

KHADI GRAM UDYOG TRUST

v.

SHRI RAM CHANDRAJI VIRAJMAN MANDIR SARSAIYA
GHAT, KANPUR

November 28, 1977

[N. L. UNTWALIA AND P. S. KAILASAM, JJ.]

U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) (U.P. Act XIII), 1972, sec. 20(4), scope of—Whether the words "entire amount of rent due" occurring in s. 20(4) would include time-barred rent.

Section 20(1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act XIII of 1972 bars institution of a suit for eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner. Sub-s. (2) of s. 20 enables the landlord to file a suit on any one or more of the grounds mentioned in that sub-section. Sub-cl. (a) of sub-s. (2) provides that a suit for eviction of a tenant from a building may be instituted on the ground that the tenant is in arrears of rent for not less than 4 months and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand. Section 24 provides "In any suit for eviction on the ground mentioned in cl. (a) of sub-s. 2, if as the first hearing of the suit the tenant unconditionally pays or tenders to the landlord or deposits in court the entire amount of rent and damages for use and occupation of the building due from him together with interest thereon at the rate of 9 per cent per annum and the landlord's costs of the suit in respect thereof after deducting any amount already deposited by the tenant under sub-s. (1) of s. 30, the court may in lieu of passing a decree for eviction on that ground pass an order relieving the tenant against his liability for eviction on that ground" thus, giving another opportunity for payment of rent to the tenant.

The respondent, owner of premises No. 49/4 General Ganj, Kanpur, served a notice on the appellant who was a tenant of a shop in the premises on a monthly rent of Rs. 200/- from 1958 demanding payment of arrears of rent as well as to quit the premises. Several notices were also served earlier on the appellant and he failed to pay the rent within one month from the date of the service of the notice of demand on him. The last notice was served on 9th of July 1973. Subsequently, the respondent filed a suit No. OS 5/73 before the District Judge, Kanpur relinquishing his claim for rent for the period 1-1-1963 to 31-12-1970 as the relief was time-barred. On the appellant's paying the rent for the period from 1-1-1971 to 30-4-1973, the respondent restricted his claim for the period 1-5-1973 to 8-8-1973 for Rs. 3200/- as damages and Rs. 322.93 as water tax alleging to be already due and Rs. 50/- as water tax tentatively due *pendente lite* and future water tax and also for ejectment of the appellant/defendant from the suit premises. The appellant filed the written statement stating that he had paid the entire amount due; that he was not a defaulter as the rent for the period 1-1-1963 to 31-12-1970 was barred by time and was, therefore, not liable to be evicted from the suit premises u/s. 24. The appellant also deposited a sum of Rs. 5972.43 in the court being the amount of rent and damages for the period 1-5-1973 to 28-2-1975 together with interest, costs etc. as required by s. 24 of the U.P. Act of 1972. The suit which was transferred to the court of sixth Additional District Judge was decreed in favour of the respondent/plaintiff on 11-11-1975 and the appellant/defendant was directed to vacate the suit premises. The entire amount deposited by the appellant/defendant in the court u/s. 20(4) of the Act was ordered to be paid to the respondent/plaintiff. The District Judge was of the view that the tenant ought to have deposited the time-barred arrears of rent also in order to claim benefit u/s. 24. The Trial Court found that the landlord had proved that tenant was in arrears of rent for not less than 4 months and had failed to pay the same to the landlord within one month from the date of service

A upon him of a notice of demand and, as such, satisfied the requirement of sub-s. 2 of s. 20 and is entitled for order of eviction. The appellant filed a revision petition u/s. 25 of the Small Causes Court Act in the High Court of Allahabad which was dismissed.

Dismissing the appeal by special leave the Court,

B HELD : (1) Under s. 20(2) of the Act, the landlord gets a cause of action for evicting the tenant when the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand. If the tenant pays the entire arrears of rent due at the first hearing of the suit the court may relieve the tenant against eviction even though he had not complied with s. 20(2). The tenant can take advantage of the benefit conferred by s. 20(4) only when he pays the entire amount of rent due as required u/s 20(4). Under sub-s. (4) of s. 20 though the tenant has not complied with the requirement of sub-s. (2) of s. 20, if he pays at the first hearing of the suit unconditionally the entire amount of rent, the court may pass an order relieving the tenant against his liability for eviction. [252C; G]

(2) The statute of limitation only bars the remedy but does not extinguish the debt, except in cases provided by s. 28 of the Limitation Act which does not apply to a debt. [253B]

Curwen v. Milburn (1889) 42 Ch. D. 424, quoted with approval.

D *Bombay Dyeing and Manufacturing Co. Ltd. v. The State of Bombay & Others* [1958], S.C.R. 1122, applied.

Ram Nandan Sharma and Anr. v. Mt. Maya Devi and Ors. A.I.R. 1975 Pat. 283, approved.

E (3) On consideration of the scheme of the Act, it is clear that the statute has conferred a benefit on the tenant to avoid a decree for eviction by complying with the requirement of s. 20(4). If he fails to avail himself of the opportunity and has not paid the rent for not less than four months and within one month from the date of service upon him a notice of demand the landlord under s. 20(2) would be entitled to an order of eviction. Still the tenant can avail himself of the protection by complying with the requirements of s. 20(4). The words "entire amount of rent due" would include rent which has become time-barred.

In the instant case as the appellant has not deposited the entire amount due, the protection u/s. 20(4) is no more available. [253-D-F]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1313 of 1977.

Appeal by Special Leave from the Judgment and Order dated 20-5-77 of the Allahabad High Court in Civil Revision No. 2217 of 1975.

G *Hardayal Hardy, K. L. Taneja and S. K. Sabharwal* for the Appellant.

I. N. Sinha, Badri Das Sharma and S. R. Srivastava for the Respondents.

The Judgment of the Court was delivered by

H KAILASAM, J.—On November 8, 1977 when the hearing of the appeal was concluded we pronounced an order dismissing the appeal with costs stating that a-reasoned judgment would follow. We now proceed to give our reasons.

This appeal by special leave is preferred by Khadi Gram Udyog Trust, the tenant against the judgment of the Allahabad High Court passed in Civil Revision No. 2217 of 1975 directing its eviction. The respondent Shri Ram Chandraji Virajman Mandir, Sarsaiya Ghat, Kanpur, the owner of premises No. 49/4 General Ganj, Kanpur, served a notice on the appellant who was a tenant of a shop in the premises on a monthly rent of Rs. 200/- from 1958 demanding payment of arrears as well as to quit the premises. The notice was served on 9th July, 1973. Subsequently the respondent filed the suit No. O.S.5 of 1973 before the District Judge, Kanpur, restricting its claim for recovery of arrears of rent from 1-5-1973 to 8-8-1973 for Rs. 3200/- as damages and Rs. 322.93 as water tax alleged to be already due and Rs. 50 as water tax tentatively due *pendente lite* and future water tax and for ejectment of the petitioner from the suit premises. In this suit the respondent relinquished his claim for rent for the period 1.1.1963 to 31.12.1970 as the relief was time-barred. The appellant paid the rent for the period 1.1.1971 to 30.4.1973 and thereafter respondent restricted his claim for the period 1.5.1973 to 8.8.1973. The appellant filed the written statement stating that he had paid the entire amount due. As the rent for the period 1.1.1963 to 31.12.1970 was barred by time, he pleaded that he was not a defaulter and was therefore not liable to be evicted from the suit premises. The appellant deposited a sum of Rs. 5972.43 in the Court being the amount of rent and damages for the period 1.5.1973 to 28.2.1975 together with interest, cost etc. as required by section 20(4) of the U.P. Act 13 of 1972. The suit was transferred to the Court of 6th Addl. District Judge, Kanpur, who on 11.11.1975 decreed the suit of the respondent and directed the appellant to vacate the suit premises and ordered that the entire amount deposited by appellant in the Court under section 20(4) of the Act shall be paid to the plaintiff-respondent. The appellant filed a revision petition under section 25 of the Small Causes Courts Act in the High Court of Allahabad. The High Court dismissed the revision petition by its judgment and order dated 19.4.1977. The present appeal is filed by special leave granted by this Court.

The only contention raised in this appeal is that the appellant having complied with the requirement of section 20(4) of the Act and deposited the entire amount of rent due, the Court ought to have passed an order relieving the tenant against his liability for eviction on that ground. Chapter IV of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act XIII of 1972 prescribed the procedure for eviction of a tenant. While section 20(1) bars institution of suit for eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner, sub-section (2) enables the landlord to file a suit on any one or more of the grounds mentioned in sub-section (2). We are concerned with sub-clause (a) of sub-section (2) which provides that a suit for eviction of a tenant from a building may be instituted on the ground that the tenant is in arrears of rent for not less than four months and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand. It is not disputed that several notices

- A were served on the appellant and that he failed to pay the rent within one month from the date of the service of the notice of demand on him. Another opportunity for payment of rent is provided to the tenant under section 20(4) which provides that "In any suit for eviction on the ground mentioned in clause (a) of sub-section (2), if at the first hearing of the suit the tenant unconditionally pays or tenders to the landlord or deposits in Court the entire amount of rent and damages for use and occupation of the building due from him together with interest thereon at the rate of 9 per cent per annum and the landlord's costs of the suit in respect thereof, after deducting any amount already deposited by the tenant under sub-section (1) of section 30, the court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on the ground. Under this sub-section, therefore, though the tenant has not complied with the requirement of sub-section (2) of section 20, if he pays at the first hearing of the suit unconditionally the entire amount of rent the court may pass an order relieving the tenant against this liability for eviction. In this case the appellant deposited on 13-2-1975 a sum of Rs. 5972.43 being the amount of rent and damages for the period 1.5.1973 to 28.2.1975 together with interest etc. The contention of the appellant is that "entire amount of rent due" would be the rent that is recoverable and would not include the rent, the recovery for which is barred by time. According to the appellant the payment of entire amount of rent due would not include the rent for the period 1.1.1960 to 31.12.1970 as the claim is barred by time. The District Judge who tried the suit was of the view that the tenant ought to have deposited the time-barred arrears of rent also in order to claim benefit under section 20(4). The trial Court proceeded with the trial of the suit and found that the landlord had proved that tenant was in arrears of rent for not less than 4 months and had failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand and as such satisfied the requirement of sub-section (2) of section 20 and is entitled for order of eviction. In the revision the High Court affirmed the view taken by the trial Court and dismissed the appeal.
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- It will be seen that under section 20(2) of the Act, the landlord gets a cause of action for evicting the tenant when the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand. If the tenant pays the entire arrears of rent due at the first hearing of the suit the court may relieve the tenant against eviction even though he had not complied with section 20(2). The tenant can take advantage of the benefit conferred by section 20(4) only when he pays the entire amount of rent due as required under section 20(4). The question that arises for consideration in this appeal is whether the entire amount of rent due would include even rent which cannot be recovered as having been time-barred. There is ample authority for the proposition that though a debt is time-barred, it will be a debt due though not recoverable, the relief being barred by limitation. In Halsbury's Laws of England (3rd Ed.) Vol. 24 at p. 205, Article 369, it is stated "except
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in the cases previously mentioned, the Limitation Act, 1939 only takes away the remedies by action or by set off; it leaves the right otherwise untouched and if a creditor whose debt is statute-barred has any means of enforcing his claim other than by action or set-off, the Act does not prevent him from recovering by those means. The Court of Appeal in *Curwen v. Milburn* (1889) 42 Ch. D. 424 Cotton, L. J. said :

“Statute-barred debts are dues, though payment of them cannot be enforced by action.”

The same view was expressed by the Supreme Court in *Bombay Dyeing and Manufacturing Co. Ltd. v. The State of Bombay & Others*(¹) where it held that the statute of limitation only bars the remedy but does not extinguish the debt, except in cases provided for by section 28 of the Limitation Act, which does not apply to a debt. Under section 25(3) of the Contract Act a barred debt is good consideration for a fresh promise to pay the amount. Section 60 of the Contract Act provides that when a debtor makes a payment without any direction as to how it is to be appropriated, the creditor has the right to appropriate it towards a barred debt. In a full Bench decision of the Patna High Court *Ram Nandan Sharma and Anr. v. Mt. Maya Devi and Others*(²), Untwalia, C. J. as he then was, has stated “There is a catena of decisions in support of what has been said by Tek Chand, J. in *First National Bank v. Sant Lal*, (A.I.R. 1959 Punj. 328 at p. 330 paragraph 12) that the Limitation Act with regard to personal actions, bars the remedy without extinguishing the right.” The law is well-settled that though the remedy is barred the debt is not extinguished. On consideration of the scheme of the Act, it is clear that the statute has conferred a benefit on the tenant to avoid a decree for eviction by complying with the requirement of section 20(4). If he fails to avail himself of the opportunity and has not paid the rent for not less than four months and within one month from the date of service upon him of a notice of demand, the landlord under section 20(2) would be entitled to an order of eviction. Still the tenant can avail himself of the protection by complying with the requirements of section 20(4). As he has not deposited the entire amount due the protection is no more available. We agree with the view taken by the trial court and the High Court of Allahabad that the words “entire amount of rent due” would include rent which has become time-barred

In the result the appeal is dismissed. There will be no order as to costs.

S. R.

Appeal dismissed.

(1) [1958] S.C.R. 1122.

(2) A.I.R. 1975 Pat. 283.