

Suraj Mal Vs. Ganghir Mal

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Court : Rajasthan

Decided On : Apr-30-2003

Reported in : RLW2003(4)Raj2648; 2003(3)WLC211

Judge : Harbans Lal, J.

Acts : Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 13(4); Code of Civil Procedure (CPC) - Sections 151; [Limitation Act, 1963](#) - Sections 5

Appeal No. : S.B. Civil Revision Petition No. 236 of 2003

Appellant : Suraj Mal

Respondent : Ganghir Mal

Advocate for Def. : R.K. Agrawal, Adv.

Advocate for Pet/Ap. : Anil Mehta, Adv.

Disposition : Revision petition dismissed

Judgement :

Harbans Lal, J.

1. The instant civil revision petition Under Section 115 C.P.C. is directed against the order dated 29.5.2002 passed by the learned District Judge, Tonk in appeal

No. 25/2001 Under Section 22 of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (here-in-after referred to in short 'the Act') whereby the appeal has been dismissed and the order dated 28.4.2001 passed by learned Civil Judge (JD) Tonk on the applications Under Section 13(4) of the Act and Under Section 5 of the Indian Limitation Act have been rejected and the defence of petitioner-defendant has been struck out.

2. The relevant facts, in short are that non-petitioner- plaintiff instituted a suit on 28.8.1996 in the trial court for eviction on twin grounds of default and bonafide reasonable personal necessity. Petitioner-defendant contested the suit by filing written statement and denying the averments made in the plaint. As the suit was also filed on the ground of default Under Section 13(l)(a) of the Act, the trial Court determined the provisional rent on 10.2.1999. But, petitioner defendant failed to deposit the provisional rent within the period allowed by the Court. He then moved an application Under Section 151 CPC r/w Section 13(4) of the Act and also moved an application Under Section 5 of the Indian Limitation Act for condoning the delay in making the payment of provisional rent which was after hearing the parties disallowed and the defence of defendant against eviction was also struck out vide order dated 28.4.2001. The appeal filed against the said order was also dismissed vide impugned order and the order of the trial Court was affirmed. Hence, this revision.

3. I have heard learned counsel for the parties and have also perused the orders of the courts below.

4. In view of the authoritative pronouncement of the Hon'ble Apex Court in Nasiruddin and Ors. v. Sita Ram Agrawal (1), Section 5 of the [Limitation Act, 1963](#) does not apply so as to condone the delay of more than the period prescribed therein and the courts below have, therefore, rightly disallowed the application of petitioner-defendant for condonation of delay in making payment of provisional rent and consequently striking out his defence against eviction. Therefore, no interference in the impugned orders is warranted and called for.

5. In this view of the matter, this revision petition deserves to be and is hereby dismissed.

