

Ram Pratap Vs. Smt. Manphool

Ram Pratap Vs. Smt. Manphool

SooperKanoon Citation : sooperkanoon.com/762715

Court : Rajasthan

Decided On : Mar-27-1985

Reported in : 1985(2)WLN700

Judge : Vinod Shanker Dave, J.

Appeal No. : S.B. Civil Revision No. 422 of 1984

Appellant : Ram Pratap

Respondent : Smt. Manphool

Disposition : Petition dismissed

Judgement :

Vinod Shanker Dave, J.

1. This revision petition is finally disposed of as agreed to by both the learned counsel. This revision petition is directed against the order of Munsif, Srimadhopur date December 5, 1981, when he passed it under Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (here in after referred to as ' the Act'), determining the rent. An appeal against that order was filed which has been dismissed by the Civil Judge, Nim-Ka-thana, Sikar by his judgment, dated July 12, 1984.

2. It is contended by the learned counsel appearing for the petitioner that the trial court has not considered the material on record while adjudicating the application under Section 13(3) of the Act. He had mentioned in his application that he had paid the rent to the plaintiff but this aspect of the matter has not been considered by the trial court. I have gone through the written statement as well as perused the orders of the courts below. A bare reading of the written statement indicates that not a word has been said about the mode of payment of rent and vague assertion has been made that the rent has been paid. A perusal of the appellate court order shows that no material has been placed to show that there are entries in Bahi of the defendant and the fact that rent has been paid to the plaintiff. It is contended that this court in *Chhaganlal v. Priti Rani* 1982 RLR 846 has held that the words 'on the basis of material on record' means all the material on record in addition to the plaint and the written statement, I do not find any 'material' on record' on the basis of which a view other than what has been taken by learned Munsif could be taken as is apparent from the order of the appellate court that till that date no material had been placed. Hence the case cited has no application on the facts of the present case. It was for the defendant to have been vigilant at the time when the written statement was filed wherein he should have said that the rent has been paid and the entries have been made in his Bahi and besides a mention in the written statement he also ought to have placed on record the copies of Bahi but that not having been done before the decision of the application, this court is unable to entertain any material subsequent to the date of the decision of the application.

3. Yet another argument has been raised that Section 13(3) of the Act is mandatory in nature and the court ought to have determined the rent within 3 months from the date of the filing of written statement which was so done on April 10, 1981 and it ought to have been determined before July 10, 1981. But the order of the court being dated 5-11-1981, is without jurisdiction. In support of his contention the counsel for the petitioner has cited *Ganesh Narain v. Ranchor Das* 1978 RLW 388; *Kishan Lal v. Smt. Kamla Devi Sharma* 1979 RLW 369 and *Kartara v. Subhash Chandra and others*: 1984 RCR 599. As against this the contention of the learned counsel for the respondent is that provisions of Section 13(3) of the Act so far as the period of determination is concerned are directory

and not mandatory in nature. He has relied on a decision of this court in *Ramchandra v. Kanak Ram*: 1980 WLN 128. I have given my earnest consideration to this argument. The case cited by the learned counsel for the petitioner are not directly on the point in question as to whether the import of the word 'which shall not be more than 3 months after filing of the written statement and shall be before framing of the issue' make the provisions mandatory. These word do find place in *Ganesh Ram v. Ranchor Das* (supra) at page 395 but my learned brother Hon'ble S.K, Mal Lodha, J. has not reporduced the wordings used in, the Section and the point in consideration before him was about the denial of relationship of landlord and tenant wherein the question he was deciding was whether determination under Section 13(3) of the Act is essential or not and in this view of the matter is cannot be said to have lying down any law on the question raised. Same is the position in the cases reported in 1978RLW 388 as well 1984 (1) RCR 599. My learned brother Hon'bie Agrawal, J. considered this very question and held that the determination made by the court even after the expiry of the aforesaid period of three months is not rendered illegal or void. He considered precisely this point in reference to rules of interpretation and construction of sentences. He also considered the intention of legislature by quoting examples and after thorough discussion on various judgments both of the Indian Courts and English Courts held as under:

If the provisions of Sub-rule (3) of Section 13 as amended, are construed in the light of the principles referred to above, the conclusion is inescapable that while Sub-section (3) casts a mandatory obligation on the court to provisionally determine the amount of rent to be deposited in court or paid to the landlord by the tenant, the further requirement in Sub-section (3) that the said determination shall be made by the court on the first date of hearing or on an any other date as the court may fix in this behalf shall not be more than three months after filing of written statement and shall be before the framing of the issue cannot be regarded as mandatory and it is only of a directory in nature a determination made by the court after the expiry of aforesaid period is not rendered illegal or void. The prescription of the time within which the court should make the provisional determination in Sub-section (3) of Section 13 is with a view to emphasise the need for an expeditious determination by the court. But to hold that if the aforesaid

determination is not made within the aforesaid period prescribed, the power to make the determination comes to an end and can not be exercised would result in serious general inconvenience and injustice to tenants who have no Control over the public officer, viz., the court who has been entrusted with the said duty. Such a construction also would not promote the main object of the legislature in enacting the Act as well as the Amendment Act of 1976, namely, to give protection to the tenants against eviction. It is possible to visualise situations when due to circumstances beyond control, it may not be possible for the court to make the provisional determination within the period prescribed in Sub-section (3) of the Section 13 of the Act. The Court may fix a date for making determination within three months of written statement but the date so fixed may be declared a public holiday or on the said date Presiding Officer may go on leave and no judicial officer may be available to take up the case on that date so as to make the determination within the period of three months prescribed in Sub-section (3). Similarly there may be a case where the record may become defective on account of death of one of the parties after the filing of the written statement and it may not be possible to proceed with the case and to make the determination within a period of three months from the date of filing the written statement as prescribed by Sub-section (3) of Section 13 of the Act. To hold that the period prescribed in Sub-section (3) of Section 13 for the provisional determination of the amount by the court is mandatory would result in penalising the tenant for something for which he is not at all responsible. The legislature in enacting Sub-section (3) of Section 13 and in prescribing the aforesaid time limit, could not have intended to achieve the said result.

4. On a reading of the aforesaid authority I have absolutely no hesitation in agreeing with what he has held in this case. In this view of the matter, I am unable to accept the argument advanced by the learned counsel for the petitioner.

5. As a result of the discussion made above, I find no error of jurisdiction in the orders of the two courts below and dismiss the revision petition.