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Court : Rajasthan

Decided On : Nov-25-1982

Reported in : 1982WLN644

Judge : M.C. Jain, J.

Appeal No. : S.B. Civil Revision No. 424/1982

Appellant : Bhanwar Lal

Respondent : Mithan Lal

Advocate for Pet/Ap. : Shri. S.L. Mardia

Disposition : Petition dismissed

Judgement :

M.C. Jain, J.

1. This revision is directed against the order of the learned Additional District Judge, Sirohi, dated 23.9. 1982, whereby he allowed the preliminary objection relating the maintainability of the appeal and dismissed the petitioner's appeal on the ground that the appeal is not maintainable under Section 22 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (here in after referred to as 'the Act').'

2. A few material facts may be noticed. A suit for arrears of rent and ejectment was filed by Mst. Dhapu, Ashok Kumar and Mithanlal against the defendant-petitioner in the Court of Munsif, Abu Road, on the grounds of default and reasonable bonafide need. It was alleged in the plaint that the disputed premises, namely the shop, is required for Mst. Dhapu, who will start a small 'kirana' shop. A plea was taken in the written statement that the shop fell to the share of the plaintiff Mithanlal and Mithanlal is the owner of the shop since 1976. Thereafter, an application for amendment of the plaint was moved. The amendment sought was deletion of the names of Dhapu and Ashok Kumar as plaintiffs and that the shop is required for reasonable and bonafide need of Mithanlal for running a dispensary. The learned Munsif allowed the amendment on 9.3.1981, although the amendment application was contested by the petitioner. Aggrieved by the order of the learned Munsif, the petitioner preferred an appeal under Section 22 of the Act before the learned Additional District Judge, Sirohi, and on a preliminary objection regarding the maintainability of the appeal, when raised before him, he upheld the same and dismissed the appeal. He observed that only the orders passed under the Act are appealable under Sec 22 of the Act and he specified certain orders, namely, order under Section 6, 10, 13(4), 15, 19-A, 20 etc of the Act. Dissatisfied with the order of the learned Addl. District Judge, this revision petition has been filed.

3. I have heard Shri S.L. Mardia, learned Counsel for the petitioner and perused the impugned order of the learned Additional District Judge.

4. Shri S.L. Mardia submitted that the eviction was sought by the plaintiff under Section 13(1)(h) of the Act and in the original plaint, the requirement was shown to be that of plaintiff Mst. Dhapu. This ground is now changed by seeking an amendment. The ground is allowed to be changed by amendment, then such an order can only be passed under Section 13(1) (h), so the order passed by the Munsif, fell under Section 13 (1)(h), and as such, the same is appealable under Section 22 of the Act. He submitted that such a relief cannot be granted under the Code of Civil Procedure. Relief of eviction can only be granted under Section 13(1)(h), so the order passed on an application for amendment, would be covered under Section 13 (1)(h). He supported his contention by placing reliance on a decision of this Court in Chandulal v. Smt. Gulab 1962 RLW 692.

5. In my opinion, the contention is completely devoid of any force. The contention, as above, is recorded simply to be rejected. The Act does not make any provision for seeking any amendment in the pleadings by the parties. Any application for amendment of the pleadings would lie under Or. 6, Rule 17. C.P.C.. and an order passed thereon would be an order passed under the Code of Civil Procedure and the only remedy in respect of such an order is by way of revision under Section 115 of the Code of Civil Procedure to this Court. Simply because the need of one of the plaintiffs is substituted by the need of another plaintiff by seeking an amendment, it cannot be said that the order of such a nature, would be an order passed under Section 13 (1)(h) of the Act, so as to make it appealable under Section 22 of the Act. It may be stated that so far as the trial of the suit is concerned on any of the grounds mentioned in Section 13 of the Act, the trial will proceed under the provisions of the Code of Civil Procedure and an amendment of pleadings in such a suit will also be governed by the provisions contained in the Code of Civil Procedure. The case *Chandulal v. Smt. Gulab* (Supra), relied upon by Shri Mardia has no application to the present case. In that case the order was passed under Section 13(5) of the Act, whereby the defence of the defendant was struck off and an appeal was preferred against that order, but the learned District Judge expressed an opinion that no appeal lay against that order. This view of the learned District Judge was reversed by this Court and it was held that the order of the Civil Judge was one passed under Section 13 (5) of the Act, which was appealable under Section 22 of the Act. Mr. Mardia, relied on this observation, made by Jagat Narayan, J., as he then, was, that there is no power in the court under the Code of Civil Procedure to direct the defendant to deposit rent in a suit for ejectment and for recovery of arrears of rent or to strike out his defence on his failure to do so. This power is only given to the court under Section 13 (5) of the Act. On the basis of this observation, Mr. Mardia urged that there is no power under the Civil Procedure Code where any relief on the basis of bonafide personal need can be granted to the plaintiff and such a power vests in the court only under Section 13 (5) (h) of the Act, so it should be taken that the order is passed under Section 13 (1) (h) of the Act. I agree with the observation referred to above. So far as the power of directing payment of rent or to strike out the defence on account of non-payment of rent is concerned, such a power does not vest in the court under

the Code of Civil Procedure, but as regards the power of allowing amendment is concerned, such a power does vest in the Code of Civil Procedure, as there is a specific provision in the Code of Civil Procedure for allowing amendment in the pleadings of the parties. The amendment may be sought in relation to any of the grounds mentioned in Section 13 of the Act. Thus, the contention advanced before me in my opinion, is absolutely unfounded and deserves to be rejected.

6. No other point has been pressed before me.

7. In the result, this revision petition has no force, so it is hereby dismissed summarily.

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