

Umedram Vs. Rameshwar Prasad

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Court : Rajasthan

Decided On : Nov-28-1972

Reported in : 1972WLN873

Judge : Jagat Narayan, C.J.

Appeal No. : S.B. Civil Revision No. 657 of 1969

Appellant : Umedram

Respondent : Rameshwar Prasad

Judgement :

Jagat Narayan, C.J.

1. This is a revision application by the plaintiff against an order of the District Judge, Pali.

2. The plaintiff let out the shop in suit to the defendant on 24-6-1949. He brought the present suit for eviction on the allegation that the shop was newly constructed and the construction was completed on 1.6-1963 so that the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 were not applicable for a period of seven years under Section 2(e). Under the terms of the contractual tenancy the defendant had agreed to vacate the premises whenever he was asked to do so. However, plaintiff served a notice terminating the tenancy with effect from 24 9 1967.

3. The defendant denied the knowledge of the fact whether the shop was newly constructed and whether its construction was completed on 1-6-1963. He also denied that the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 were not applicable. However, the plaint was so framed that even if the Act was applicable, the suit would not fail if the plaintiff succeeded in proving the grounds. The grounds on which the eviction of the defendant was sought were as follows:

1. The defendant committed default in payment of rent, from 24-6-1966 to the date of suit, namely, 4-10-1967, and

2. that the plaintiff required the premises for the use of himself and his family bonafide.

4. 7-11-1967 was the first date of hearing. Assuming that the Act was applicable, the defendant filed an application on that date for determination of the amount payable under Section 13(5) and for granting him time to pay it. On 27-4-1969 the trial court determined rent for 23 months at the rate of Rs. 22/- was payable along with interest at 6% and gave 15 days time to the defendant to deposit it. He did not deposit the amount but filed an appeal against that order. During the pendency of the appeal, the defence of the defendant was struck out on 4-7-69. On 28.9.69 the District Judge accepted the appeal, set aside the order and remanded the case with the direction that the trial court should determine whether the Act was applicable to the case. Against that order the present revision application was failed on 27-10-1967. It was admitted on 26-11-1969 and it was ordered that the record should be sent for and the case listed for hearing as soon as the record was received and the opposite party was served. It has, however, come up for hearing now. 7 years have now expired since 1-6-1963 and according to the decision of a learned single Judge of this Court in *Narayan Chand v. Krishna Kumar* 1967 RLW 512 the Act has now become applicable to this case.

5. It has now become necessary for the trial Court to determine whether the Act was applicable to this case on the first date of hearing, namely, 7-11-1967. If the Act was so applicable on that date then subSections (4) to (7) of Section 13 of the Act will apply to this case and the parties will be entitled to the benefit or penalty

prescribed therein. If, however, the Act was not applicable to this case on 7-11-1967 and became applicable afterwards then only Section 13(1) would apply to this case and subSection (4) to (7) of Section 13 will not apply.

6. I, accordingly, decide the revision application as indicated above and send back the case to the trial Court for decision in accordance with law in the light of the observations made above.

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