which has been wholly or substantially demolished.

(b) where such substantial addition is made to an existing building that the existing building becomes only a minor part thereof the whole of the building including the existing building shall be deemed to be constructed on the date of completion of the said addition."

4. A notice under Section 106 of the Transfer of Property Act was served on the appellant asking him to quit and vacate the said tenanted premises. As he did not comply with the said demand, respondent filed a suit for eviction of the appellant on the premise that Section 2(2) of the Act was applicable stating:-

"3. That the said accommodation was constructed in the year 1975, but after construction the building was first assessed on new constructions since 1-4-1978 only and the U.P. Act 13 of 1972 is made applicable to Meerut Cantonment area, is not applicable to the said construction and according to law it is a new construction."

5. Appellant traversed the said allegation in his written statement in the following terms :

"That contents of para 3 of the plaint are denied. The allegation that the shop in dispute was constructed in the year 1975 is false. Similarly it is denied that the said shop was for the first time assessed to house tax on 1-4-78. It is further denied that U.P. Act XIII of 1972 is not applicable to the shop in dispute or that the said shop is a new construction within the meaning of U.P. Act XIII of 1972 as applicable to the Cantonment."

6. No objection was raised that the said pleading was insufficient for attracting the exemption provisions contained in the said Act. Parties went to trial, knowing the issues arising in the suit.

One of the issues which was framed in the said suit was as under:-

"[1] Whether the property in question is a newly constructed and the U.P. Act No. 13 of 1972 is not applicable? If yes then effect?"

7. The learned Trial Judge having regard to the evidences adduced by the parties opined that requirements of both clauses (b) and (c) contained in the explanation I appended to Section 2(2) were satisfied stating:-

"In this respect clause 1(c) of explanation of section 2 is important, in which it has been stated that where such substantial addition is made to an existing building that the existing building become only a minor part thereof the whole of the building including the existing building shall be deemed to be constructed on the date of completion of the said addition. In the light of the clarification, which is fully applicable in the circumstances of the present suit, that earlier the house, which was being used for residential purpose and was on rent of Rs. 100/- per annum with the two tenants has been let out on Rs. 1600/- per month to a tenant for commercial use and substantial constructions have been made in this property, which were detailed by P.W. 1, there is no question of disbelieving the version of P.W. 1 that they demolished the earlier existing store room, bath room and passage and constructed pillars and beams, by removing other passage and store they constructed an attached bathroom and latrine, a new room was

constructed by removing the earlier existing store and kitchen and pillars and beams were constructed by removing 5 arches in earlier existing veranda, pillars and beams were constructed and a window was made by constructing a linter of 26 by 35 feet in between earlier existing room and verandah. The defendant has not rebutted this statement of P.W. 1 by any material evidence nor he has denied specifically this statement of P.W. 1 in his statement that substantial alterations were made as such the earlier building has become a small part of present building as such the building is deemed to be a new construction and the enhanced house tax was imposed first time on 1-7-1978 on this property, therefore the property in question will be deemed as newly constructed on 1-4-1978.

8. A Revision Application was filed thereagainst by the appellant in terms of Section 25 of the Provincial Small Cause Courts Act. It does not appear from the Order passed by the High Court in exercise of its revisional jurisdiction that any contention that the pleadings in regard to the jurisdictional fact namely applicability of the provisions of the said Act was raised. The High Court, however, without going into the contentions raised before it, relying on or on the basis of the decision of this Court in Vineet Kumar Vs. Mangal Sain Wadhwa (1984 (3) SCC 352) opined that as the period of ten years have elapsed during the pendency of the suit and the revision application, the Act would be applicable.

9. Respondent approached this Court thereagainst. By a judgment and order dated 28.2.2005, the said decision was set aside, on the premise that Vineet Kumar (supra) had been overruled by a larger Bench of this Court in Suresh Chand Vs. Ghulam Chisti (AIR 1990 SC 897). The matter was remitted to the High Court directing:-

"\005\005 In the facts and circumstances of the case, we remit the matter to the High Court for disposal in accordance with law. If the High Court finds that there are other questions which arise for consideration in the Civil Revision before the High Court, it will hear the parties and pass appropriate orders. If the High Court finds that the matter requires to be remitted to the Trial Court for any reason, it may do so. We express no opinion in the matter."

10. The impugned judgment had been passed by the High Court on hearing the parties afresh.

11. Concededly, the appellant filed an application for adduction of additional evidence in terms of Order XLI Rule 27 of the Code of Civil Procedure. The High Court refused to exercise its discretionary jurisdiction in the matter stating that the requirements of the said provision had not been fulfilled.

12. In regard to the submission that the said Act was applicable since the High Court was of the view that the findings of the learned Trial Judge cannot be said to be wholly unsustainable attracting the revisional jurisdiction of the Court holding :

"Besides, I can not loose sight of the fact that it is a findings of fact arrived at by the Court below which cannot be interfered in exercise of revisionist jurisdiction. I am conscious of the fact that this is a revision under Section 25 of the Provisional Small Causes Court Act but this alone would not entitle this Court to reassess the evidence and upset a finding of fact. It is also to be noted that while recording the findings on the question as to whether the building was new building or an old building, it was taken into consideration that previously

the building was assessed at the rental value of Rs. 330/- per annum, subsequently after the new construction, the value was enhanced to Rs. 22,800/- w.e.f. 1.4.1978. This was done taking into substantial additions made to the existing building. This was earlier let out to one Satish Chander Jain for residential purposes and after he vacated, major additions and alterations have been made and it was converted into commercial building and was let out to the tenant for commercial purpose. The trial Court took into consideration the oral evidence as well as documentary evidence that was placed before the Judge Small Causes Court. I do not find any illegality what so ever in the impugned judgment which calls for interference. This Court interfere under section 25 Judge Small Causes Court only, in the event learned counsel could establish that the findings of the trial Court was perverse and not sustainable in law. Admittedly the building in question is subject to assessment of municipal taxes and date of construction will be assessed on the basis of assessment as well as other factor and evidence to be taken into consideration, which was admittedly been done by the trial Court and this Court at the time when this civil revision was decided on 24.8.2004, since, the findings of the trial Court regarding the date of construction of the building was confirmed in civil revision and upheld by the Apex Court, I am of the view that it cannot be reopened in this second innings. The Apex Court has only remitted the case to consider the other points which were not canvassed when the revision was decided previously. In the fact and circumstances, what has been discussed above, I do not find it a fit case for interference. The judgment dated 20th October, 1987 is absolutely a legal. The decree for eviction and arrears of rent are confirmed. The civil revision is accordingly dismissed."

13. Mr. Raju Ramachandran, learned senior counsel appearing on behalf of the appellants would submit that the High Court committed a serious error insofar as it failed to take into consideration that the learned Judge, Small Causes Court had committed an error of law in recording a finding of fact on issue No.1 upon taking into consideration irrelevant facts and ignoring material evidence. Had such facts which had been brought on record, Mr. Ramachandran would submit, been taken into consideration, it could have been shown that most of the constructions were raised on the first floor and not on the ground floor. It was urged that the finding recorded by the learned Trial Judge that the existing building had undergone substantial addition is vitiated in law, as the same was arrived at without any basis, particularly when in terms of clause (c) of Explanation I appended to Section 2(2) of the Act, it was necessary to record a finding as regards total existing construction vis-à-vis total new addition which would lead to the conclusion that new constructions within the meaning thereof have been made.

14. The High Court, it was contended, having regard to the fact that an admission had been made in a rejoinder filed by the respondent in a pleading made in another litigation in the year 1996 ought to have allowed the application for adduction of additional evidence.

15. Mr. Jaideep Gupta, learned senior counsel appearing on behalf of the respondent, on the other hand, would submit that the explanation raises a legal fiction and in that view of the matter, the judgment of the High Court is unassailable. The learned counsel contended that in the plaint, evidence need not be pleaded and in any event as the parties had understood the merit and purport of the issue between them, the respondent cannot be said to have been taken by surprise, it was contended that even no ground had been taken before the High Court.

16. By reason of sub-section (2) of Section 2 of the Act, an exemption has been created from operation of the Act. What would constitute

"Construction" is explained by Explanation I appended thereto. For the said purpose, a legal fiction has been created. The criteria laid down therefor, *inter alia*, is that the completion of a building should be reported to or otherwise recorded by the local authority having jurisdiction, and in a case of building subject to assessment, the date on which the first assessment thereof comes into effect. Clauses (b) and (c) of Explanation I provides for an expansive definition so as not only to include a construction upon demolition of the existing structure but also substantial addition to an existing building to the effect that the existing building becomes only a minor part thereof.

17. Indisputably, new assessment was made in the year 1978. Respondent had brought on record, the vast difference in the amount of tax payable before and after reconstruction.

18. What would amount to a new construction, being essentially a question of fact, would depend upon the nature and extent of the additions and alterations made in the whole building. It does not confine to a floor where the tenanted premises is situate. Where several tenants are inducted in different parts of the same building, it would be difficult, in the event, the submission of Mr. Raju Ramchandran is accepted to hold that one part of the building shall be governed by the Act and the other part would not be. Clause (c) of the Explanation I in our considered opinion makes the legal position absolutely clear.

19. Appellant's application for adduction of additional evidence has been rejected on valid grounds by the High Court. It, for cogent and sufficient reasons, refused to exercise its discretionary jurisdiction. We do not see any reason to interfere therewith. Even if the purported admission made by the respondent, a subsequent pleading was to be taken into consideration, still then the respondent was required to be cross-examined. Another round of litigation would have started. We do not think that the appellant has made out a case for grant of such indulgence.

20. There cannot be any doubt whatsoever that the revisional jurisdiction of the High Court under Section 25 of the Provincial Small Causes Courts Act is wider than Section 115 of the Code of Civil Procedure. But the fact that a revision is provided for by the statute, and not an appeal, itself is suggestive of the fact that ordinarily revisional jurisdiction can be exercised only when a question of law arises.

21. We, however, do not mean to say that under no circumstances finding of fact cannot be interfered therewith. A pure finding of fact based on appreciation of evidence although may not be interfered with but if such finding has been arrived at upon taking into consideration irrelevant factors or therefor relevant fact has been ignored, the revisional court will have the requisite jurisdiction to interfere with a finding of fact. Applicability of the provisions of Section 2(2) of the Act may in that sense involve determination of mixed question of law and fact.

22. Strong reliance has been placed by Mr. Raju Ramchandran on a decision of this Court in *Suresh Kumar Jain Vs. Shanti Swarup Jain And Others* [(1997) 9 SCC 298] wherein having regard to the facts involved therein and particularly the averments made in regard to completion of entire construction and assessment notice issued by the municipality, the question which arose for consideration was in regard to the date for completion of the building. It was in the aforementioned premise this Court opined:-

"32. The contention of the respondent landlord that the tenant appellant having wrongly contended that he had been continuing in the old premises even prior to 1973, is not permitted to rely on the subsequent construction of the tenanted premises, cannot be accepted for the simple reason that the landlord having instituted the eviction suit in the Small Causes Court, instead of filing such eviction suit before the appropriate forum under the Rent Act, on the plea that the building in which the tenant was inducted in 1973 was a newly constructed building for which he was entitled to exemption under Section 2(2) of the Rent Act, was under an obligation to strictly prove that such building, in fact, had been constructed within ten years from the date of the institution of the suit."

23. This Court exercised its discretionary jurisdiction under Article 136 of the Constitution of India in the fact situation obtaining therein stating:-
"33\005..The deemed date of construction as found earlier by the courts below was not approved by this Court in allowing the appeal arising out of the earlier special leave petition preferred by the tenant appellant and the High Court was specifically directed to decide the deemed date of construction under Section 2(2) of the Rent Act in the light of the observation made by this Court. In the facts of the case, such determination of deemed date of construction by appreciating and interpreting municipal records and assessment proceedings was not determination of a fact simpliciter but such determination involved a determination of mixed question of law and fact\005\005"

24. It, however, appears that another Bench of this Court in *Sudha Rani Garg (Smt.) Vs. Jagdish Kumar (Dead) And Others* [(2004) 8 SCC 329] held as under:-

"12. "When a statute gives a definition and then adds that certain things shall be 'deemed' to be covered by the definition, it matters not whether without that addition the definition would have covered them or not." (Per Lord President Cooper in *Ferguson v. McMillan*)

13. Whether the word "deemed" when used in a statute established a conclusive or a rebuttable presumption depended upon the context. (See *St. Leon Village Consolidated School Distt. V. Ronceray.*)

14. "I \005 regard its primary function as to bring in something which would otherwise be excluded." (Per Viscount Simonds in *Barclays Bank v. IRC.*)

15. "Deems" means "is of opinion" or "considers" or "decides" "and there is no implication of steps to be taken before the opinion is formed or the decision is taken". [See *R. v. Brixton Prison (Governor), ex p Soblen*, All ER p. 669 C.] (See *Ali M.K. v. State of Kerala.*)

16. It is not in dispute that the first assessment came into effect from 1-4-1983 and in the relevant column relating to enhancement or reduction of the tax "Q September 1982" is recorded. According to learned counsel for the appellant it means that the completion of the shop has been recorded by the local authority on 1-7-1982. The plea is clearly untenable. A quarter is a period of time, covering in the instant case from 1-7-1982 to 30-9-1982. It only shows that when assessment was made, construction was completed earlier sometime in the third quarter of September 1982. The quarter started from 1-7-1982. It cannot mean that the construction of the building was completed by the date. The date of completion of construction can be any date falling between two terminals i.e. 1-7-1982 to 30-9-1982. The hypothetical presumption that the first date of the quarter being 1-7-1982, it shall be deemed to be the date of completion of construction, has no basis. In case the first three dates are available then the modality for working out the date of completion is provided in the Explanation. As the records go to show, the first assessment came into effect on 1-4-1983. That is the third date provided in the Explanation."

25. We may, however, notice that another Division Bench of this Court in Sanjay Kumar Gulati Vs. N.P. Singh and Another [(2005) 12 SCC 396], by a short Order opined as under:-

"3. We see no ground to interfere with the order of eviction passed by the trial court as affirmed by the High Court in revision. The trial court after referring to the evidence has given a clear finding that the building was constructed only in or after the year 1988. Therefore, by the time the suit was filed, the building was less than ten years old. Hence, it was rightly held that the landlord can invoke the benefit of Explanation 1 to Section 2(2) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972."

26. Each case, therefore, depends on its own facts. In this case, we are not concerned with different dates of construction. The allegation contained in the plaint that the constructions were made in the year 1975 and tax was assessed with effect from 1.4.1978, being the issue involved in the suit, have been gone into by the trial court at great details. We have noticed hereinbefore that a finding of fact has been arrived at with reference to clause (c) of explanation 1 of Section 2(2) of the Act. Such a finding was based on the appreciation of evidence. Before the High Court, it had not been pointed out, as to what relevant facts have not been considered and what irrelevant fact had been considered in arriving at the said decision.

27. The High Court may not be entirely correct in its approach so far as construction of Section 25 of the Provincial Small Cause Courts Act is concerned, but as noticed hereinbefore, a finding of fact has been arrived at keeping in view the pleadings of the parties and the issue framed on the basis thereof, viz., as to whether the construction was an old construction or a new one. The High Court in the revision application also noticed that the finding of fact arrived at by the trial court had been approved in the earlier round of litigation before the High Court.

28. The provisions of Section 2(2) contain a deeming provision. By reason thereof, a legal fiction has been created. It therefore, must be given its full effect. See S.M.S.Pharmaceuticals Ltd. Vs. Neeta Bhalla and Anr. [(2007) 4 SCC 70] and Ramesh Chandra Sharma Vs. Punjab National Bank and Anr. [2007 (8) SCALE 240, Para 13]

29. It is true that respondent could have made more elaborate pleadings; but we have noticed hereinbefore that no grievance was made in regard thereto. The parties knew the stand taken by the other. The issue involved in the suit was a simple one namely whether the construction was an old one or a new one. Even in the revision application, no such question was raised as it appears from the impugned judgment of the High Court. Such a ground was taken before us for the first time. There is also nothing to show that the appellant has been prejudiced in any manner whatsoever. It is a well settled principle of law that when parties have gone into trial knowing fully well the issue involved, inadequate pleading, if any, may not be sufficient to set aside the judgment.

30. For the reasons aforementioned, we do not find any merit in this appeal which is dismissed accordingly with costs. Counsel's fee assessed at Rs.10,000/- (Rupees ten thousand only).