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Court : Rajasthan

Decided On : Aug-15-1982

Reported in : 1982WLN(UC)350

Judge : Dwarka Prasad Gupta, J.

Appeal No. : S.B. Civil Second Appeal No. 71/82

Appellant : Rama Kishan

Respondent : Umedmal

Disposition : Appeal allowed

Judgement :

Dwarka Prasad Gupta, J.

1. The only argument advanced by the learned Counsel of the appellant in this appeal is that as the outstanding amount of rent had already been deposited by the tenant appellant in the court under Section 19A of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 hereinafter to be referred to as 'the Act') prior to the institution of the suit, no decree for payment of the said amount of arrears of rent could have been passed against the appellant.

2. It is not in dispute that a sum of Rs. 648/- in respect of rent for the period of 36 months @ Rs. 18/- per month was claimed in the suit. This amount of rent related

to 25.1.75 to 24.1.78. It is also not in dispute that the aforesaid amount of Rs. 648/- towards the arrears of rent was deposited by the defendant tenant in the court under Section 19A of the Act on different dates. It is also not in controversy now between the parties that the amount of rent for the aforesaid period was neither paid or deposited by the tenant appellant as and when the same fell due nor the deposit was made in accordance with the provisions of Section 19A(3)(c). Therefore, it was rightly held by the two courts below that the defendant tenant had committed defaults in payment of rent for a period of more than six months. However as the amount of arrears of rent had already been deposited in the court and as such at the time of determination of the amount payable under Section 13(3) of the Act. Adjustment was allowed to the tenant for the said sum of Rs. 648/- but at the time of final decision of the suit the courts below proceeded to pass a decree against the defendant tenant for the said sum of Rs 648/- in respect of arrears of rent. As already pointed out above, the said sum of Rs 648/- had been deposited by the defendant tenant in the court even prior to the institution of the suit under Section 19A though not within the time specified in Clause (c) of Section 19A(3) read with Section 19B. However once the amount of arrears of rent has already been deposited by the tenant under Section 19A in the court for payment to the landlord, no decree for the said amount should have been passed against the tenant in the suit. Although the courts below allowed adjustment of the said amount of Rs. 648/- while passing the order under Section 13(3) of the Act and also allowed the defendant tenant relief under Section 13 (6) by dismissing the suit for eviction taking into consideration is the said deposit of arrears of rent under Section 19A, yet the courts below proceeded to pass the decree for the recovery of the very same amount against the defendant tenant. Once the amount of Rs 648/- had been deposited by the tenant under Section 19A even beyond the prescribed time, the land lord could have withdrawn the said amount from the court and in the view of the matter a decree for recovery of the amount of Rs. 648/- from the defendant tenant should not have been passed. On the other hand, the defendant tenant should have been allowed adjustment of the said amount of Rs. 648/- which had already been deposited by him under Section 19A of the Act, while passing the decree for the amount of arrears of rent in the suit. As no other amount towards rent was due except the aforesaid amount of Rs. 648/- which had

already been deposited by the defendant tenant under Section 19A, the plaintiff's suit for recovery of rent should also have been dismissed. Of course, the defendant might be a defaulter in payment of rent for a period of more than 6 months but as benefit was allowed to him of the provisions of Section 13(3), the suit for eviction was rightly dismissed under Section 13(6), of the Act. The amount of arrears of rent having already been deposited by the tenant even prior to the institution of the suit, there was nothing due against him by way of rent when the suit was filed, and as such there should have been no decree for arrears of rent but the plaintiff's suit should have been dismissed not only for eviction but also for recovery of arrears of rent.

3. In the result the appeals is allowed the decree passed by the two courts below is set aside and the plaintiff's suit is dismissed. The parties are directed to bear their own costs in all the courts.

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