

v.

VIRENDRA GOYAL (DEAD) BY L. RS.

March 11, 1969

[J. C. SHAH AND A. N. GROVER, JJ.]

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Transfer of Property Act (4 of 1882) s. 114—Relief against forfeiture—Opportunity given—Trial Court—Failure to avail—Appellate Court's Jurisdiction.

In a lease of land, it was covenanted that in the event of default of payment of rent for two consecutive years, the tenancy rights will stand forfeited. As the rent remain due and in arrears for two years, the landlord filed a suit for the eviction of the tenants and for payment of the arrears of rent and compensation. The tenants claimed relief against forfeiture of their tenancy rights under s. 114 of the Transfer of Property Act and deposited in Court an amount less than the amount due. The Trial Court decreed the suit holding that the conditions relating to deposit in Court of rent in arrear, interest thereon, and costs of the suit were not complied with. The tenants appealed and offered to pay balance of rent due together with costs of the suit and the appeal and interest, and deposited an amount much larger than due. The appellate court allowed the appeal holding that the tenants were entitled to the benefit of s. 114 when they were willing and ready to pay more than what was due, and there were valuable constructions on the plots and the respondent's dispossession would put them to a great loss. The High Court dismissed the appeal against this decision. In appeal before this Court, the landlord contended that the jurisdiction under s. 114 to relieve against forfeiture could only be exercised by the Court of First Instance; that the tenants having failed to avail of the opportunity given by the Trial Court to pay the amount due with interests and costs, the appellate court had no jurisdiction to grant another opportunity; and that the discretion was not properly exercised in this case. Repelling the contentions, this Court :—

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HELD : The covenant of forfeiture of tenancy for non-payment of rent is regarded by the Courts as merely a clause for securing payment of rent, and unless the tenant has by his conduct disentitled himself to equitable relief the Courts grant relief against forfeiture of tenancy on the tenant paying the rent due, interest thereon and costs of the suit. Jurisdiction to relieve against forfeiture for non-payment of rent may be exercised by the Court if the tenant in a suit in ejectment at the hearing of the suit pays the arrears of rent together with interest thereon and full costs of the suit. In terms s. 114 makes payment of rent at the hearing of the suit in ejectment a condition of the exercise of the Court's jurisdiction but an appeal being a rehearing of the suit, in appropriate cases, it is open to the Appellate Court at the hearing of the appeal to relieve the tenant in default against forfeiture. Passing of a decree in ejectment against the tenant by the Court of First Instance does not take away the jurisdiction of the Appellate Court to grant equitable relief. [953 C]

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Failure to avail themselves of the opportunity does not operate as a bar to the jurisdiction of the Appellate Court. The Appellate Court may, having regard to the conduct of the tenant, decline to exercise its discretion to grant him relief against forfeiture. [954 A]

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- A** *Chilukuri Tripura Sundaramma v. Chilukuri Venkates-Warlu* alias *Ramchandram and Others*, A.I.R. 1949 Mad. 841; *Janab Vellathi and others v. Smt. K. Kadavel*; *Thayammal*, A.I.R. 1958 Mad. 232; *Shrikishanlal and Others v. Ramnath Jankiprasad Ahir and others*, I.L.R. 1944 Nag. 877; *Budhi Ballabh and others v. Jai Kishen Kandpal*, 1963 A.L.J. 132, *Bhagwant Rambhau Khese v. Ramchandra Kesho Pathak*, A.I.R. 1953 Bom. 129; *Namdeo Lokman Lodhi v. Narmadabai and others*, [1953] S.C.R. 1009, 1025, referred to.

- B** Having regard to the circumstances that valuable constructions were put up on the land and that the tenants had deposited much larger amount than due, the discretion was rightly exercised in favour of the tenant. In an appeal with special leave, this Court will not ordinarily interfere with an order made in exercise of the discretion of the Courts below, specially when there was evidence that the tenants were guilty of conduct disentitling them to relief against forfeiture for non-payment of rent. [1954 E]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 648 of 1966.

- D** Appeal by special leave from the order dated December 4, 1964 of the Allahabad High Court in Second Appeal No. 3310 of 1964.

Sarjoo Prasad and *J. P. Goyal*, for the appellant.

R. K. Garg and *A. N. Goyal*, for respondent No. 1.

- E** *R. K. Garg*, *D. P. Singh*, *S. C. Agarwala*, *Uma Dutt* and *S. Chakravarti*, for respondent No. 2.

The Judgment of the Court was delivered by

- F** **Shah, J.** Under a deed dated October 28, 1949, Virendra Goyal, the first respondent herein, obtained permanent tenancy rights in 28 plots of land of the ownership of Lala Praduman Kumar. The tenant agreed to pay Rs. 250/- per annum as advance rent on the first day of January of each year, and in default of payment of rent for two consecutive years the tenancy rights were to stand forfeited. Goyal transferred his tenancy rights to Lala Hukam Chand. Pursuant to the lease several tenements were raised on the land demised.

- G** The tenant failed to pay the rent accrued due for two years. The appellant then served a notice on January 4, 1960, terminating the tenancy and instituted an action in the Court of the City Munsiff, Saharanpur, against Virendra Goyal and Lala Hukam Chand for a decree in ejectment and for an order for payment of Rs. 545/11/- as rent and compensation.

- H** Several contentions were raised in their written statement by the defendants one of which alone is material. The tenants prayed that they should be given relief against forfeiture of their tenancy rights under s. 114 of the Transfer of Property Act. In the Trial

Court the tenants deposited an amount of Rs. 1,099.34. The Trial Judge held that the conditions relating to deposit in Court of rent in arrear interest thereon, and costs of the suit were not compiled with and decreed the plaintiff's claim. In appeal to the District Court the tenant offered to pay the balance of the amount of the rent due together with costs of the suit and appeal and interest at the rate of 6% per annum or such other rate as the Court may direct and deposit in Court Rs. 2,082.50 in the aggregate. The learned District Judge was of the view that the amount paid by the tenants was in excess of the amount due by them and observed :

"...the appellants have deposited much more amount than is due to the respondent as arrears of rent the costs of the suit and of the appeal and the interest. There is no reason why benefit of section 114 of the Transfer of Property Act be not given to the appellants when they are ready and willing to pay much more amount than is actually due to the respondent. The fact is that there are valuable constructions over the plot and defendants dispossession would put them to a great loss. It is for this reason that they are prepared to pay the amount that may be demanded from them. I, therefore, find that the appellants are entitled to the benefit of section 114 of the Transfer of Property Act and are relieved against the forfeiture".

The second appeal against this decision was summarily dismissed by the High Court of Allahabad.

In appeal to this Court counsel for the appellant contends :

- (1) that jurisdiction under s. 114 of the Transfer of Property Act to relieve against forfeiture for non-payment of rent may only be exercised by the Court of First Instance and not by the Court of Appeal;
- (2) that the Trial Court gave an opportunity to the tenants to pay the amount of rent due together with interest and costs, but the tenants failed to avail themselves of the opportunity. In the circumstances the appellate Court had no jurisdiction to grant another opportunity to the tenants to make the requisite payment and grant relief against forfeiture of the tenancy;
- (3) that in any event, discretion was, in the circumstances, not properly exercised by the District Court.

- A** In our view, there is no substance in any of the contentions. Section 114 of the Transfer of Property Act provides :—

B “Where a lease of immovable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred”.

- C** The covenant of forfeiture of tenancy for non-payment of rent is regarded by the Courts as merely a clause for securing payment of rent, and unless the tenant has by his conduct disentitled himself to equitable relief the Courts grant relief against forfeiture of tenancy on the tenant paying the rent due, interest thereon and costs of the suit. Jurisdiction to relieve against forfeiture for non-payment of rent may be exercised by the Court if the tenant in a suit in ejectment at the hearing of the suit pays the arrears of rent together with interest thereon and full costs of the suit. In terms s. 114 makes payment of rent at the hearing of the suit in ejectment a condition of the exercise of the Courts’ jurisdiction but an appeal being a rehearing of the suit, in appropriate cases it is open to the appellate Court at the hearing of the appeal to relieve the tenant in default against forfeiture. Passing of a decree in ejectment against the tenant by the Court of First Instance does not take away the jurisdiction of the appellate Court to grant equitable relief. This is the view taken by the High Courts in India : see *Chilukuri Tripura Sundaramma v. Chilkuri Venketes-Warlu alias Ramchandram and others*⁽¹⁾ *Janab Vellathi and others v. Smt. K. Kadervel Thayammal*⁽²⁾; *Shrikishanlal and others v. Ramnath Jankiprasad Ahir and others*⁽³⁾; *Budhi Ballabh and others v. Jai Kishen Kandpal*⁽⁴⁾. The High Court of Bombay in cases arising under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, has also expressed the same opinion in *Bhagwant Rambhau Khese v. Ramchandra Kesho Pathak*⁽⁵⁾.

- H** We do not think that there is any bar to the exercise of jurisdiction by the appellate court merely because in the Court of First Instance relief against forfeiture was claimed by the tenants and they failed to avail themselves of the opportunity of paying the amount of rent together with interest thereon and costs of the suit.

(1) A.I.R. 1949 Mad. 841.

(2) A.I.R. 1958 Mad. 232.

(3) I.L.R. 1944 Nag. 877.

(4) 1963 A.L.J. 132.

(5) A.I.R. 1953 Bom. 129.

Failure to avail themselves of the opportunity does not operate as a bar to the jurisdiction of the Appellate Court. The Appellate Court may, having regard to the conduct of the tenant, decline to exercise its discretion to grant him relief against forfeiture. The question is not one of jurisdiction but of discretion. This Court in *Namdeo Lokman Lodhi v. Narmadabai and others*⁽¹⁾ has observed at p. 1025 :

“.....in exercising the discretion (under s. 114 of the Transfer of Property Act), each case must be judged by itself, the delay, the conduct of the parties and the difficulties to which the landlord has been put should be weighed against the tenant It is a maxim of equity that a person who comes in equity must do equity and must come with clean hands and if the conduct of the tenant is such that it disentitles him to relief in equity, then the court's hands are not tied to exercise it in his favour”.

The District Court has observed that valuable constructions had been put up on the land leased and the tenants had deposited an amount very much larger than the amount due to the landlord. Having regard to the circumstances the District Court was of the view that discretion should be exercised in favour of the tenants. The High Court summarily dismissed the appeal. The High Court must be taken to have confirmed the view of the District Court. In an appeal with special leave, this Court will not ordinarily interfere with an order made in exercise of the discretion of the Courts below, specially when there is no evidence that the tenants were guilty of conduct disentitling them to relief against forfeiture for non-payment of rent.

The appeal therefore fails and is dismissed with costs.

Y.P.

Appeal dismissed.

(1) [1953] S.C.R. 1009, 1025.