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C.A.No. 4756-4757 OF 1997

Part-heard

Item No.101

Court No.8

Section IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO. 4756-4757 OF 1997.@@

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Sugarbai M. Siddiq & Ors. ...Appellant(s)

Vs.

Ramesh S. Hankare (dead) by Lrs. ...Respondent(s)

[With office report]

WITH I.A.Nos.3-4 - Appln. for bringing on record subsequent events.

WITH I.A.Nos5-6 - Application for impleading Appellant Nos.4 & 5.

Date:27/09/2001: These matters were called on for hearing today.

CORAM:

HON'BLE MR.JUSTICE SYED SHAH MOHAMMED QUADRI

HON'BLE MR.JUSTICE S.N. PHUKAN

For the appellant(s) : Mr. NN. Keshwani, Adv.
Mr. Ramlal Roy, Adv.

For the respondent(s) : Mr. Bhim Rao, Sr.Adv.
Mr. Vijay Nagar, Adv.
Mr. SK. Verma, Adv.
Mr. SM. Jadhav, Adv.

UPON hearing counsel the Court made the following
O R D E R

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Mr. NN. Keshwani, the learned counsel for the appellants resumed and concluded his arguments at 11.40 a.m. Thereafter, Mr.Bhimrao Naik, learned senior counsel replied upto 12.30 p.m.

IAs 3 to 6 are dismissed.

In terms of the signed order Civil Appeal arising out of WP 307/91 is allowed; Civil Appeal arising out of WP 3262/89 is dismissed as not pressed. There shall be no order as to costs.

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[Naresh Kumar]
Court Master

[Kanwal Singh]
Court Master

[Reportable signed order is placed on the file.]

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4756-4757 OF 1997

Sugarbai M.Siddiq & Ors.

... Appellants

versus

Ramesh S.Hankara (D) by Lrs.

... Respondents

O R D E R

These appeals, by special leave, are directed against the common order of the High Court of Judicature of Bombay, Bench at Aurangabad, passed in Writ Petition No.307 of 1991 and in Writ Petition No.3262 of 1989 on October 17, 1996. The appeal arising out of order in Writ Petition No.3262 of 1989 is not pressed. The facts in the appeal arising out of order in Writ Petition No.307 of 1991 which are relevant for our purposes, may be noticed here.

The appellants are the landlords of premises bearing Municipal No.2573 (City Survey Nos.27 & 27-A) in Mochi Lane Ahmednagar (for short the premises) and the respondents are the legal representatives of the original tenant (hereinafter referred to as, the respondents). The appellants filed suit No.756 of 1978 in the court of the Joint Civil Judge, Junior Division at Ahmednagar against the respondents seeking their eviction on two grounds -- the first is non-payment of rent for more than six months even after notice of demand under Section 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (for short, the Act) and the second is reasonable and bona fide requirement of the appellants, under Section 13(g) of the Act. The only ground which now survives is the first ground, namely, default in payment of rent for the period exceeding six months from January 1, 1978 to June 30, 1978. A notice demanding the rent was sent to the respondents on July 3, 1978 which was served on July 14, 1978; the demand in the notice was not fulfilled within the statutory period of one month. The respondents contested the suit stating that they did not receive the notice; that rent was sent by money order but the appellants refused to accept the same; that they had already paid the rent and, therefore, the ground was not available to the appellants.

On consideration of the evidence on record, oral and documentary, the trial court found that the amount was not paid within the permissible period and decreed the suit for eviction on July 15, 1981. On appeal by the respondents herein the order of eviction was maintained and the appeal was dismissed by the appellate court on December 23, 1983. That order was assailed by the respondents herein before the High Court in Writ Petition No.307 of 1991 which was allowed on October 17, 1996 by setting aside the order of the appellate court confirming the order of the trial court. It is against that order that the present appeal is preferred.

Mr.N.N.Keshwani, learned counsel for the appellants, contends that non-payment of rent by the respondents within the statutory period is a question of fact and both the trial court as well as the first appellate court found it against the respondents, therefore, the High Court in exercise of the jurisdiction under Article 227 of the Constitution ought not to have disturbed the finding of fact. The High Court, submits the learned counsel, reappreciated the evidence and recorded the finding which is unsustainable on merits.

Shri Bhimrao Naik, learned senior counsel for the respondents, on the other hand, submits that inasmuch as the findings recorded by the trial court as well as the appellate court are contrary to the evidence, the High Court has rightly gone into the question of default and recorded the correct finding which does not require interference by this Court.

There can be little doubt that in an application under Article 227 of the Constitution, the High Court has to see whether the lower courts/tribunal has jurisdiction to deal with the matter and if so, whether the impugned order is vitiated by procedural irregularity; in other words, the court is concerned not with decision but with decision making process. On this ground alone the order of the High Court is liable to be set aside.

Since the order impugned before the High Court was passed

costs of the suit as directed by the court. Sub-section (4) is not relevant for the present discussion. In the instant case, as noted above, the rent in dispute relates to the period of six months -- from January 1, 1978 to June 30, 1976. Notice of demand in respect of the rent in arrears was sent by the appellants (Exh.29) which was received by the respondents on July 14, 1978. The period of one month contemplated in the provision within which the original tenant was entitled to pay the rent expired on August 14, 1978. The defence of the appellants is that on July 11, 1978, a money order for the amount in demand was sent which was received back on July 17, 1978 and, therefore, there has been substantial compliance of clause (a) of sub-section (3) of Section 12. Admittedly, the respondents did not file receipt of sending the money order which is direct evidence of the fact of sending the money order to the appellants. In his deposition in the trial court the original tenant admitted that the receipt of sending the money order issued by the postal authorities was with him; however, he did not choose to file the same. The trial court drew adverse inference against him, in our view rightly. The money order coupon containing the endorsements of the postal authorities refused which was returned by the postal authorities (Exh.67) was examined by the trial court and it was found that the postal stamp was dated August 27, 1978, if that be so there was no material to show that the amount in demand was sent within one month. These findings were confirmed by the appellate court. The High Court misread Exh.67 as containing the dated August 17, 1978 and from that inferred that the money order might have been sent on August 12/13, 1978 and upset the concurrent findings of courts below. In view of the divergence of opinion on this aspect we ourselves looked into the record and with the help of magnifying glass perused Exh.67. The same was also placed before the learned counsel for the parties. We are unable to agree with the High Court that the postal stamp is of August 17, 1978. The adverse inference drawn by the trial court and the appellate court remains unrebutted. There was no other material to justify interference by the High Court. Therefore, the finding recorded by the High Court cannot be sustained. For the aforesaid reasons, the order under challenge is set aside, the order of the appellate authority confirming the order of the trial court is restored. The appeal against Writ Petition No.307 of 1991 is thus allowed. There shall be no order as to costs. In view of the order passed in this appeal I.As.3 to 6 are dismissed. The appeal arising out of the order in Writ Petition No.3262 of 1989 is dismissed as not pressed. No costs.

.....J.
[Syed Shah Mohammed Quadri]

.....J.

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[S.N.Phukan]

New Delhi.
September 27, 2001.

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