REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 8256-8257 OF 2018
(Arising out of Special Leave Petition (Civil) Nos.24615-24616 of 2017)

M/s Alagu Pharmacy & Ors. ……Appellants

Versus

N. Magudeswari ..…. Respondent

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JUDGMENT

Uday Umesh Lalit, J.

Leave granted.

2. This appeal is directed against the final judgment and order dated 29.03.2016 in Civil Revision Petition (NPD) No.586 of 2016 as well as against the order dated 02.12.2016 in Review Petition No.89 of 2016 in said

Civil Revision Petition (NPD) No.586 of 2016 passed by the High Court of Judicature at Madras, Bench at Madurai.

3. The appellants 2 to 4 are doing business in the name and style of M/s Alagu Pharmacy i.e. the appellant No.1. The appellants claim to be tenants in the suit property owned by the respondent herein since 1998. On or about 22.02.2012 a lease agreement was entered into, which according to the appellants was signed by the respondent, extending/renewing the period of lease. On 13.11.2013 and 07.12.2013 the respondent had issued legal notices calling upon the appellants to vacate the suit property alleging inter alia that the lease agreement dated 22.02.2012 was not signed by the respondent and was a forged document, to which reply was given by the appellants on 17.01.2014. On 17.01.2014 itself a complaint (Exh.P-10) was lodged by the respondent alleging commission of forgery. According to the appellants, on 20.01.2014 the respondent alongwith her husband and some henchmen tried to evict the appellants which attempt was successfully resisted by the appellants. In the circumstances, O.S. No.135 of 2014 was filed by the appellants on 21.01.2014 seeking relief of permanent injunction against the respondent from interfering with their peaceful possession and enjoyment of the suit property save and except by due process of law. After

hearing the appellants, an ad interim injunction was granted by the District Munsif, Coimbatore.

4. It appears that on 29.01.2014 a compromise (Exh.P-11) was entered into between the appellants and the respondent. It is the case of the appellants that they were summoned to the police station in connection with the complaint lodged by the respondent (Exh.P-10) and under the pressure employed by the police, said Exh. P-11 was entered into. Soon thereafter an Eviction Petition i.e. R.C.O.P. No.29 of 2014 was filed by the respondent before the Principal Rent Controller-cum-District Munsif, Coimbatore for eviction of the appellants. It is the case of the appellant that they were again asked to appear before the police on 27.03.2014 and under the pressure exerted by the police a compromise deed was entered into under which the appellants agreed to vacate the suit property. Said compromise deed was presented before the Court on 28.03.2014 and following order was passed by the Rent Controller and Principal District Munsif, Coimbatore:

> "Petition dated 08.02.2014 filed under Section 10(2)(ii)(a), 10(3)(c) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and the petitioner filed this petition against the respondents to vacate the premises and to deliver the vacant possession of the petition mentioned property more fully described hereunder in the schedule and cost of this petition.

This petition coming on this day for hearing before me in the presence of Thiru. M. Sanjaiyan, Advocate for petitioner and of Thiru. Somasundaram, Advocate for respondent. Both parties filed compromise memo and both parties present and this day this Court doth order direct as follows:

1. That the respondents be and are hereby granted time upto 31.10.2015 to vacate the petition mentioned property and to handover the vacant possession of the same to the petitioner/landlord and

2. That the respondents are hereby directed to pay the present monthly rent of Rs.19080/- pm to the petitioner/landlord till the date of delivery of possession of the property (i.e. upto 31.10.2015) by way of cheque; and

3. That in case of default to do so by the respondents, the petitioners are entitled to take appropriate action through court of law against the respondents.

4. The compromise petition do form part of this final order, and

5. That there be no order as to cost."

5. On 07.10.2015, a letter was sent by the respondent calling upon the appellants to vacate the premises by 31.10.2015 in terms of the aforesaid compromise decree. On 07.12.2015, an appeal being R.C.A. (CFR) No.31591 of 2015 was filed by the appellants before the Principal Subordinate Judge, Coimbatore against the aforesaid compromise decree

dated 28.03.2014. Along with said appeal IA No.465 of 2015 was also preferred seeking condonation of delay of 604 days in filing said appeal.

6. The respondent having contested the matter, said IA No.465 of 2015 was taken up for consideration by the appellate court. It was submitted on behalf of the appellants that they were pressurized into signing the compromise deed and said compromise was brought about because of pressure exerted by the police. Reliance was placed on complaint Exh.P-10 by the respondent and compromise letter Exh.P-11 dated 29.01.2014. On the other hand, it was submitted on behalf of the respondent that there were numerous occasions for the appellants to raise a grievance that the compromise in question was brought about by coercion and yet no such objection was ever raised. It was, therefore, submitted that the delay of 604 days in preferring the appeal ought not to be condoned.

7. The appellate court by its Order dated 19.01.2016 accepted said IA No.465 of 2015 and condoned the delay subject to payment of Rs.2000/- by the appellants to the respondent. It was observed by the appellate court as under:

"8. The main contention of the respondent is compromise made before the trial court with free will and now the respondent is tried to drag on the matter and preventing the respondent from enjoying the fruit source of the compromise decree. On the side of respondent Ex.R1 and R4 marked. Ex.R1 compromise memo; R2 document for already received the certified copy of fair and final order; R3 letter from the respondent to the petitioner; R4 postal acknowledgement. On perusal of respondent side documents to disprove the facts of Ex.P-10 and Ex.P-11 no documents have been filed. The landlord-tenant relationship is admitted. The allegations made by the respondent against the petitioners is lease deed dated 22.02.2012 is forged one and complaint has been given to the police regarding the forged documents and the petitioners themselves come to the agreement they are undertake to vacate the petition mentioned property, there is no police threat or complaint or coercion by the police or by the respondent. In order to consider the documents filed by the petitioners Ex.P-10 is the police complaint, prepared by the respondent Magudeswari against the 2nd petitioner/appellant. In the complaint the allegations made against the 2nd petitioner is that there is life threat to the respondents and the lease deed has been created by the 2nd petitioner by forging the signature of the respondent and requesting the police to take proper legal action against the 2nd petitioner. Once the written complaint filed before the police mentioning the name of the accused, if the police finds it is true for that police have to register FIR against the accused and proceed with the investigation as per law. But on perusing of Exh.P-11 compromise letter dated 29.01.2014 between the respondent and the 2nd petitioner addressing to the inspector of police, City Crime Branch. In continuation the RCOP has been filed and memo of compromise filed, compromise decree has been passed. As stated above the duty of the police is only to register the case against the accused and proceed against the accused for the offence committed for the crime, they are not entitled to make any compromise against the crime unless and until it is provided by law and further before when compromise arrived at court, the previous compromise has been arrived at police station. From Ex.P-11 itself there

> arises suspicion whether the petitioner has put into any force or any threat to make the compromise before the court. Hence from the above discussions there is a police force with regard to file the compromise regarding RCOP 29/14 and previously compromise letter has been arrived before the police. Hence there is a suspicion arises petitioner must be put into any threat or coercion at the time of filing the compromise memo in RCOP and now the petitioner filed the petition to condone the delay of 604 days. Hence from the above discussions it is clear the petitioners have explained the delay of 604 days in filing the appeal and the explanation submitted by the petitioners is acceptable one."

8. The aforesaid order was challenged by the respondent by preferring Civil Revision Petition before the High Court of Judicature at Madras which Revision Petition was allowed by the High Court vide its orders dated 29.03.2016. It was observed by the High Court as under:

> "5. There are two courses open to the tenants. One is that the tenants would have stated before the Court which recorded the compromise that the compromise was out of compulsion or coercion on the part of the police during enquiry of the complaint preferred by the landlady. In that case, the Court which recorded the compromise would have dealt with that issue. That is not the case here. When that is not the case, it is far fetched for the appellate court to come to a conclusion that the tenants might have been put into coercion or force before entering into the compromise. It is equally probable that in order to get the closure of complaint, the tenants would have opted to enter into a compromise and thereafter, the tenants are put forth an allegation of invalidity of compromise. Even if the tenants had some difficulty in expressing themselves before the trial court, the appeal would have been filed immediately after the compromise decree, if there had been any vitiating factors

> while entering into the compromise. But, the appeal had not been filed in time. Therefore, the conduct of the tenants would only indicate the procrastinating approach in dealing with their case."

9. The appellants preferred a review petition which was rejected by the High Court on 02.12.2016. This appeal challenges the correctness of both the orders passed by the High Court. We heard Mr. Ratnakar Dash, learned Senior Advocate for the appellants and Mr. S. Thananjayan, learned Advocate appearing for the respondent.

10. The order passed by the appellate court shows that compromise Exh.P-11 was brought about on 29.01.2014 that is even before the eviction petition was filed by the respondent. Further, said compromise Exh.P-11 was addressed to the Inspector of Police, City Crime Branch. The appellate court had further observed that complaint Exh.P-10 and compromise Exh.P-11 were not disputed by the respondent and no document in rebuttal was filed. The complaint (Exh.P-10) proceeds on a premise that the lease deed dated 22.02.2012 was a forged document and there was no relationship of landlord-tenant between the parties. Yet an eviction petition was filed, seeking eviction of the appellants under the concerned Rent Act. There is an inherent contradiction in the stand adopted by the Respondent. In the

circumstances, the assertion made by the appellants that pressure was exerted through the police and they were compelled to enter into compromise is prima facie acceptable. In ***Ajad Singh*** v**. *Chatra and Others*[1]*,*** compromise recorded in Police Station *inter alia* was not found to be acceptable by this Court and the matter was remanded. It was observed, "…..the appellate court ought to have taken note of the fact that the said compromise was recorded in the Police Station and during the pendency of the suit." It is true that there was a delay of 604 days in filing the appeal, but in cases where there is reasonable doubt that police may have forced a party to enter into compromise, the process of Court ought to weigh in favour of a party who alleges to be victim of such pressure. It may be pertinent to note that the order passed by the High Court does not even deal with this aspect nor was any submission made that the assessment made by the appellate court was in any way incorrect or imperfect.

11. Further, eviction petition was filed seeking eviction of the appellants under Section 10(2)(ii)(a), 10(3)(c) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Said Sections are as under:

[1] (2005) 2 SCC 567 (para 8)

> "10(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied-
>
> …….
>
> (ii) that the tenant has after the 23rd October 1945 without the written consent of the landlord-
>
> (a) transferred his right under the lease or sublet the entire building or any portion thereof, if the lease does not confer on him any right to do so, or
> …..
> …..
>
> (3) …….
>
> (c) A landlord who is occupying only a part of a building, whether residential or non-residential, may, notwithstanding anything contained in clause (a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for residential purposes or for purposes of a business which he is carrying on, as the case may be."

12. The eviction in terms of the aforesaid provisions can be ordered only if the concerned Rent Controller or Court is satisfied that the ground seeking eviction is made out. It has been held by this Court that unless and until ground seeking eviction in terms of the concerned Rent Act is not made out,

no eviction of a tenant can be ordered, even if the parties had entered into a compromise. For example, in ***K.K. Chari*** v. ***R.M. Seshadri***[2] this Court considered its earlier decisions in three cases as under:-

> **"**20. There are three decisions of this Court which require to be considered. In ***Bahadur Singh*** v. ***Muni Subrat Dass***[3] a decree for eviction passed on the basis of a compromise between the parties, was held, by this Court, to be a nullity as contravening Section 13(1) of the Delhi and Ajmer Rent Control Act, 1952. The facts therein were as follows:
>
> > "The tenant and the son of the landlord referred the disputes between them to arbitration. The landlord was not a party to this agreement. The arbitrators passed an award whereunder the tenant was to give vacant possession of the premises in favour of the landlord within a particular time. This award was made a decree of court. The landlord, who was neither a party to the award nor to the proceedings, which resulted in the award being made a decree of court, applied for eviction of the tenant on the basis of the award. The tenant resisted execution by raising various objections under Section 47 of the Code of Civil Procedure. One of the objections was that the decree for eviction based upon the award was a nullity as being opposed to the Delhi and Ajmer Rent Control Act, 1952. This Court held that the decree directing the tenant to deliver possession of the premises to the landlord was a nullity, as it was passed in contravention of Section 13(1) of the relevant statute. After quoting the sub-section, this Court further held that the decree for eviction passed according to an award, in a proceeding to which the landlord was not a party and without the court satisfying itself that a statutory ground of eviction existed, was a nullity and cannot be enforced

[2] (1973) 1 SCC 761
[3] (1969) 2 SCR 432

> in execution. It will be seen from this decision that the decree was held to be a nullity because the landlord was not a party thereto, and also because the court had not satisfied itself that a ground for eviction, as required by the statute, existed. This decision is certainly an authority for the proposition that a court ordering eviction has to satisfy itself that a statutory ground of eviction has been made out by a landlord. How exactly that satisfaction is to be expressed by the court or gathered from the materials, has not been laid down in this decision, as this court was not faced with such a problem."

21**.** In ***Kaushalya Devi*** v. ***Shri K.L. Bansal***[4] the question again rose under the same Delhi statute regarding the validity of a decree passed for eviction on compromise. The plaintiff therein filed a suit for eviction of the tenant on two grounds—

(*a*) the premises were required for their own use; and

(*b*)the tenant had committed default in payment of rent.

22. The tenant filed a written statement denying both these allegations. He disputed the claim of the landlord regarding his requiring the premises for his own use bona fide and also the fact of his being in arrears. When the pleadings of the landlord and the tenant were in this state, both parties filed a compromise memo in and by which they agreed to the passing of a decree of eviction against the tenant. Representations to the same effect were also made by the counsel for both parties. The court passed the following order:

> "In view of the statement of the parties' counsel and the written compromise, a decree is passed in favour of the plaintiff against the defendant."

The tenant did not vacate the premises within the time mentioned as per the compromise memo. On the other hand,

[4] (1969) 1 SCC 59

he filed an application under Section 47 of the Civil Procedure Code pleading that the decree is void as being in contravention of Section 13 of the Delhi statute. The High Court held that the decree was a nullity, as the order was passed solely on the basis of the compromise without indicating that any of the statutory grounds mentioned in Section 13 existed. Following the decision in ***Bahadur Singh*** this Court upheld the order of the High Court. Here again, it will be seen that the manner in which the court's satisfaction is to be expressed or gathered has not been dealt with.

23. A similar question came up again before this Court in ***Ferozi Lal Jain*** v. ***Man Mal***[5]. The landlord filed an application for eviction of the tenant on the ground that he had sublet the premises without obtaining his consent in writing. Subletting, without the consent of the landlord in writing, was one of the grounds, under Section 13(1) of the Delhi statute entitling a landlord to ask for eviction. The tenant denied the allegation that he had sublet the premises. Both the landlord and the tenant entered into a compromise and the court, after recording the same, passed the following order:

> "As per compromise, decree for ejectment and for Rs 165 with proportionate costs is passed in favour of the plaintiff and against the defendant. The parties shall be bound by the terms of the compromise. The terms of the compromise be incorporated in the decree-sheet...."

24. As the tenant did not surrender possession of the properties within the time mentioned in the compromise memo, the landlord levied execution. It was resisted by the tenant on various grounds one of which was that the decree for eviction was a nullity, being in contravention of Section 13 of the Delhi Statute. This contention was accepted by the execution court, as well as by the High Court. This Court, after a reference to the

[5] (1970) 3 SCC 181

provisions of Section 13, held that a decree for recovery of possession can be passed only if the court concerned is satisfied that one or other of the grounds mentioned in the section is established. This Court, further observed:

> "From the facts mentioned earlier, it is seen that at no stage, the Court was called upon to apply its mind to the question whether the alleged subletting is true or not. Order made by it does not show that it was satisfied that the subletting complained of has taken place, nor is there any other material on record to show that it was so satisfied. It is clear from the record that the court had proceeded solely on the basis of the compromise arrived at between the parties. That being so there can be hardly any doubt that the court was not competent to pass the impugned decree. Hence the decree under execution must be held to be a nullity."

13. In ***Nagindas Ramdas*** v. ***Dalpatram Ichharam alias Brijram and Others***[6] it was stated:-

> **"17**. It will thus be seen that the Delhi Rent Act and the Madras Rent Act expressly forbid the Rent Court or the Tribunal from passing a decree or order of eviction on a ground which is not any of the grounds mentioned in the relevant Sections of those statutes. Nevertheless, such a prohibitory mandate to the Rent Court that it shall not travel beyond the statutory grounds mentioned in Sections 12 and 13, and to the parties that they shall not contract out of those statutory grounds, is inherent in the public policy built into the statute (Bombay Rent Act).

[6] (1974) 1 SCC 242

18. In ***Rasiklal Chunilal case,*** a Division Bench of the Gujarat High Court has taken the view that in spite of the fact that there is no express provision in the Bombay Rent Act prohibiting contracting out, such a prohibition would have to be read by implication consistently with the public policy underlying this welfare measure. If we may say so with respect, this is a correct approach to the problem.

19. Construing the provisions of Sections 12, 13 and 28 of the Bombay Rent Act in the light of the public policy which permeates the entire scheme and structure of the Act, there is no escape from the conclusion that the Rent Court under this Act is not competent to pass a decree for possession either *in invitum* or with the consent of the parties on a ground which is de hors the Act or ultra vires the Act. The existence of one of the statutory grounds mentioned in Sections 12 and 13 is a *sine qua non* to the exercise of jurisdiction by the Rent Court under these provisions. Even parties cannot by their consent confer such jurisdiction on the Rent Court to do something which, according to the legislative mandate, it could not do.

….

22. The mere fact that Order 23 Rule 3, of the Code of Civil Procedure is applicable to the proceedings in a suit under the Bombay Rent Act, does not remove that fetter on the Rent Court or empower it to make a decree for eviction *de hors* the statute. Even under that provision of the Code, the Court, before ordering that the compromise be recorded, is required to satisfy itself about the lawfulness of the agreement. Such lawfulness or otherwise of the agreement is to be judged, also on the ground whether the terms of the compromise are consistent with the provisions of the Rent Act.

….

27. From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court *could* be prima facie satisfied, about the

> existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong."

14. The common thread that runs through the aforesaid pronouncements of this Court is – in cases where protection under a Rent Act is available, no eviction can be ordered unless ground seeking eviction is made out, even if parties had entered into a compromise. Moreover, the invalidity on that count can even be raised in execution. In the present case, the order dated 28.03.2014 did not remotely note that any particular ground under the Rent Act was made out.

15. In the circumstances, in our considered view, the order passed by the appellate court was absolutely correct and did not call for any interference

on part of the High Court. We, therefore, allow the present appeals and restore the order dated 19.01.2016 passed by the appellate court in IA No.465 of 2015. The appeal shall now be heard on merits and disposed of in accordance with law. Since there was delay of more than 600 days on part of the appellants, we direct that the appellants shall pay costs of Rs.50,000/- to the respondent which shall be over and above that already imposed by the appellant court and shall be made over within six weeks from this Judgment. The appeals stand allowed in the aforesaid terms.

..……J.
(Abhay Manohar Sapre)

..……
J.
(Uday Umesh Lalit)

New Delhi,
August 14, 2018.