

Devi Das Vs. Narain Das

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Court : Rajasthan

Decided On : Aug-01-1996

Reported in : 1996(3)WLC529; 1996(2)WLN16

Judge : Arun Madan, J.

Appeal No. : S.B. Civil Misc. Appeal No. 542 of 1996

Appellant : Devi Das

Respondent : Narain Das

Disposition : Appeal dismissed

Judgement :

Arun Madan, J.

1. This appeal has been preferred against the order dated 22.5.96 passed by the learned Addl. District Judge No. 4, Jaipur City, Jaipur whereby the appellate court upheld the order dated 22.5.96 of the trial court determining the provisional rent of the property in dispute at the rate of Rs. 1650/-per month and also the arrears of rent for the period from 1.1.93 to 30.4.96 amounting to Rs. 66,000/- pending the hearing and final disposal of the appeal. The appellate Court had also directed the appellant to deposit the aforesaid amount towards provisional rent as well as the arrears for the aforesaid period (i.e. for 40 months) and the interest of Rs. 5,909/-

on the aforesaid amount in all amounting to Rs. 71,909/-. The appellant was further directed to deposit the said amount within 15 days of the said order in the Bank account of the respondent or pay in cash to him or deposit the same with the Court. He was also directed to deposit the further rent at the same rate by 15th of each succeeding month. Aggrieved by the said order, the appellant has preferred this appeal. The appellant has assailed the impugned order on the ground that the primary evidence has not been taken into account as required by Section 13(3) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (for short 'the Act'). The appellant has further contended that the trial court had acted in excess of jurisdiction in determining the provisional rent and as such the order of the appellate court is liable to be quashed and set aside. The appellant has further contended that he has not been given any opportunity of cross-examination of the witnesses who had deposed on affidavit in favour of the plaintiff-respondent wherein he had stated that he had paid rent in respect of the suit premises at the rate of Rs. 1250/- per month. The appellant has also contended that the rent was sent by money orders for 15 months upto November, 1994 but the money order was not accepted by the landlord and instead he had filed a suit for rent and eviction against the appellant. In the memo of appeal, it has been further contended by the learned Counsel for the appellant that the secondary evidence relating to the business being run by the respondent i.e. Income-tax ledger and the documents of House-tax from the municipal records were also not examined and considered by the learned appellate court for determining the rent at the rate of Rs. 1650/-per month for the disputed period. The appellant has further assailed the impugned order for the reason that the trial court had erroneously placed reliance upon the affidavit of sole witness Shri Kishan Chand who was the previous tenant of the landlord and had been residing in the premises for the last 7 years and was paying the rent of Rs. 1250/-per month since 1983 to 1988, hence the case of the appellant has been seriously prejudiced since the appellate court has not given any opportunity to the appellant to lead any secondary evidence on the record.

2. On the other hand, learned Counsel for the respondent has controverted the contentions advanced by the learned Counsel for the appellant and has placed reliance upon the judgment of this Court in the matter of Smt. Nirupama Ben v.

Devat Singh reported in wherein the similar question had arisen for consideration of this Court. This was a case of oral tenancy and there was no written agreement or the rent receipt executed by the parties. The dispute had arisen regarding the rate of rent. This Court held that in such like cases, while fixing the provisional rent under Section 13(3) of the Act, there is a mandatory duty cast upon the Court to determine the provisional rent if a suit for eviction is based on any of the grounds set forth under Section 13 of the Act. The Court should calculate the rate of rent at which it was last paid or was payable for the period for which the tenant had made the default. This determination of rent in Sub-section (3) of Section 13 of the Act is provisional subject to final adjustment, correction and modifications subsequently when the suit is finally disposed of and the object of the said provision is to afford protection to the tenant and give him one more opportunity to make the payment of arrears of rent.

3. In my considered opinion the object of the legislature in introducing the aforesaid provision in the Act is only to help those tenants who are bonafide in their approach and are placed in helpless situation but certainly not to give any indulgence to the tenants who want to make misuse of the said provision by defaulting in payment of rent as provisionally determined by the court and subsequently raise dispute with a view to over-reach the process of law. This view has also further been fortified by subsequent judgments, of this Court in the matter of Bhanwar Singh v. Lalit Kumar reported in 1991(2) RLR 595, wherein this Court held that determination of provisional rent under Section 13(3) of the Act is subject to final determination under Sub-section (7) of Section 13 of the Act. This Court further held that it was the admitted case of parties that tenancy was oral. Neither any rent-note nor any lease-deed was executed by the defendant in favour of the plaintiff and hence the determination of the amount claimed in the suit was only provisional and subject to final determination as above.

4. I have heard the learned Counsel for the parties at length and also perused the summoned record. Admittedly, there is no rent-note executed between the parties nor any rent receipt has been placed on the record by the appellant.

5. In my opinion in absence of the preliminary evidence the trial court before fixing the provisional rent under Section 13(3) of the Act has to take into consideration the prevalent rent in the locality in respect of the identical premises and to also consider the last rent drawn by the landlord from the previous tenant in the suit premises. In this respect Kishan Chand who was previous tenant had specifically deposed in his affidavit that he was paying rent at the rate of Rs. 1250/- per month from 1983 to 1988 and in my view the trial court is absolutely justified in placing reliance upon the said affidavit by fixing the provisional rent at the rate of Rs. 1650/- per month and hence no fault can be found with the order of the trial court. In any event the appellant will have full opportunity to cross-examine the said witness including any other evidence which may be adduced by the respondent as well as the evidence in rebuttal.

6. Instead of complying with the impugned order of the learned trial court which was confirmed in appeal by the appellate court, the appellant has chosen to violate the same by not depositing the arrears of rent as so determined by the appellate court in terms of the order dated 22.5.96 as aforesaid. I am further of the view that the provisions envisaged under Section 13(3) of the Act are more stringent if not complied as violation of the same would result in striking of the defence against eviction under Section 13(5) of the Act which is a natural consequence of such violation and there is no scope for relaxation under the Act.

7. As per Section 13(4) of the Act, if the tenant fails to pay or deposit the provisional rent as fixed by the Court then in appropriate cases the time can be extended by the Court for a period not exceeding 3 months from the date of the order. In this case the period of 3 months would be expiring on 20th August, 1996. Keeping in view the fact that the appellant has already deposited a sum of Rs. 20,000/- with the trial court in compliance with the order of this Court dated 1.7.96 and has also shown proof of the deposit, which shall be adjusted towards remaining amount due to the appellant, the appellant is directed to deposit the remaining amount of provisional rent as directed by the trial court on or before 30.8.96. In case of any default the trial court shall be at liberty to strike off the defence of the appellant. The appeal is devoid of merit and is accordingly dismissed. The trial court is further directed to expeditiously deal with the matter

and decide the same in any case not later than 6 months from the date of the receipt of the certified copy of this order. The records of the trial court be sent back immediately.

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