

Kripal Singh Vs. Bhanwarlal and ors.

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Court : Rajasthan

Decided On : Oct-08-1976

Reported in : 1976WLN(UC)410

Judge : S.N. Modi, J.

Appeal No. : S.B. Civil Regular Second Appeal No. 112 of 1976

Appellant : Kripal Singh

Respondent : Bhanwarlal and ors.

Disposition : Appeal dismissed

Judgement :

S.N. Modi, J.

1. This is a second appeal by the defendant-tenant against the judgment and decree passed by the Civil Judge, Bhilwara, dated March 27, 1976.

2. The relevant facts giving rise to this appeal are that two shops described in paragraph No. 1 of the plaint were let out to the appellant by the plaintiff respondents on a monthly rent of Rs. 14/- on January 1, 1966. After terminating the tenancy, the respondents filed the suit, out of which this appeal has arisen, for recovery of arrears of rent and damages amounting to Rs. 273/- and also sought eviction of the appellant on the ground of default of payment of rent under Section

13(1)(a) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 hereinafter referred to as 'the Act'. It was pleaded in the plaint that prior to the present suit, a suit for eviction under Section 13(1)(a) of the Act was filed but that suit was dismissed on appellant's depositing the arrears of rent etc. on the first date of hearing under Section 13(4) of the Act.

3. Both the courts below have come to the conclusion that in the previous suit filed by the respondent, the appellant took the benefit of the provisions of Sub-section (4) of Section 13 of the Act. The court below have further held that the appellant thereafter again committed default to payment of rent and as such he is liable to be evicted. Both the courts below, therefore decreed the suit.

4. In the lower appellate court it was admitted on behalf of the appellant that the appellant was defaulter within the meaning of Section 13(1)(a) of the Act. The only contention agitated before the lower appellate court was that the appellant had not taken benefit of the provisions of Section 13(4) of the Act in the previous suit. The lower appellate court rejected the above contention on the basis of the judgment in the previous suit dated February 17, 1972 marked as Ex. 2. It runs as under:

odqyk; Qjhdsu mi0 oknh ;g nkok dsoy fdjk;k vnk djus es fMQk YV djus ds vk/kkj ij yk;k FkkA izfroknu us p

~~5. The above judgment clearly shows that the appellant, in the previous suit, took the benefit of the provisions of Section 13(4) of the Act and that is why that suit, which was based on default of payment of rent, was dismissed. As already pointed out above, there is no dispute that the defendant has committed default in payment of rent within the meaning of Section 13(1)(a) of the Act.~~

~~6. Sub-section (6) of Section 13 of the Act, as amended by the Amending Act of 1976, read as under-~~

~~(6) If a tenant makes deposit or payment as required by Sub-section (4) no decree for eviction on the ground specified in Clause (a) of Sub-section (1) shall be passed by the court against him:~~

~~Provided that a tenant shall not be entitled to any relief under this sub section, if having obtained such benefit or benefit under Section 13-A in respect of any such accommodation, if he again makes a default in the payment of rent of that accommodation for six months.~~

~~Since the appellant had previously taken benefit of the provisions of Sub-section (4) of Section 13 of the Act and had thereafter again admittedly committed default in the payment of rent for more than six months, he was rightly held not entitled to any benefit in view of the proviso to Section 13(6) of the Amending Act.~~

~~7. The learned Counsel for the appellant drew my attention to the written statement Ex. A1 filed in the previous suit by the appellant. In paragraph 11 of Ex. A1, it was pleaded that a sum of Rs. 112/- was deposited by the appellant under Section 19A of the Act in case No. 9 of 1970. The learned Counsel for the appellant was not able to show whether this averment is correct. He was also not able to show on what date the sum of Rs. 112/- was deposited. It may be that the sum of Rs. 112/- was deposited by the appellant after the respondents had instituted the previous suit. Even assuming that the appellant had deposited Rs. 112/- under Section 19A of the Act, he did so after having committed default in payment of rent for more than six months. The written statement Ex. A1, In the circumstances is of no assistance to the appellant.~~

~~8. the learned Counsel for the appellant also attempted to show that the admission about the default in payment of rent in the present suit made in the lower appellate court it by the learned Counsel for the appellant was wrong but he failed to substantiate it.~~

~~9. There is no force in this appeal and it is dismissed with costs.~~

~~10. The learned Counsel for the appellant prays for grant of leave to appeal to a Division Bench, which is refused.~~