

Choit Ram Vs. Ramdeen

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Court : Rajasthan

Decided On : Aug-28-1991

Reported in : 1991WLN(UC)241

Judge : B.R. Arora, J.

Appeal No. : S.B. Civil Second Appeal No. 38 of 1991

Appellant : Choit Ram

Respondent : Ramdeen

Disposition : Appeal dismissed

Judgement :

B.R. Arora, J.

1. This second appeal is directed against the decree and judgment dated December 18, 1990, passed by the Additional District Judge No. 2, Jodhpur, by which the appeal filed by the defendant appellant Choit Ram was dismissed.

2. Plaintiff Ramdeen filed a suit in the Court of the Additional Munsif and Judicial Magistrate No. 1, Jodhpur, for eviction and recovery of arrears of rent with respect to First Floor of a house situated in Jodhpur City near Anand Cinema, on the ground of second default for more than six months in making payment of rent of the house in dispute. It was averred in the plaint that the first floor of the house

comprising two rooms, one Saal and one kitchen was given to the defendant on the rent of Rs. 55/- per month and the tenancy started from 12th of each month and ending on 11th of next month. The defendant tenant had not made payment of the rent of the house since from January 12, 1984 to March 11, 1985. It was further averred that earlier the suit with respect to the present premises was filed against the defendant for eviction on the ground of default in payment of rent, reasonable and bonafide necessity and non user of the suit premises for more than six months. In the earlier suit, the defendant availed the benefit of Section 13(6) of the Rajasthan Premises (Control of Rent and Eviction) Act and, therefore, the suit of the plaintiff, on the ground of default, was dismissed as the defendant deposited the rent under Section 13(4) of the Act as determined by the Court. The Suit of the plaintiff, on the ground of nonuser of the suit premises for more than six months, as well as on the ground of reasonable and bonafide necessity, was also dismissed by the trial court. Distisfied with the dismissal of the suit, the plaintiff filed an appeal but neither any appeal nor any cross-objection was filed by the defendant tenant against the finding of default. In the earlier suit, the defendant deposited the rent only upto January 12, 1984 and did not deposit any rent after that date since 12th January, 1984 to March 11, 1985 and, he, therefore, committed a second default in making payment of rent and, therefore, the plaintiff is entitled to get the decree of eviction against the defendant. The defendant contested the suit and denied the allegations regarding the committal of second default. The case of the defendant was that as the trial Court did not determine the provisional rent as required under Section 13(3) of the Act and, therefore, it was not necessary for the defendant to deposit the amount of rent, but still the defendant deposited the amount of rent if the Court of the Additional Civil Judge No. 1, Jodhpur, by which the earlier suit was decided on February 9, 1984 and the appeal in that case is still pending before the Appellate Court and has not been finally disposed of. His case was, therefore, that as the appeal is a continuation of the suit and the amount of rent was deposited in the earlier suit and, therefore, no second default has been committed by the defendant. Plaintiff Ramdeen, in support of his case, examined himself as W 1 while the defendant Choit Ram examined himself as PW 1 and placed on record the rent receipts Ex. A-1 to Ex. A-8, showing the payment of rent in the Court of the Additional Civil Judge No. 1,

Jodhpur. The learned trial Court after trial, by its decree and judgment dated October 25, 1986, decreed the suit filed by the plaintiff and passed the decree for eviction against the defendant. Dissatisfied with the decree and judgment dated October 25, 1986, passed by the Munsif and Judicial Magistrate, First Class, Jodhpur, the defendant filed an appeal before the District Judge, Jodhpur, which appeal was ultimately decided by the learned Additional District Judge, No. 2 Jodhpur, who, by the decree and judgment dated December 18, 1990, dismissed the appeal filed by the defendant Choit Ram. It is against this decree and judgment dated December 18, 1990, passed by the Additional District Judge No. 2, Jodhpur, that the appellant defendant has filed the present appeal.

3. Heard learned Counsel for the parties.

4. It is contended by the learned Counsel for the defendant-appellant that the present suit filed by the plaintiff Ramdeen on the ground of second default was not maintainable as the appeal in the earlier suit was still pending. It is further contended by the learned Counsel for the appellant that the appeal is continuation of the suit and the appellant deposited the amount of rent in the Court of the Additional Civil Judge No. 1, Jodhpur, and as such the defendant did not commit any default in payment of rent and no decree for ejection can be passed on the ground of default in favour of the plaintiff. Lastly it was contended by the learned Counsel for the appellant that the determination of the provisional rent under Section 13(3) of the Act was necessary even in the case of second default and as it was not done by the learned trial Court hence the whole proceedings stand vitiated. The learned Counsel for the plaintiff respondent on the other hand, has supported the decree and judgment passed by the learned lower Court.

5. I have considered the rival submissions raised by the learned Counsel for the parties.

6. So far as the first ground raised by the learned Counsel for the appellant that the second suit on the ground of default is not maintainable because the appeal with respect to the first suit was still pending and was not finally disposed of on the date when the second suit was filed, is concerned, suffice it to say that the trial Court in the earlier suit dismissed the suit filed by the plaintiff on the ground that

the defendant deposited the rent on the first date of hearing. So far as the other two grounds regarding reasonable and bonafide necessity of the plaintiff and non-user of the suit premises for more than six months by the defendant tenant are concerned, they were decided against the plaintiff and the plaintiff preferred an appeal challenging the findings of the trial Court on these two grounds. So far as the finding of default in payment of rent was concerned, that was not challenged by the defendant. The defendant neither filed any appeal nor any cross objection and, therefore, so far as the question of default is concerned, that stands decided against the defendant and specific finding was given by the trial Court that the defendant appellant committed default in making payment of rent for more than six months. As that issue was not raised nor was the finding on default challenged by way of appeal or cross-objection by the defendant, therefore, the present suit cannot be said to be in any way, premature. The suit was maintainable and was rightly tried by the learned trial Court. The contention raised by the learned Counsel for the appellant on this point is, therefore, devoid of any force.

7. The next ground raised by the learned Counsel for the appellant is that an appeal is a continuation of a suit and as the appeal is still pending and the defendant deposited the amount of rent in the Court of the Additional Civil Judge No. 1, Jodhpur (the trial Court in the earlier suit), therefore, he did not commit any default in the payment of rent and the suit filed by the plaintiff deserves to be dismissed. In support of his case, the learned Counsel for the appellant has placed reliance over the judgment of the Hon'ble Supreme Court rendered in *Mst. Rafiquennessa v. Lal Bahadar Chetri* : [1964]6SCR876 . His further case is that as the appeal is a continuation of suit and the appeal was still pending and therefore, the defendant could not have made the deposit of the rent under Section 19-A of the Act during the pendency of the suit. In support of his case, he has placed reliance over the judgment of this Court rendered in *Govind Ram v. Raji Bai and Anr.* 1911 W.L.N. 372. The question : whether an appeal is a continuation of suit with respect to the provisions of Section 13(4), 13(5) and 13(6) of the Act, came-up for consideration before this Court in *Kewal v. Sesmal* 1981 W.L.N. 77 and *Kampiddin v. Wahid Ali* 1987 R.L.R. (1) 290 and this Court, in both these cases, after considering the law on the point including the various judgments of the Supreme Court, came to the conclusion that an appeal is a continuation of the suit

in the context of some statutes only, but so far as the second proviso of Section 13(4) of the Act is concerned, it was observed that the appeal cannot be said to be a continuation of the suit. The Court, after considering the various provisions of the Act held that under the Rajasthan Premises (Control of Rent and Eviction) Act, and keeping in mind the intention of the legislature and the language of Section 13 of the Act, the appeal cannot be held to be a continuation of the suit for the purpose of second proviso of Section 13(4) of the Act. As the appeal cannot be said to be a continuation of the suit in the present case and, therefore, the dependent was not required to deposit the amount of rent under Section 13(4) of the Act and if any deposit has been made by the defendant under Section 13(4) of the Act then he is not entitled for any protection under the Act. The second limb of the argument of the learned Counsel for the defendant-appellant in the present case is that even if the appellant has deposited the amount of rent under Section 13 (4) of the Act, which he was not required to deposit still then this amount deposited by him may be treated as a deposit made under Section 19-A of the Act. The deposit under Section 19-A of the Act can be made only if the requirements of Section 19-A of the Act, are made out according to Section 19-A of the Act, the tenant is required to pay the rent within the time fixed by the contract or in absence of such contract by the 15th day of each following month in which it is to be paid. In the present case, the tenancy in question starts from 12th of each month and the defendant could have deposited the amount of rent in the Court on or before 27th of each month. The tenancy could have make payment of rent firstly by personal payment to the landlord or remit or deposit the rent by sending the amount of rent by Postal Money order at the ordinary address of the landlord or he may, by notice in writing, require the landlord to specify within ten days from the date of the receipt of the notice the name of bank and account number in which the rent is to be deposited by the tenant. If the landlord specifies the name of the bank and the account number then the tenant shall deposit the same in the account of the landlord and shall continue to deposit the same which may subsequently fall due in respect of the premises, and where he has remitted the rent by Postal Money Order and the money order is received back by him under the postal receipt with the acknowledgement : of 'refusal' or 'unfound' and where the landlord does not specify the name of the bank and the account number or

where there is a bonafide doubt about the person or persons to whom the rent is to be paid then the tenant may deposit such rent with the Court within 15 days of the expiry of the period of ten days of the notice. He may deposit the amount within the time specified in Sub-clause (c) of Sub-section (3) of Section 19-A of the Act and further continue to deposit with the Court any amount of rent which may subsequently become due. It is only in these circumstances that the defendant could deposit the amount of rent in the Court. As in the present case the defendant appellant did not comply with the requirement of Sub-clauses (a) and (b) of Sub-section (3) of Section 19-A of the Act, therefore, the amount of rent so deposited by the defendant cannot be treated as a deposit under Section 19-A of the Act and cannot be said to be a valid tender made by the defendant and thus, cannot save the defendant from the eviction from the suit premises. The deposit of rent in the Court is permissible only when the conditions specified in Sub-section 3(a) and (b) of Section 19-A of the Act are complied with. But in the absence of the special and adequate ground and without the existence of the requirement of Sub-section 3(a) and (b) of Section 19-A of the Act, the tenant cannot ask the landlord to collect the rent every time from the court. As in the present case, neither the defendant offered the rent nor the landlord refused to accept the rent nor the defendant sent the amount by Postal Money Order nor he gave notice to the plaintiff to inquire about the name of the bank and account number and as the requirement of Sub-section (3) of Section 19-A was not complied with and therefore, the deposit made by the defendant in the Court cannot be treated as a deposit under Section 19-A of the Act. Even otherwise the deposit made by the defendant in the trial Court was, also, not within the time and the Court, after considering the receipts produced by the defendant came to the conclusion that the defendant has committed default of more than six months in depositing the rent. The receipts produced by the defendant Ex.A-1 to Ex. A-8 clearly show that the deposit was not made by the defendant in the Court within time. The amount of rent for the month of January and February 1984 was not deposited by the defendant. The rent for the month of March, 1984 was deposited on May 9, 1984, which is also, beyond the time prescribed under the law. The rent for the month of May, 1984 was deposited on July 7, 1984. The rent for June and July, 1984 was deposited on September 13, 1984 and the amount of rent for the month of August, 1984 was deposited on

October 11, 1984 and the rent for the month of February 1985 was deposited by the defendant on May 23, 1985. Thus, in view of the judgments of this Court rendered in Smt. Manak Bai and Ors. v. Kalyan Bux 1989 (2) R.L.R. 704 and Bajrang Lal v. Ram Deo 1988 (1) R.L.R. 360, the defendant, appellant, even as per his own statement, made a default for more than six months in making payment of rent and, therefore, the default in making payment of rent stands clearly proved in the present case. The deposit of the amount by the defendant in the Court cannot be said to be a valid tender as the amount could have been deposited in the Court Section 19-A of the Act only after exhausting both the methods laid down in clauses (a) and (b) of Sub-section (3) of Section 19-A of the Act.

8. Now I take up the case of Govind Ram v. Raji Bai and Ors. cited by the learned Counsel for the appellant. This case is not applicable in the present case because in that case the suit filed by the plaintiff was still pending and the amount of rent was deposited by the defendant under Section 19-A of the Act and, therefore, that was treated as a payment made under Section 13(4) of the Act, but as in the present case the suit has already stood disposed of and the appeal was pending but that appeal was not filed by the defendant and it was filed by the plaintiff and in that appeal the question of default was not under consideration. The question of default was decided in favour of the plaintiff and against the defendant which was not challenged by the defendant.

9. The last contention raised by the learned Counsel for the appellant is that the determination of the provisional rent was necessary under Section 13(3) of the Act and as the provisional rent as required under Section 13(3) of the Act, was not determined by the trial Court and, therefore, it was as not necessary for the defendant to deposit the amount of rent in the Court. In support of its case, the learned Counsel for the appellant has placed reliance over the judgment of this Court rendered in Ram Lal and Anr. v. Goverdhan Lal 1988 (1) R.L.R. 669. The question, therefore, which requires second default, the determination of provisional rent is a must or not. So far as the case based on first default is concerned, it is mandatory for the trial Court to determine the provisional rent on the first date of hearing or on any date fixed by it within three months of filing the written statement

but before framing of issues because Sub-section (3) of Section 13 gives a mandate to the trial Court to provisionally determine the amount of rent to be deposited in the Court or to be paid to the landlord by the tenant on the first date of hearing or on any other date as the Court may fix in this behalf, which shall not be more than three months after filing of the written statement and shall be before the framing of the issues after hearing the parties and on the basis of material on record, In case the suit for eviction is based on the ground set-forth in Clause (a) of Sub-section (1) with or without any other ground referred to in that section, but so far as the cases based on second default is concerned, whether it is necessary or not that has to be seen. According to proviso appended to Sub-section (6) of Section 13, a tenant shall not be entitled to any relief under this sub-section if having obtained such benefit or benefits under Section 13-A of the Act in respect of any such accommodation if he again makes a default in respect of such accommodation for six months. It is not in dispute that in the present case, the defendant appellant has already availed the benefit of Sub-section (6) of Section 13 of the Act in the earlier suit and as he has already availed the benefit of Sub-section (6) of Section 13 and, therefore, in view of the proviso appended to Sub-section (6) of Section 13, he is not entitled to any relief under Sub-section (6). When the defendant-appellant is not entitled to any relief under Sub-section (6) then the determination of rent, in my view, was not at all necessary. When the defendant cannot save himself from ejection by making payment or depositing the rent under Section 13(4) of the Act and the benefit of Sub-section (6) was not available to him hence the determination of provisional rent under Sub-section (3) of Section 13 of the Act is not at all necessary to be made and if the provisional rent is not determined then that will not, in any way, affect the trial. Similar case came up for consideration before this Court in Hanspuri v. Bhanwar Lal and Anr. 1987 (II) R.L.R. 329 and Hon'ble K.S. Lodha, J. in that case, after considering the law on the point, came to the conclusion that the exercise of the determination of rent under Section 13(3) of the Act in second suit would be futile inasmuch as the proviso to Sub-section (6) of Section 13 of the Act clearly provides that the tenant will not be entitled to the relief under Sub-section (6) if he has already taken the advantage of it in the previous suit.

10. The question : whether the defendant, who has not deposited the amount of rent under Sub-section (4) or (3) of Section 13 of the Act, is liable to have his defence struck-out on account of non-compliance of the same, came-up for consideration before this Court in Hanuman Prasad v. Gaindi Lal A.I.R. 1974 (Raj.) 41 and Hon'ble C.M. Lodha, J. (as he then was) observed as under:

Where a tenant having obtained benefit, under Section 13-A again makes a default in the payment of rent for six months it is incontrovertible that the defendant is not entitled to the benefit available to a tenant under Sub-section (7) on account of proviso before it. It would be the incongruous to say that even though the defendant cannot save himself from the ejection by making the deposit or payment under Sub-section (4) or Sub-section (5) of Section 13 of the Act yet he is liable to have his defence struck out on account of non-compliance of the same. Therefore, Sub-section (6) of Section 13 cannot be pressed into service against a tenant to whom the benefit under Sub-section (7) is not available.

These two decisions which are directly on the point were not brought to the notice of the Hon'ble Single Judge while deciding the case of the Ram Lal v. Goverdhan Lal 1988 (1) R.L.R. 669 and the judgment was given by Hon'ble Kapoor, J. without taking into account the case in Hanspuri v. Bhanwar Lal and Anr., which is a case directly on the point. After going-through the provisions of Section 13(3) to 13(6) of the Act, and the intention behind the Act, I agree with the view taken by Hon'ble K.S. Lodha, J. in the aforesaid case and in my opinion, as the benefit of Sub-section (6) of Section 13 of the Act was not available to the defendant and the defendant cannot save himself from the ejection by making the payment or to deposit the rent under Section 13(4) of the Act and, therefore, the compliance of Sub-section (3) by provisionally determining the rent is not necessary as the provisions of Sub-section (6) of Section 13 cannot be pressed into service in case of second default. When the provisions of Sub-section (6) of Section 13 of the Act cannot be pressed into service in the case of second default then the provisions of Sub-sections (3), (4) and (5) of Section 13 are not attracted in the present case and, therefore, the determination of the provisional rent was not necessary.

11. The learned Counsel for the appellant has, also, moved an application under Order 6 Rule 17 CPC with a prayer that he may be permitted to amend the written statement and may be allowed to take the plea that the amount of rent deposited by him in the Court of the Additional Civil Judge No. 1, Jodhpur may be treated as the amount deposited in this case and the provisional rent may be determined. This application has been filed by the defendant-appellant in the second appeal. No contention with this respect was made before the trial Court or the first appellate Court. It is, no doubt, true that the object of the Court is to decide the rights of the parties and not to punish the parties for any mistake or negligence made in the conduct of their cases and undoubtedly the Court has wide powers to allow the amendment in the plaint or the written statement at any stage by a proper exercise of its powers in the interest of justice. But the exercise of such discretionary powers is governed by the judicial consideration and it ought to be exercised with care and circumspection, and the amendment which sets out a new case from the original case cannot be allowed if it is unjust to the opposite party. By the proposed amendment, the defendant-appellant wants to get the amount deposited by the defendant in the earlier suit to be adjusted in the present case so that he may not incur the disability of default and such type of amendment cannot be allowed to be made at this stage. The similar question came-up for consideration before this Court in *Prahlad Bahadur Saxena v. Narayan Das Kalra* 1985 R.L.R. 1103 and the Court disallowed the application moved under Section 13(6) of the Act and refused to allow the amendment and observed that if such application is allowed then the rent should be taken to have been deposited in proper time. In view of the judgment of this Court in *Prahlad Bahadur Saxen's* case, the amendment sought to be made by the defendant cannot be allowed. Moreover as I have discussed above, the So-called amendment will not be of any help to the defendant-appellant as even if this point is considered then it will not change the case in favour of the defendant because even if this deposit is taken as a deposit made by defendant even then it will not save the defendant from ejection as the so-called amount deposited by the defendant was not deposited within the time and the defendant committed default of more than six months in making payment of rent in time.

12. Lastly, it is contended by the learned Counsel for the appellant that some time may be allowed to the defendant-appellant to hand-over the vacant possession of the suit premises to the plaintiff respondent. Looking to the facts and circumstances of the case, I allow the appellant to hand-over the vacant possession of the suit premises to the plaintiff-respondent within the period of one year from today.

13. In the result, the appeal filed by the appellant is dismissed with costs throughout. But, however, the appellant is allowed one year's time to hand-over the vacant possession of the suit premises to the plaintiff-respondent provided the appellant furnishes an undertaking in the trial Court within the period of two weeks from today that he will hand-over the vacant possession of the suit premises to the plaintiff-respondent on or before August 27, 1992 and will not induct any other person in the suit premises and will pay the arrears of rent, if any, and shall continue to pay the future rent of the suit premises regularly.

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