

Bundu Vs. Smt. Hashmat

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Court : Rajasthan

Decided On : Jan-25-1972

Reported in : AIR1972Raj238; 1972()WLN19

Judge : Jagat Narayan, C.J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11 and 13; Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 13(4), 13(5) and 13(6)

Appeal No. : Civil Revn. Appln. No. 377 of 1971

Appellant : Bundu

Respondent : Smt. Hashmat

Advocate for Def. : P.N. Datt, Adv.

Advocate for Pet/Ap. : D.P. Gupta, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Jagat Narayan, C.J.

1. This is a revision application by the defendant against an appellate order of Additional Civil Judge No. 4 Jaipur Civt. striking out his defence under Section 13 (6) of the Raia-sthan Premises (Control of Rent & Eviction) Act. 1950.

2. The suit for ejectment was filed on 21-5-68 inter alia on the ground of default. 31st July 1968 was the first date of hearing. On that date the defendant sought an adjournment for filing the written statement. The case was adjourned to 6-8-68. On that date hp filed his written statement. He also filed an application under Section 13 (4) and (5). On 14-3-69 an order determining the rent and interest payable by the defendant was passed by the court and two months time was allowed to make the deDosit. On 15-12-69 the plaintiff filed an application for striking out the defence of the defendant under Section 13 (6) on the ground that the deposit of the amount determined under Section 13 (5) was not made within two months. This application was rejected on 7-2-70. There were two suits pending between the Darties. Both were for recovery of arrears of rent and for ejectment. but relating to two different shops. The number of the present suit was 208/1969. The monthly rent was Rs. 16/-. The other suit was No. 298/69. The rent of the premises in that suit was Rs. 32/- per month. Bv mistake in the tender the defendant had entered suit No. 298/69 as the suit in which the deposit was being made.

3. The trial Court held that there was no default because of this mistake on the part of the defendant. The plaintiff preferred an appeal which was dismissed on 30-7-70 and that order became final.

4. It may be mentioned here that the only ground taken by the plaintiff, in his application dated 15-12-69 asking the Court to strike out the defence of the defendant was that he had not made the deposit of the amount determined under Section 13 (5) within the time allowed by the court for making it. On 16-2-70 the plaintiff filed another application for striking out the defence of the defendant on the ground that he had neither deposited the amount of rent and interest nor made an application as contemplated under Section 13 (4) on the first date of hearing namelv 31-7-68. This application was dismissed by the trial court on 19-10-70. The plaintiff preferred an appeal which the appellate court allowed and struck out the

defence of the defendant on the ground that he had neither made the deposit nor filed an application as contemplated under Section 13 (4).

5. The contention on behalf of the defendant-applicant in this revision application is that the second application of the plaintiff for striking out the defence of the defendant was barred by the principle of constructive res iudicata. Having heard the learned counsel for the parties I am of the opinion that this contention must be upheld.

6. In *Satvadhvan v. Smt. Deorajin Debi*. AIR 1960 SC 941 it was held that the principle of res iudicata applies also as between two stages in the same litigation to this extent that a court whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings.

7. The plaintiff filed an application on 15-12-69 in which it was alleged that a default was committed by the defendant in making the deposit in accordance with Clauses (4), (5) and (6) of section 13 inasmuch as the amount determined by the court was not deposited within two months as allowed by it. This application was dismissed on 7-2-70. That order operated as res iudicata and the plaintiff was precluded from re-agitating the matter that a default was committed by the defendant which attracted Section 13 (6). In this application the plaintiff could also have taken the ground which he took in the subsequent application dated 16-2-70 and by the principle of constructive res iudicata the trial Court will be deemed to have decided by its order dated 7-2-70 that no non-compliance of Clauses (4) and (5) of Section 13 had been made by the defendant entitling the plaintiff to have his defence struck out under Clause (6). The plaintiff was accordingly estopped from asking the Court to strike out the defence of the defendant under Section 13 (6) after the order dated 7-2-70 on a ground not urged when that order was passed. The plaintiff preferred an appeal against the order dated 7-2-70 which was dismissed on 30-7-70 and this order became final.

8. On behalf of the plaintiff it was contended that the ground taken in the application dated 16-2-70 namely that the defendant committed a default within the meaning of Section 13 (6) as he neither made the deposit nor filed an

application for grant of time for making a deposit as contemplated under Section 13 (4) on the first date of hearing namely 31-7-68 raised a question of jurisdiction of the Court and therefore the principle of *res iudi-cata* was not applicable to it. Reliance was placed on *Mathura Prasad v. Dossibai*, AIR 1971 SC 2355. In my opinion no question relating to the jurisdiction of the Court arises in the present case and the principle of constructive *res judicata* is fully applicable to it.

9. Another contention on behalf of the plaintiff was that in view of the provisions of Sub-sections (4), (5) and (6) of Section 13 the Court was bound to strike out the defence of the defendant *suo motu* whether the plaintiff applied for it or not and the plaintiff could not have waived the benefit accruing to him. Reliance was placed on the decision of a learned single Judge of this Court in *Jodhrai v. Suleman*, 1970 Rai LW 170. It was held in that case that the *Raiasthan Premises (Control of Rent and Eviction) Act* is a special law made for the protection of the tenant from eviction and is thus for the benefit of a section of the public. It will therefore not be incorrect to hold that this statute has been enacted on the ground of public policy. The nature of the obligation imposed under Section 13 (4) is of an imperative nature and the admission of waiver or estoppel would nullify this statutory provision.

10. With all respect I am unable to agree with the view taken in the above case. The Act has no doubt been passed to give protection to tenants, who constitute a weaker section of the society needing such protection. Only such provisions of the Act as given protection to the tenant cannot be allowed to be waived by him. The provisions of the Act which confer benefit on the landlord can be waived by the latter. In this connection I may refer to the decision of the SUPreme Court in *Lachoo Mal v. Radhev Shyam* (1971) 1 SCC 619 = (AIR 1971 SC 2213). In that case the appellant, an old tenant of respondent, entered into an agreement with the latter that he will vacate the shop for one month to enable respondent to construct an upstairs portion for his own use. but that he should resume possession of the shop after the period at the same old rent. He took back possession after the construction. But as respondent refused to take the rent, the appellant deposited the rent under Section 7-C of U. P. (Temporary) Control of Rent and Eviction Act, 1947. The respondent served a notice to quit and later filed a suit for

ejection of the appellant and for arrears of rent. The suit was dismissed as the appellant was entitled to protection under Section 3 of the Act. It was reversed in first appeal and duly confirmed by the High Court in second appeal. The Supreme Court held-

(i) The respondent cannot claim the benefit of Section 1-A of the Act on the plea of new construction after January 1, 1961, as he had waived his personal benefit by the agreement with the appellant. The general principle is that every one has a right to waive and to agree to waive the advantage of a law or 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.

(ii) The said agreement is not unlawful nor does the performance thereof defeat any provision of law under Section 23 of the Indian Contract Act. Section 1-A does not employ a language containing a prohibition against or impose any restriction on a landlord and a tenant entering into an agreement that they would not be governed by that Section,

So far as the Raiasthan Act is concerned Sub-section (1) of Section 13 is prefixed by the words 'notwithstanding anything contained in any law or contract no Court shall pass any order, in favour of a landlord, whether in execution of a decree or otherwise, evicting the tenant so long he is ready and willing to pay rent therefor to the full extent allowable by the Act. unless it is satisfied that one of the grounds given in Clauses (a) to (h) of the sub-section exists,' Sub-sections (4) (5) and (6) are not prefixed by language similar to that used in Sub-section (1).

11. In the result, I allow the revision application and set aside the appellate order of the Additional Civil Judge No. 4. Jaipur City, striking out the defence of the applicant. In the circumstances of the case. I leave the parties to bear their own costs of these proceedings throughout.