

Rajendra Kumar Vs. Jamna Das

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Court : Rajasthan

Decided On : Jan-15-1975

Reported in : 1975(8)WLN15

Judge : J.P. Jain, J.

Appeal No. : S.B. Civil Revision No. 430 of 1973

Appellant : Rajendra Kumar

Respondent : Jamna Das

Advocate for Pet/Ap. : Mr. Bhandari

Disposition : Application allowed

Judgement :

J.P. Jain, J.

1. This is a revision application by defendant-tenant against the order of the District Judge, Jaipur City, dated 6.9.73, whereby it dismissed the petitioner's appeal and confirmed the order of the Munsif (west) Jaipur City striking out the defence of the petitioner against eviction on 18-11-72.

2. Non petitioner Jamna Das instituted a suit on 22-8-68 against the tenant Rajendra Kumar for ejectment and for Rs. 231/- as arrears of rent He also claimed

damages pendent lite and till the date the possession was delivered to the plaintiff at the rate of Rs. 33/- per month. The case of the plaintiff was that the defendant was the tenant vide rent note dated 22-10-1960 of a shop facing south situated in Tripolia Bazar, Jaipur of the plaintiff at a monthly rent of Rs. 33/-. The plaintiff served a quit notice on 18-4-68 determining the tenancy and calling upon the tenant to surrender possession within one month from the date of the receipt of the notice. The ground averred in the notice was that the landlord required the shop for his personal necessity. It was further alleged that the defendant had not paid any rent after 31.12.67 and as such Rs. 231/- were claimed by way of rent from 1-1-61 to 31.7.68.

3. The defendant resisted the suit. He pleaded that the plaintiff did not require the shop bonafide and in fact it was on his part a pressure to increase rent. As regards the non-payment of rent it was contended by the defendant tenant that after 31.12.67 the landlord did not accept the rent so much so that he remitted the rent for four months on 21-5-68 by money order No 2566 but it was refused. According to him another money order No.2317 for six months' rent was sent to the landlord on 8-7-68 but it was likewise refused.

4. The learned trial judge framed five issues on 12-3-69. On 4-12-68 the tenant applied to the court for depositing rent and interest under Section 13(4) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1960, (hereinafter referred to as 'the Act'). It is common ground that the rent for the period from 1.1.68 to 31.12.68 was accepted by the landlord in the court on 20.12.68. By another application dated 26.8.69 the tenant deposited rent for seven months from 1.1.69 to 31.7.69. This is also not in dispute that the defendant appeared for the first time in the court in pursuance of the summons on 17.10.68.

5. On 17.8.72 on behalf of the plaintiff Jamnadas an application was submitted saying that the defendant-tenant had not deposited rent and interest under Section 13(4) of the Act on the first date of hearing i.e. on 17-10-68. It was prayed in that application that the defendant tenant's defence against eviction be struck out under Section 13(6) of the Act. In the written reply submitted on 9.5.72 the tenant contended that the plaintiff's suit is not based on the ground of default and as such

deposit under Section 13(4) of the Act was not ceiled for and therefore the question of striking out the defence against eviction does not arise. In the alternative, it was submitted that since the plaintiff-landlord accepted the rent and interest for a period of 12 months on 20.12.68, the default, if any, was waived by the plaintiff and it is no longer open to him to ask the court to strike out defence against eviction.

6. The learned trial judge without addressing itself to the question as to whether the plaintiff's suit was based on the ground of default appears to have assumed that Section 13(4) was applicable. Subsequent facts are not very much in dispute as the amount was not admittedly deposited on 17-10-68. He, however, found that there was no waiver on the part of the landlord in having accepted the rent on 20.12.1968 of a period of 12 months inasmuch as the rent for subsequent period was not deposited in accordance with the requirements of Section 13(4) of the Act. He accordingly struck out the defence of the tenant against eviction by his order dated 18.11.72. The tenant being aggrieved of this order preferred an appeal. The learned District Judge, Jaipur City, by his order dated 6th September, 73, dismissed the appeal. It is against this order that the tenant has come in revision.

7. Mr. Bhandari learned Counsel for the petitioner, at the outset, argued that the learned trial judge failed to find if the default was one of the grounds of eviction in the present suit. In view of the fact the learned Counsel urged, that the plea was specifically raised in reply dated 9.5.72 and the learned trial judge was quite conscious about it yet he did not address himself to this question. According to his submission, the learned trial Court instead of determining this question, assumed the applicability of Section 13(4) to the case. He invited my attention to the pleading; On the other hand, Mr. Kasliwal, strenuously urged that the suit was based on the ground of default as well. He also referred to the allegations made by the plaintiff in para No 3 of the plaint. My attention was also invited to the two applications made by the defendant-tenant dated 4.12.1968 and 26.8.69. The argument was further re-enforced by referring to the issues and in particular issue No. 2. Lastly Mr. Kasliwal submitted that this question was not raised before the lower appeal. The court and as such it is open to the petitioner to make a submission in this regard in revision.

8. With view to appreciate the rival contentions I would here reproduce paras Nos. 2, 3, 4 and 7 of the plaint verbatim:

2& ;g fd izfroknh u oknh dks mijksDr nqdku dk fdjk;k fnukad 31 ekg 12 lu~ 67 rd dk vnk fd;k gS AvkSj bls ckn dk fdjk;k ckotwn ryc or&dktk; ds vnk ugh fd;k A

3& ;g fd oknh igys dekuh bathfu;fax dkjiskjs'ku t;iqj es bUthfu;j Fkk A oknh dks yxHkx ,d o'kZ iwoZ ukSdjh NksM+uh iM+h o [kqn dh nqdku [kkyh u gksus ls mls fctyh ds leku dk dkjksckj ,d fdjk, 'kqnk nqdku es eksrhyky vVy IM+d t;iqj ij djuk iM+k A ;g nqdku oknh ds dkjksckj fctyh ds leku ds /kU/ks ds fy, mi;qDr ugh gS vkSj u bl nqdku ij cSBdj oknh vPNk /kU/kk dj ldrk gS vkSj oknh dks bl nqdku dk 425 :0 egkokj fdjk;k nsuk iM+rk gS tc fd izfroknh ls nqdku fooknxzLr dk fdjk;k ds 33 :i;k egkokj gh oknh dks feyrk gS A oknh viuk fctyh dk dkjksckj fooknxzLr nqdku es f'kV djuk pkgk gS A 'kgj t;iqj f=iksfy;k cktkj okyh nqdku fctyh ds leku ds O;kikj ds fyos mijksDr fdjk;k 'kqnk nqdku ls tks eksrhyky vVy jksM+ ij fLFkr gS oknh ds fy, dgh T;knk vPNh gS Ablfy, oknh dks vius Loa; ds dkjksckj djus ds fy, fooknxzLr nqdku dh jhtuscy cksukQkbM] ij'kuy uslsfIVh gS vkSj oknh izfroknh ls fdjk;s 'kqnk nqdku eqUntkZen ua0 1 [kkyh djokus dk vf/kdkjh gS A

4& ;g fd oknh us mijksDr fdjk;s 'kqnk nqdku dks [kkyh djokus ds fy, vius ,MoksdsV Jh jkepUnz dklyhoky ds }kjk izfroknh dks ,d jft LVM ,-Mh- ukfVI fnukad 18&4&68 fnyok;k] tks izfroknh dks fnukad 23&4&68 dks fey x;kA bl ukfVI ds }kjk izfroknh dks lwfpr fd;k x;k Fkk fd og ukfVI izkflr ls ,d ekg ij ;k ftl fnu viuh fdjk;snkjh leklr gksuk ekus ml fnu fdjk;k 'kqnk nqdku [kkyh djds oknh dks laHkyk nsos o pk gqvk fdjk;k pqdrh vnk djs A izfroknh us mDr ukfVI izkflr ds ckotwn Hkh u Hkjs fdjk;k vnk fd;k vkSj u fooknxzLr nqdku gh [kkyh djds oknh dks laHkykbZ A

7& ;g fd nkos gktk ds fy, fcuk;s eq[kklher ckcr vnk;xh fdjk;k o gtkZ fnukad 31&1&68 dks o fQj gj ekg dh vkf[kjh rkjh[k dks o ckcr bU[kyk fnukad 23&5&68 dks iSnk gks dj nks'kh nk;j djuk ykfte vk;k A

9. From the plaint it is abundantly dear that the plaintiff sent the quit notice on 18-4-68 when the rent was due to him only la three months end 18 days. This notice was delivered to the tenant on the 23-4-1968. In this notice he was called upon to surrender possession within one month from the receipt of the notice that is by 23-

5-68. The allegation of the plaintiff is that inspite of this notice the tenant did not surrender possession. The para No. 3 he clearly alleged that he wanted the shop for himself as he was thinking of doing his personal business. He stated that his requirement was reasonable and bonafide. It was, however, alleged in para No. 2 referred to above that the defendant had paid rent upto 31-12-67 but the rent has not been paid beyond that period inspite of demand. In para No. 7 the plaintiff made it clear that the cause of action for eviction arose on 23-5-68 This is the date on which one month's time allowed by the notice expired As for the arrears of rent it was stated by him that the cause of action arose on 31-1-68 and on every last day of the following month. From the pleading it is difficult for me to hold that the default was made one of the grounds for eviction. The allegation in para No. 2 which has been stressed upon by Mr. Kasliwal only speak of the non-payment of rent beyond 31-12-67. The plaintiff has claimed relief in the sum of Rs. 231/- as arrears of rent from 1-1-68 to 31-7-68.

10. Mr. Kasliwal learned Counsel to the plaintiff placed reliance on *Zainab Bai and Ors. v. Navayug Chitrapat Co. Ltd* : AIR1969 Bom194 to point out that it is not necessary for a landlord to set out any of the conditions enumerated in Section 13 termed as grounds of ejection in the notice to quit as they are not part to the cause of action. The landlord is supposed to set out the grounds only in the plaint not because they constitute his cause of action but in anticipating of the tenant claiming protection under the Rent Control Act to show that the conditions have arisen which make the tenant liable for eviction In the present case the quit notice was served on the tenant on 23.4.68 on which date the tenant could not have been termed a defaulter within the meaning of Section 13(1)(a) of the Act inasmuch as admittedly the rent had been paid upto 31.12.67. It would be profitable to refer here Section 13(1)(a):

Section 13 - Eviction of tenant - (1) Notwithstanding anything contained in any law or contract, no Court shall pass any decree, or make any order, in favour of a landlord, whether in execution of a decree or otherwise, evicting the tenant so long as he is ready and willing to pay rent therefor to the full extent allowable by this Act, unless it is satisfied.

(a) that the tenant has neither paid nor tendered the amount of rent due from him for six months.

11. The question that arises and which falls for my determination is whether the plaintiff has taken the default as one of the grounds for seeking the eviction of the tenant. From the perusal of the paragraphs referred to above it is crystal clear that the grounds of eviction stated by the plaintiff is contained in para No. 4 and it is only the personal necessity. This is further confirmed by the allegation in para No. 7. Para No. 2 only contains an allegation that the rent had been paid beyond 31-12-57. This allegation alone cannot be read as ground for eviction. I am not required to decide here as to whether the ground has to be mentioned in the quit notice, For the purpose of this case The Bombay decision does not come in conflict with the decision that I am arriving at.

12. Now I will refer to the applications of the defendant-tenant dated 26-1-69. According to Mr. Kasliwal the tenant has admitted in these applications that the suit was based on default. In para 2 of the application dated 4.12.68 it is alleged that the suit is also based on for non payment of rent. The defendant wanted to pay the rent and on his refusal to take the rent, the money orders were sent but the plaintiff did not accept them as well. Never the less the tenant expressed his desire to deposit the rent with interest under Section 13(4) of the Act. In the application dated 26-8-69 the tenant appeals to have made similar allegation stating further that the rent upto 31.12.68 has been accepted by the plaintiff and he desired to deposit rent for seven months from 1-1-69 to 31-7-69. There is no manner of doubt that the plaintiff's suit was also for the recovery of rent from 1.1.68 to 31.7.68 as per allegations contained in para 2 and 7 of the plaint The suit was, therefore, definitely for nonpayment of rent as well. Construing the two applications referred to above it cannot be said that this tenant admitted that the plaintiff's suit was based to the ground of default as will. That apart, this would not be sufficient to read a ground which did not actually exist in the plaintiff's pleadings. A plaintiff coming to the court with a specific ground cannot rely on facts which are alleged or understood b. the defendent and the cue which has not been pleaded by the plaintiff cannot be allowed to proved by the plaintiff. This is settled law that the decision of case cannot be based on ground outside the pleading of

the parties and it is a case pleaded that has to be found. Without an amendment of the plaint the court is not entitled to grant relief on a ground which has not been pleaded. Their Lordships of the Supreme Court held in *Salig Ram v. Munshi Ram and Anr.* : [1961]1SCR951 that plaintiff basing his case on custom must actually plead custom in his plaint before he can be allowed to press custom. In *Allam Gangadhara Rao v. Gollapaili Gangarao* : AIR 1969 AP291 their Lordships held that the suit based on the cause of action cannot be decreed on another cause of action. I have shown above that in para No. 7 of the plaint the landlord clearly stated the cause of action for eviction having arisen on 23-5-68 on which date one month's time allowed by the notice expired. The notice in express terms stated the ground of personal necessity.

13. The contention of Mr. Kasliwal that an issue has been framed by the Court and it shows that the parties were quite alive to the case of each other, also deserves notice. Issue No. 2 to which my attention has been drawn in particular is reproduced below:

vk;k izfroknh us rkjh[k 31&12&67 ds ckn dk fdjk;k euhvkMZj ls Hkstk Fkk tks oknh us ugh fy;k vr% fMQk YV ugh gq, gS A

14. In answer to the allegation of para No. 2 of the plaint the tenant alleged that the landlord himself did not take the rent after 31-12-67. It was further averred by him that he remitted the money order of four months rent on 21-5-68 but it was not accepted by the plaintiff. He again sent a money order representing rent for six months on 8-7-68 but it was likewise refused by the landlord on 10-7-68. On this basis the defendant contended that the plaintiff does not accept the rent and he is creating circumstance to show that the tenant is defaulter in making payment. The plaintiff claimed a decree for Rs. 231/- as arrears of rent for the period from 1-1-63 to 31-7-68 on the allegation that the defendant did not pay the rent in spite of repeated demands. This allegation was repudiated as referred to above and these pleadings were responsible for the framing of the issue No. 2. The liability to interest and Costs very much depend upon the correctness of the plaintiff's allegation. By no stretch of imagination this issue can be read as an issue disclosing the case of the eviction to be based on default. If the case of the plaintiff

had been on the basis of default the proper issue would have been in terms of the requirement of Section 13(1)(a) referred to above Section 13 (4) reads as follows:

Section 13. Eviction of tenant. (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 day 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 is made together with interest on such amount calculated at the rate of six percent per annum from the date when any such amount was payable upto 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.

15. There is no controversy between the learned Counsel that Section 13(4) will be applicable only when a suit for eviction is based on the ground set forth in Clause (f) to Sub-section (1) of Section 13. The requirement of Section 13(4) has been held to be mandatory. It means that if the case of the plaintiff is based on default as contained in Section 13(1)(a) and the tenant wants to avail of the protection available under Section 13(4), he must deposit rent with interest on the first date of hearing, if there is no contest with regard to the rate of rent and the amount of rent payable by the tenant. It has been so held by a bench decision of this Court in *Salig Ram v. Narottam Lal* 1971 RLW 555, In the event the deposit is not made as required by Section 13(4) of the Act, the penalty prescribed under Section 13(6) of the Act necessarily follows. Thus it is clear that violation of the provisions of Section 13(4) means a penalty as provided under Section 13 (6) of the Act. The fundamental principle of construction is that when a statute creates an offence or imposes a penalty the law must be construed strictly and for that matter the pleadings of the parties must also be construed strictly. I have discussed the plaint and I am clear in my mind that the plaintiff's suit is based only on the ground of personal necessity and not on the basis of default as contemplated by Section 13(1)(a) of the Act. Both the judges of the court below

have failed to determine the question if the suit was based on the ground of default. Without deciding the controversy it was assumed by each one of them that the suit was based on default and Section 13 (4) was applicable.

16. Here I must refer to another contention of Mr. Kasliwal. He has argued that this question was first raised in the first appellate Court and since the tenant did not agitate in the court of appeal I should not agitate in the court of appeal I should not permit him to raise this question in this Court in revision. He has referred to certain decisions. I must state here that the plaintiff made an application asking the court to strike out defence on 17-3-72. The tenant opposed this application and he stated in his reply dated 9-5-72 that the plaintiff's suit was not based on default. He thus raised the specific plea in his reply. It has been so mentioned in the judgment of the learned trial Judge but it is unfortunate that the learned Munsif did not address himself to this question and only assumed that Section 13(4) was applicable. The matter went in appeal. Now Mr. Kasliwal submits that this question was not raised before learned appellate Court. There is no manner of doubt that the question raised by the tenant goes to the very root of the case and it affects the jurisdiction of the court which decided to strike out the defence against eviction. This was the real controversy between the parties. It cannot, moreover, be said that the plea taken up by the tenant was given up. The order passed by the learned District Judge is equally sketchy and was for him to have seen if Section 13(4) was at all applicable. I, therefore, find no difficulty to permit Mr. Bhandari to argue that the plaintiff's suit was not based on the ground of default even if it not said that it was argued before the learned lower appellate court. By striking out the defence against eviction the learned courts below have exercised jurisdiction which did not vest in them. As a matter of fact, while deciding the application of the plaintiff dated 17-3-72 it was for the plaintiff to have shown that his suit was based on default and Section 13(4) was applicable in the circumstances of the case. But it is unfortunate that none of the courts below tried to resolve this question and instead, placing reliance on the admitted facts of the case that is that the deposit was not made on the first date of bearing, struck out the defence of the tenant against eviction.

17. The second alternative argument raised by Mr. Bhandari that the landlord waived his right by having accepted the rent need not be answered, in view of my finding on the first question.

18. In the result the revision application is allowed. The order passed by the Munsif (West), Jaipur City dated 18.11.72 and that of the District Judge, Jaipur City 6.9.1973 are set aside. The case will go back to the trial judge who will proceed further in accordance with law. In the circumstances of the case, the parties will bear their own costs of this revision and the appeal in the Court of District Judge.

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