

Jagannath Vs. Janiram

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SooperKanoon Citation : sooperkanoon.com/753197

Court : Rajasthan

Decided On : Mar-23-1981

Reported in : AIR1981Raj233; 1981()WLN379

Judge : Dwarka Prasad, J.

Acts : Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 13(1), 13(4), 13(5) and 13(7)

Appeal No. : Civil Second Appeal No. 348 of 1974

Appellant : Jagannath

Respondent : Janiram

Advocate for Def. : N.N. Mathur, Adv.

Advocate for Pet/Ap. : M.M. Vyas, Adv.

Disposition : Appeal allowed

Judgement :

Dwarka Prasad, J.

1. In this second appeal, arising out of a suit for eviction of a tenant from the rented premises, learned counsel for the tenant appellant has made two submissions: His first contention is that the expression 'the first date of hearing'

occurring in Sub-section (4) of Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as 'the Act') should be construed as the date on which the Court applied its mind to the facts of the case and framed the issues and not the date fixed for appearance in the summons issued to the defendant. The second contention of learned counsel is that the trial Court failed to determine the amount payable by the tenant in accordance with the provisions of Sub-section (5) of Section 13 of the Act and the amount, deposited by the tenant towards arrears of rent and interest thereon, was withdrawn by the landlord plaintiff on July 31, 1969, during the pendency of the suit without any demur and as such the plaintiff should be deemed to have waived the objection that the amount was not deposited on the first date of hearing.

2. The necessary facts which have led to the aforesaid controversy may be mentioned here. The plaintiff landlord filed the suit for eviction on October 18, 1968, on three grounds, inter alia: --

- (i) personal necessity of the landlord for the suit premises;
- (ii) damage was caused to the premises by the tenant, and
- (iii) the tenant had committed defaults in payment of rent.

3. The questions relating to reasonable and bona fide personal necessity of the landlord for the suit premises and damage to the premises by the tenant were decided against the plaintiff landlord by the trial Court and those questions were not contested by the plaintiff in the first appeal, nor any contest was raised in respect of those questions before me in this second appeal. So the question which survive is as to whether the tenant committed defaults in payment of rent. The trial Court held that as the tenant had not deposited the arrears of rent together with interest thereon, on the first date fixed for hearing of the suit, the defendant tenant could not take benefit of the provisions of Sub-sections (4) and (5) of Section 13 of the Act, as they stood at the relevant time. It was also held that the rent was in arrears for more than 6 months on the date of institution of the suit, as such the tenant was held to be a defaulter and a decree for ejectment was passed against him on that ground. The first appellate Court also took the same view and the plea

of waiver, which was also advanced before him did not find favour with the first appellate Court.

4. The first date fixed in the suit was December 19, 1968. On that day, counsel for the defendant appeared, filed his Vakalatnama and sought an adjournment for filing the written statement. The next date fixed was January 16, 1969. On the last mentioned date, the defendant tenant filed his written statement and also filed two applications. In one of the applications it was stated that as there was a dispute regarding the rate and amount of rent, the court should determine the amount payable to the landlord in respect of arrears of rent and interest thereon, so that the tenant may be able to deposit the amount. This application was obviously made under Sub-section

(5) of Section 13 of the Act. The other application was made under Sub-section

(4) of Section 13 of the Act, in which the defendant tenant stated that he was depositing a sum of Rs. 500/- towards arrears of rent and interest thereon and whatever amount the court thought proper may be paid to the plaintiff out of the said deposit. On this application, the trial court passed an order on January 16, 1969 itself directing that the amount of Rs. 500/- may be deposited. Thereupon the defendant-tenant proceeded to deposit the amount of Rs. 500/-. After some adjournments, the application under Section 13

(5) of the Act was considered by the trial court on March 17, 1969. The trial court took notice of the fact that there was a dispute between the parties about the rate of rent, because the plaintiff demanded rent at the rate of Rs. 10/- per month, while the defendant alleged that the rent was Rs. 60/- per year; and further he claimed that rent up to Aug. 1968 was paid, but the plaintiff claimed that rent was due from November 25, 1962. But the trial court merely directed the tenant to make payment of rent during the pendency of the suit at the rate of Rs. 10/- per month up to the 15th day of each calendar month. After the trial was over, the suit was decreed as already mentioned above on the ground of defaults in payment of rent.

5. So far as the first question is concerned, the matter has been agitated and has been decided on several occasions by this Court. In Rampal v. Manager, Sasta

Sahitya Press Ltd., 1973 Raj LW 615: (AIR 1974 Raj 43) S. N. Modi J., following the decisions in Padamchand v. Kunjbeharilal (Civil Revn. No. 446 of 1967 decided on 19-9-1968), Surajbhan v. Chander Prakash (Civil Revn. No. 434 of 1968 decided on 16-12-1968) and Mangalram v. Smt. Chandrawati Devi (1969 WLN (Part I) 257) held that the expression 'first day of hearing', appearing in Sub-section (4) of Section 13 of the Act, referred to the date for which the summons were issued to the defendant for settlement of issues. This decision was affirmed by a Full Bench of this Court in Martin & Harris (P) Ltd. v. Prem Chand, 1974 Raj LW 115: (AIR 1974 Raj 136). It was observed in Martin & Harris case, AIR 1974 Raj 136 (FB), that by a long series of decisions it was held by this Court that the expression 'first day of hearing' appearing in Sub-section (4) of Section 13 of the Act referred to the date for which the summons were issued to the defendant for settlement of issues and that the Full Bench saw no reason to depart from this long accepted interpretation. I have no reason for not following the aforesaid Full Bench decision and as such I hold that in the present case, the first day of hearing was December 19, 1968, for which the summons were issued to the defendant. The fact that the defendant sought an adjournment on that day and filed his written statement on the next date, that is, on January 16, 1969 was immaterial and the same could not change the first day fixed for hearing of the suit.

6. However, the present case is not covered by Sub-section (4) of Section 13 of the Act. It is not contested before me also that there was a dispute between the parties about the amount of arrears of rent. As a matter of fact, as noticed by the trial Court in its order dated March 17, 1969, the dispute between the parties related both to the rate of rent and also the period for which the rent was due; while the plaintiff alleged that the rent had not been paid since November 25, 1962, and was payable at the rate of Rs. 10/- per month, the defendant asserted that he had paid rent up to August 1968, and that rent was payable at the rate of Rs. 60/- per annum for the premises in dispute. Thus there was undoubtedly a dispute as to the amount of rent payable by the tenant. This dispute was apparent, as soon as the defendant filed his written statement and took the plea that the agreed rate of rent was Rs. 60/- per annum and that he had paid rent up to August 1968 to the plaintiff. Sub-sections (4) to (7) of the Act, as they stood at the relevant time ran as follows:--

'(4) In a suit for eviction on the ground set forth in Clause (a) of Sub-section (1), with or without any of the other grounds referred to in that subsection, the tenant shall, on the first date of hearing or on or before such date as the Court may, on an application made to it, fix in this behalf, or within such time, not exceeding two months, as may be extended by the Court, deposit in Court or pay to the landlord an amount calculated at the rate of rent at which it was last paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made together with interest on such amount calculated at the rate of MX per cent per annum from the date when any such amount was payable up to the date of deposit and shall thereafter continue to deposit or pay, month by month, by the fifteenth of each succeeding month a sum equivalent to the rent at that rate.

(5) If in any suit referred to in Sub-section (4), there is any dispute as to amount of rent payable by the tenant, the Court shall determine, having regard to the provisions of this Act, the amount, to be deposited or paid to the landlord by the tenant, within 15 days from the date of such order in accordance with the provisions of Sub-section (4).

(6) If a tenant fails to deposit or pay any amount referred to in Sub-section (4) or Sub-section (5) on the date or within the time specified therein, the Court shall order the defence against eviction to be struck out and shall proceed with the hearing of the suit.

(7) If a tenant makes deposit or payment as required by Sub-section (4) or Sub-section (5) no decree for eviction on the ground specified in Clause (a) of Subsection (1) shall be passed by the Court but the Court may allow such costs as it may deem fit to the landlord.

Provided that a tenant shall not be entitled to any relief under this sub-section if having obtained such benefit or benefits under Section 13-A in respect of any such accommodation if he again makes a default in the payment of rent of that accommodation for six months.'

7. Sub-section (4) of Section 13 of the Act was applicable to cases in which there was no dispute between the parties about the amount of rent payable by the defendant to the plaintiff landlord. But in cases where there was a dispute about the amount of rent payable by the tenant Sub-section (5) was attracted and in such cases, the Court was bound to determine the amount which was to be deposited by the tenant or to be paid by him to the landlord and the tenant was thereafter bound to deposit such amount, within fifteen days from the date of the order of the court determining the amount payable. In the present case, although the tenant defendant had made an application under Sub-section (5) of Section 13 of the Act, requesting the trial court to determine the amount payable by him towards arrears of rent and interest thereon, yet the trial court by its order dated March 17, 1969 failed to determine the amount so payable. It only proceeded to direct the defendant to make payment of future rent, during the pendency of the suit, month by month at the rate of Rs. 10/-per month. It was the duty of the trial Court in such a case, wherein a dispute was raised about the amount of rent payable by the tenant, either relating to the rate of rent or the period for which rent was due or both. The provisions of Sub-section (5) of Section 13 of the Act, as they then stood, were imperative in nature and the Court was bound to determine the amount, once the dispute was brought to its notice about the amount of rent payable by the tenant. The expression used in Sub-section (5) is 'the Court shall determine' and, therefore, in case of dispute about the amount of rent payable by the tenant, the Court had a responsibility to determine the amount payable towards arrears of rent and interest thereon by the tenant, Once the amount was so determined, the tenant was liable to make payment of the same to the landlord or to deposit the said amount in the Court within 15 days from the date of the order. He was also thereafter bound to make payment of rent month by month. In the present case, the trial Court merely passed a partial order, in compliance with the provisions of Sub-section (5) of Section 13 of the Act on March 17, 1969, although it took notice of the existence of the dispute between the parties about the amount of rent payable by the tenant. Instead of determining the amount of arrears of rent and interest thereon, it only directed the tenant to make payment of future rent, during the pendency of the suit, at the rate of Rs. 10/- per month. In the absence of any determination by the Court of the amount of rent payable by the

tenant, the defendant was unable to deposit such amount along with interest thereon within 15 days, as envisaged in Sub-section (5) of Section 13 of the Act,

8. However, in the present case the defendant deposited Rs. 500/- on January 16, 1969, as already stated above. Probably the plaintiff landlord also thought that the said amount was sufficient, as in the suit filed on October 18, 1968, only a sum of Rs. 360/- was claimed in the plaint towards arrears of rent for a period of three years. After the institution of the suit, five more months had passed when the trial Court passed its order dated March 17, 1969. As such the plaintiff could have claimed Rupees 410/- towards arrears of rent, adding RS. 50/- as rent for five months, at the rate of Rs. 10/- per month, to the sum of Rs. 360/- claimed in the suit. The defendant had deposited Rs. 500/- on 16-1-1969 which was more than the amount which the plaintiff could have claimed towards arrears of rent and apparently included interest on such amount. The plaintiff filed an application on July 15, 1969, seeking permission of the Court to withdraw the amount of Rs. 500/- along with Rs. 90/- deposited by the defendant subsequently. The trial Court allowed the plaintiff to withdraw the said amount of Rs. 590/- and the same was actually withdrawn by the plaintiff on July 31, 1969. Thus the plaintiff had withdrawn the amount which was clearly more than the arrears of rent due up to the date of such withdrawal. It is on the basis of this withdrawal of the sum of Rs. 500/- by the plaintiff that the argument of waiver has been advanced before me and it is contended that the amount of Rs. 500/- represented not only arrears of rent but also interest thereon and the plaintiff also thought that the amount was payable in accordance with the provisions of Section 13 (4) and (5) of the Act and as such he withdrew the said amount. Learned counsel argued that after the withdrawal of the aforesaid amount on July 31, 1969, the plaintiff could not have taken the stand that there was not compliance of the provisions of Section 13 (4) or 13 (5) of the Act on the part of tenant on the ground that the amount of arrears of rent and interest thereon was not deposited on the first date of hearing of the suit or that an application was not made for giving time to the tenant to deposit the amount of such arrears of rent etc. As a matter of fact, Sub-section (5) of Section 13 of the Act does not make it obligatory upon the tenant to make an application under that provision on the first date of hearing of the suit, to determine the amount which was to be deposited or paid by the tenant. The duty is cast upon the

Court, by the provisions of Sub-section (5) of Section 13 of the Act, in such cases where it appears to the Court that there was a dispute between the parties regarding the amount of arrears of rent payable by the tenant. Such dispute can obviously come to the notice of the Court only when the defendant files his written statement. It is only at that stage that the court is required to determine the amount of arrears of rent payable by the tenant along with interest thereon.

9. In the present case, there being no determination under Sub-section (5) of Section 13 of the Act, the tenant was not bound to make any deposit. However, whatever amount was considered proper by him to be payable towards arrears of rent and interest thereon, was deposited and the same was withdrawn by the plaintiff landlord willingly and there was no demur or protest. The plaintiff did not raise any dispute that the amount deposited by the tenant was short or insufficient. In such circumstances, the plaintiff landlord must be deemed to have waived his right, if any, to take benefit of the ground of defaults in payment of rent. As a matter of fact, the fault did not lie with the defendant but the trial Court erred in failing to perform its duty of determining the amount of arrears of rent along with interest, as envisaged in Sub-section (5) of Section 13 of the Act. Moreover, the defendant-tenant appears to have been misled by the conduct of the plaintiff in applying for and withdrawing the amount deposited by the tenant in accordance with the provisions of Section 13 (5); Sub-section (7) of Section 13 of the Act provides that if a tenant makes a deposit or payment, as required by Sub-section (4) or (5), no decree for eviction on the ground specified in Clause (a) of Sub-section (1) of Section 13 of the Act can be passed by the Court. As I have already pointed out above, Sub-section (4) was inapplicable to the facts of the present case as there was a dispute between the parties regarding the amount of arrears of rent. In these circumstances, the amount which the tenant thought proper, without determination in accordance with the provisions of Sub-section (5) of Section 13, was deposited by him and the same was willingly withdrawn by the landlord plaintiff. Thus the tenant had complied with the provisions of Sub-section (5) of Section 13 of the Act and, therefore, a decree for ejectment on the ground of defaults in payment of rent could not have been passed against the defendant.

10. In *Lachoo Mal v. Radhe Shyam* AIR 1971 SC 2213 it was held that every one has a right to waive and to agree to waive the advantage of a law or a rule, made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy. It was observed by their Lordships of the Supreme Court in the aforesaid case that if a particular owner of property did not wish to avail of the benefit of a provision of the Rent Control Act, there was no bar created by it in the way of his waiving or giving up or obtaining the advantage or the benefit contemplated by the provision. No question of policy, much less public policy, was involved in such matters and such a benefit or advantage could always be waived. The case before their Lordships related to the waiver by the landlord of a provision in Uttar Pradesh Rent Control Legislation, exempting buildings or parts of buildings erected or constructed on or after January 1, 1951 from the provisions of that Act. The landlord in that case wanted to construct rooms on the upper storey of the shop. which was in occupation of the tenant. The construction could possibly be made only if the tenant vacated the shop for some period. The parties, therefore, entered into an agreement that the shop would be vacated by the tenant for a short duration, on the condition that as soon as the required construction on the upper storey would be completed, the tenant would be restored possession of the shop. After the construction was made, the tenant resumed possession of the shop but the landlord did not accept payment of rent and filed a suit for eviction after terminating the tenancy. A plea was raised on behalf of the landlord in that suit that in terms of Section 1-A of the Act, a part of the building having been reconstructed, the premises were exempted from the provisions of the Rent Control legislation and the tenant was not entitled to protection. Their Lordships of the Supreme Court rejected the contention of the landlord and observed that Section 1-A was merely in the nature of an exemption granted in favour of the landlords and conferred benefits upon them, which they could give up or waive by agreement or contractual arrangement and that there was nothing unlawful in such an agreement, nor there was any question of public policy involved therein,

11. The decision of their Lordships of the Supreme Court in *Lachoo Mal's* case AIR 1971 SC 2213, were followed by Jagat Narayan Chief Justice as he then was, in *Bundu v. Hashmat*, AIR 1972 Raj 238. It was observed in that case that the Act

was no doubt enacted to give protection to the tenants, who constituted a weaker section of the society, needing such protection and that such provisions of the Act which gave protection to the tenant cannot be allowed to be waived. But those provisions of the Act which conferred benefits upon the landlord could be waived by the latter. It was pointed out that there was no prohibition against contracting out of the statute, so far as the provisions of Section 13 (4) and (5) of the Act, are concerned. But the provisions of Sub-section (1) of Section 13 are couched in prohibitory language and a Court cannot pass a decree for ejectment of a tenant, so long as he is ready and willing to pay rent to the full extent allowable by the Act, unless one or other of the conditions specified in the various clauses of Sub-section (1) of Section 13 is specified.

12. The same principle is applicable to the facts of the present case also as the landlord plaintiff could have waived his right for a strict compliance of the provisions of Sub-section (5) of Section 13 of the Act and for determination of the amount payable by the tenant, even after deposit or payment thereof by the tenant. But as the landlord plaintiff apparently felt satisfied in the present case with the amount deposited by the tenant and withdrew the same without any demur, it should be presumed that the plaintiff thought that the amount deposited by the tenant was sufficient to cover the amount payable for arrears of rent and interest thereon. In the circumstances narrated above, the plaintiff must be deemed to have waived his right for seeking eviction of the tenant on the ground of defaults in payment of rent. It must be assumed, in the circumstances of this case, that the deposit of Rs. 500/- was made by the tenant in compliance with the provisions of Sub-section (5) of Section 13 of the Act. As no grievance was made by the plaintiff that subsequent rent during the pendency of the suit was not paid month by month the provisions of Sub-section (5) were complied with and a decree for eviction could not have been passed in view of the provisions of Sub-section (7) of Section 13 of the Act.

13. I, therefore, allow the appeal, set aside the judgment and decree passed by the two courts below and dismiss the plaintiff's suit for ejectment. However, in the circumstances of the case, the parties are left to bear their own costs.

