

Smt. Nirupama Ben Vs. Devat Singh

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Court : Rajasthan

Decided On : Jul-26-1985

Reported in : AIR1986Raj56; 1985(2)WLN10

Judge : S.S. Byas, J.

Acts : Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 13(3)

Appeal No. : Civil Misc. Appeal No. 114 of 1985

Appellant : Smt. Nirupama Ben

Respondent : Devat Singh

Advocate for Def. : M.M. Singhvi, Adv.

Advocate for Pet/Ap. : S.L. Mardia, Adv.

Disposition : Appeal dismissed

Judgement :

S.S. Byas, J.

1. This is a tenant's appeal directed against an order of the-learned District Judge, Sirohi dt. May 10, 1985 by which the amount of rent was provisionally determined under Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act.

1950 (hereinafter to be referred as 'the Act'). Since the point involved in short, the appeal was also heard on merits on the joint request of the learned counsel for the parties.

2. Briefly recapitulated, the relevant facts are that the plaintiff instituted a suit for eviction and arrears of rent against the defendant in the Court below on Sept. 20, 1983. The case set up by him is that the suit premises situate at Mount Abu known as 'Kesar Bhawan Canteen' was let out to the defendant on Oct. 1, 1980 for a period of eleven months on a monthly rent of Rs. 2000/-. The tenancy was oral. The rent was to be paid by the defendant month by month. The defendant paid a sum of Rs. 2000/- only for the first time and thereafter failed to make any payment. A sum of Rs. 66,000/- stood due against her as arrears of rent at the time of the institution of the suit. Various grounds of eviction were pleaded, one of them being the default in payment of rent under Section 13(1)(a) of the Act. The defendant filed the written statement. The tenancy was admitted, but it was stated that the suit premises were let out to her not on Oct. 1, 1980 but such before that on Oct. 23, 1978. The rent agreed was Rs. 500/- and not Rs. 2000/- per month as alleged by the plaintiff. Various payments against the rent were pleaded by the defendant. The written statement was filed on Mar. 20, 1985. Since one of the grounds of eviction was the default on the part of the defendant in making the payment of the rent as envisaged in Section 13(1)(a) of the Act, the learned District Judge heard both the parties and determined a sum of Rs. 1,08,000/- as rent up to April, 1985. A sum of Rs. 14,310/- was assessed as interest thereon at the rate of Rs. 6% per annum. Thus, a sum of Rs. 1,22,310/- was provisionally determined under Section 13(3) of the Act. Aggrieved against the said order, the tenant has come up in appeal.

3. I have heard the learned counsel for the parties and perused the record.

4. It was contended by Mr. Mardia, learned counsel appearing for the tenant-appellant, that the Court below failed to take into account the material on record. It was argued that there was nothing on record to show that the agreed rate of rent between the parties was Rs. 2000/- per month or that the rent was last paid at this rate. It was argued that agreement dt. Nov. 1, 1979 was wrongly taken into

consideration in determining the provisional rent. This agreement related only to a period of eleven months from Nov. 1, 1979 to Sept. 30, 1980. It was further argued that the various payments alleged to have been made by the defendant were not at all taken into consideration by the Court below.

5. While countering these contentions, it was argued by Mr. Singhvi that admittedly the suit premises were occupied by the defendant even prior to Oct. 1, 1980 in respect of which the agreement was executed on Nov. 1, 1979. By this agreement, the defendant was allowed, to run the canteen in the suit premises and he was required to pay a minimum sum of Rs. 25,000/- per annum to the plaintiff. This agreement expired on Sept. 30, 1980. A new tenancy was created on October 1, 1980 and the defendant agreed to pay a sum of Rs. 2000/-per month. It was urged that when the defendant was already occupying the suit premises on the minimum rent of Rs. 25,000/-per annum, there was no question of reducing the rent to Rs. 500/- per month. The plaintiff had filed his affidavit stating therein that the defendant had paid only a sum of Rs. 2000/-towards rent on Nov. 22, 1980. No payment thereafter was made. There was no material on record to show that the defendant made payments over and above the aforesaid amount of Rs. 2000/-. I have taken the respective submissions into consideration.

6. Section 13(3) of the Act casts a duty on the Court to determine the amount of rent if a suit for eviction is based on the ground set forth in Clause (a) of Sub-section (1) of Section 13 with or without any other ground. The rent is to be determined under this sub-section after hearing the parties and on the basis of the material on record. The Court should calculate the rate of rent at which it was last paid or was payable for the period for which the tenant had made the default. This determination of rent under Sub-section (3) of the Act is provisional subject to adjustment, corrections and modifications subsequently when the suit is finally disposed of. The object of Sub-section (3) is to afford a protection to the tenant and give him one more opportunity to make the payment of the arrears of rent. This sub-section has been put in the statute for the benefit of the tenant.

7. Now, cases do arise and the present case is one among such cases where there is no written agreement or rent-note between the parties and the tenancy is

oral. Cases are also frequent where receipts of rent are not issued by the landlords to the tenants. In such cases, the material on record available for determination of the rent consists only of the pleadings of the parties, their conduct and the surrounding circumstances.

8. Here in the instant case the agreement dated November 1, 1979 executed between the parties shows that the defendant was required to pay a minimum amount of Rs. 25,000/- annually to the plaintiff for the canteen she was to run in the suit premises. The period of this agreement, which was for eleven months, expired on Sep. 30, 1980. A new tenancy appears to have sprung up between the parties on Oct. 1, 1980 and the defendant was allowed to continue in the suit premises. When the suit premises were already in the defendant's possession on an annual rent of Rs. 25,000/-, the circumstances do not allow prima facie to hold that the rent was thereafter reduced to the nominal sum of Rs. 500/- per month. This agreement cannot be excluded and will have to be taken into consideration while determining the provisional rent under Sub-section (3) of the Act.

9. The defendant alleges that no receipt was issued to her by the plaintiff for the payment she made to the plaintiff. But since, she runs a restaurant it can be well said, though not so conclusively at this stage, that she must be maintaining the accounts in connection with her business. Very easily she could have filed her account-books to show that rent was paid by her at the rate of Rs. 500/- per month and not at the rate of Rs. 2000/- per month. But she failed to file her account-books. It is also beyond apprehension that she would make the payment of rent without caring to obtain a receipt because she is a women dealing in business.

10. In these circumstances the pleadings of the parties, if any, the surrounding circumstances and their conduct furnish the material, on the basis of which the provisional rent under Sub-section (3) can be determined. In the instant case, the approach of the Court below in taking these various elements into consideration on furnishing material for determination of rent does not appear to be improper or erroneous.

11. Coming to the question of payments, the plaintiff has filed his affidavit denying the payments alleged by the defendant. According to the affidavit of the plaintiff,

the defendant paid a sum of Rs. 2000/- only on November 22, 1980 as rent. No payment thereafter was made. As mentioned above, the defendant has not filed the account-book. The documents filed by the defendant afford no help to her. The amount of rent provisionally determined under Sub-section (3) does not appear to be incorrect so as to call for any interference.

12. Even at the fault of repetition it may be recalled that the amount of rent determined under Sub-section (3) is only provisional, subject to subsequent adjustments etc. when the controversies between the parties are finally decided. If the payments made by the defendant stand ultimately proved, she is entitled to have their adjustment.

13. For the reasons stated above, I find no force in this appeal and dismiss the same, leaving the parties to bear their own costs of this Court.

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