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Court : Rajasthan

Decided On : Jul-21-1976

Reported in : 1976WLN(UC)244

Judge : S.N. Modi, J.

Appeal No. : S.B. Civil Second Appeal No. 426 of 1975

Appellant : Satyapal

Respondent : Sarad Kumar

Judgement :

S.N. Modi, J.

1. This is a second appeal by the defendants tenant in a suit for eviction and recovery of arrears of rent and mesne profits against the appellate judgment of Civil Judge, Kota dated 11.9.75. The plaintiff landlord sought eviction of the tenant on two grounds. Firstly that the defendant committed default in payment of rent and secondly that the landlord required the premises reasonably and bonafide for his own use and occupation. The trial court upheld both these grounds and decreed the suit. The appellate court held that the plaintiff was not able to prove that he required the premises reasonably and bonafide for his own use and occupation. The appellate court however, upheld the decree on the ground of default in payment of rent.

2. The defendant tenant has now come up in second appeal to this Court. After the judgment of the appellate court, the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 was amended by Ordinance No. 26/75 which came into force on 29 9 75 Along with the memo of appeal, the appellant moved an application udder Section 13-A(b) of the Amending Ordinance of 1975 with the prayer that this Court may determine the arrears of rent, interest thereon and costs of the suit and grant time to the appellant to deposit the amount so determined. The Amending Ordinance of 1975 which was later on substituted by the Amending Act 1976 also brought another change in the existing law. In Section 14(2) of the Amending Act of 1976 it was laid down that no decree for eviction on the ground of reasonable and bonafide necessity shall be passed unless the Court decided the question of comparative hardship. In this appeal it is strenuously contended on behalf of the appellant that the averment in the plaint regarding reasonable and bonafide necessity do not fall within the our view of Section 13(1)(h) of the Rajasthan Premises (Control of Rent and Eviction) Act. It is further contended that even if the case falls within the purview of 13(1)(b), the court cannot pass any decree on the ground of reasonable and bonafide necessity unless the question of comparative hardship has been gone into by the court. As regards 'default in payment of rent the contention of the appellant is that in case the tenant pays the amount determined by the court under Section 13-A no decree can be passed for eviction on that ground. On the other hand it is contended on behalf of the respondent that since the defendant had already taken benefit of the provisions of Section 13 A in a previous suit for eviction, he cannot claim any benefit of the amended provisions of Section 13A. On the ground of reasonable and bonafide necessity it is contended that the averments in the plaint fall within the purview of Section 13(1)(h) and as such the trial court rightly decreed the suit on that ground. At this stag; I do not propose to decide the rival contentions agitated before ma by the learned counsel for the parties. In view of the commencement of the Amending Act of 1976 it is ad noted that no decree cm be passed on the ground of reasonable and bonafide necessity unless the question of comparative hardship is decided. I accordingly frame the following issue:

Whether having regard to all the circumstances of the case including the question whether any reasonable accommodation is available to the landlord or the tenant,

greater hardship would be caused by passing the decree than by refusing to pass it

3. The above issue is referred for trial to the lower appellate court with the direction that the said court shall record additional evidence of the parties and shall return the evidence to this Court together with its finding thereon within a period of 3 months. The evidence already on the record shall be read in evidence in deciding the aforesaid issue. I also send the application under section ISA presented by the appellant for determination of the rent as provided in Section 13A(b) of the Amending Ordinance of 1975 or the Amendment Act of 1976. Two parties are directed to appear before the lower appellant court on 30.9.1976. They are further directed to submit the list of witnesses to be examined by them on the issue framed by this Court on or before 30.8.76. The parties are also directed to submit statement of account showing arrears of rent, interest thereon and costs of ail the three courts on or before 39.8.76. The record along with the application under Section 13-A shall be sent to the lower appellate court immediately.

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