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Dulichand Vs. Hari Mohan

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Court : Rajasthan

Decided On : Feb-24-1994

Reported in : AIR1994Raj153; 1994(2)WLN47

Judge : Rajesh Balia, J.

Acts : Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 13(1), 13(3), 13(4), 13(5) and 13(6)

Appeal No. : S.B. Civil Second Appeal No. 6 of 1994

Appellant : Dulichand

Respondent : Hari Mohan

Advocate for Pet/Ap. : B.M. Agarwal, Adv.

Disposition : Appeal dismissed

Judgement :

Rajesh Balia, J.

1. This is defendant's second appeal against the judgment and decree dated October 26, 1993 passed by the Additional District Judge No. I. Sri Ganga-nagar affirming the judgment and decree passed by the Additional Civil Judge, Sri Ganganagar dated July 17, 1990 for eviction from the suit premises situated at Sri

Ganganagar.

2. The respondent-plaintiff filed the suit for eviction against the appellant on January16, 1986 on the ground of default alleging that the premises were let out at Rs. 125/- p.m. and the defendant has neither paid nor tendered any rent since Nov. 1982. Thus he has failed to pay or tender rent for a period of more than six months on the date of filing of the suit. The defendant resisted the suit and averred that initially the rent was Rs. 30/-p.m. and in the year 1978, it was increased to Rs. 35/p.m.

3. By its order dated October 7, 1986, the trial court determined the amount of rent and interest payable under Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 @ Rs. 125/- p.m. The defendant preferred appeal against this determination which was dismissed. The petitioner failed to deposit entire amount so determined under Section 13(4) of the Act and on account of that his defence was struck out on August 18, 1989. No appeal against the order striking out the defence under Section 13(5) of the Act for non-payment of rent as required under Section 13(4) of the Act was preferred and the order became final.

4. It may be noticed here that the defendant was not permitted to lead his evidence on the ground that his defence against the eviction has been struck off. The present appellant filed revision before this Court against the order refusing the defendant-appellant, to produce his evidence, which revision was allowed observing that striking out the defence does not debar the defendant to prove his defence which is independent of Rent Control Law, that agreed rent was Rs. 30/- and not Rs. 125/- and that he has made payment upto Nov. 1985.

5. Thereafter, by its judgment and decree dated July 17, 1990 the trial Court found that agreed rent between the parties was Rs. 35/-and not Rs. 125/- as claimed by the plaintiff by deciding Issue No. 1 in favour of the defendant.

6. On Issue No. 2, relating to nonpayment of rent since Nov. 1982 until the filing of the suit, the court came to the conclusion that defendant has neither paid nor tendered the rent to the respondents since Nov. 1982.

7. On these findings, the court came to the conclusion that plaintiff has made out a ground on which decree under Section 13(l)(a) of the Act can be passed. As the defendant has failed to make payment of the amount determined under Section 13(3) of the Act as required by Section 13(4) within the time prescribed and his defence against the eviction under the Act was struck out under Section 13(5), he is not entitled to benefit under Section 13(6). Hence decree for eviction was passed. However, as the rate of rent finally determined was only Rs. 35/- p.m., the trial court passed a decree in favour of the defendant for refund of Rs. 1500.95/- after adjusting the amount paid or deposited after filing of the suit in terms of order dated August 18, 1989.

8. Aggrieved with the aforesaid judgment and decree both the plaintiff as well as defendant preferred appeals in respect of respective decree passed against them, Both the appeals have been dismissed by the lower appellate court on October 26, 1993 by affirming the findings arrived at by the trial court.

9. At the outset, it was informed by the learned counsel for the appellant that the decree under appeal against the defendant has already been executed and the premises on the site have been demolished. However, the learned counsel for the appellant stated that in case appeal is allowed, he may be entitled to restitution and therefore, the appeal may be heard on merits.

10. It was first contended by the learned counsel for the appellant that he having paid more amount than due under the final decree, he cannot be considered as defaulter and it cannot be said that he has not complied with the Order under Section 13 (3) of the Act. He, therefore, contends that his defence against eviction has wrongly been struck out and he is entitled to get benefit under Section 13(6) of the Act. Having carefully considered this contention, 1 do not find any force in it.

11. The Scheme of the Act under the relevant provisions of Section 13(1)00 readwith Section 13(3)(4)(5) and 6, it is amply clear that even in case of the existence of a ground for eviction as provided under Section 13(1)(a) an additional protection has been provided in case the defendant-tenant complies with the order determining the amount payable under Section 13(3), which determination is of course provisionally, and amount paid or deposited in terms of Section 13(4) is

always subject to adjustment in accordance with final determination of rent at the close of trial by making payment of amount so determined under Section 13(3) within the time allowed under Section 13(4). If he makes compliance with the requirements of Section 13(4) by making payment or depositing the amount as required by subsection (4), no decree for eviction on the ground set forth in clause (a) of Sub-section (1) of Section 13 can be passed against him. However, if he fails to deposit or pay any amount referred to in Sub-section (4) on the date or within the time specified in the order or the provision itself, his defence against eviction is liable to be struck out.

12. Under the Scheme, the relevant condition for benefit under Section 13(6) is the payment of amount as determined under subsection (3) and is not dependent on or related to the payment of amount as finally determined on ultimate decision, in case there is dispute about the rate of rent at which it was payable or the actual amount of rent that is due. Therefore, for the purpose of operation of Sub-sections (5) and (6), the final determination of rate of rent or amount due is irrelevant and what is relevant is, the amount determined under Sub-section (4). Of course if it is found that no amount was due or rent for a period of less than six months was due on the date of filing of the suit, a decree for eviction for default will still be not passed. That will be not because of protection under Section 13(6) of the Act, but because the plaintiff fails to make out default aground for eviction under Section 13(1)(a), law is trite that even where defence of defendant against eviction is struck off, the plaintiff is not entitled to a decree for eviction as a legitimate consequence, but he still have to prove that one or more grounds, on which decree for eviction can be passed under relevant RentControl Laws, exist to sustain such decree.

13. There is no dispute that amount determiend under Section 13(3) was not paid or deposited as required under Section 13(4).' It was on the basis of his failure of defendant that defence against eviction was struck out. Thereafter, they challenged the order of closure of evidence by way of revision. No challenge to the striking out the defence was ever made. That order therefore, has become final.

14. If there is failure on the part of the defendant-tenant to pay or deposit the amount under Section 13(4) of the Act and the Court exercise its discretion for striking out the defence under Sub-section (5), then thereafter there is no room for operation of Sub-section (6) on the basis of final finding on the rate of rent or amount of rent due arrived at the conclusion of the trial which is different from determination under Section 13(3). In that event, if it is proved that the plaintiff has made out a case of default as envisaged under Section 13(1)(a), there is no impediment on passing the decree of eviction on that ground. But if the learned plaintiff fails to make out that the defendant had defaulted in terms of Section 13(1)(a), no decree can be passed.

15. In the present case, both the courts below have concurrently found that defendant has not paid or tendered rent even at the rate of Rs. 35/- since Nov. 1982 until the date of the filing of the suit i.e. to say for a period of more than three years and therefore, a ground for eviction under Section 13(1)(a) has been made out.

16. This being a finding of fact is not liable to be interfered with in the second appeal, nor it has been made out from the record that the courts below have committed any error by way of misreading the evidence or ignoring the relevant evidence that has come on record to vitiate the finding of fact so as to raise any substantial question of law.

17. In these circumstances, I do not find any reason to interfere with the judgment and decree of the court below. There is no force in this second appeal and the same is herebydismissed. There will be no order as to costs of this appeal.

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