

Mohan Lal Vs. Shree Ram and ors.

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Court : Rajasthan

Decided On : Sep-21-2004

Reported in : RLW2005(1)Raj40; 2005(1)WLC245

Judge : N.P. Gupta, J.

Acts : Rajasthan Rent Control Act, 2001 - Sections 6 and 6(1); Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 6

Appeal No. : S.B. Civil Writ Petition No. 4047 of 2004

Appellant : Mohan Lal

Respondent : Shree Ram and ors.

Advocate for Pet/Ap. : C.P. Soni, Adv.

Disposition : Petition dismissed

Judgement :

Gupta, J.

1. Heard learned counsel for the petitioner.

2. By the impugned orders the Rent Control Tribunal has decided respondent's application filed under Section 6 of the Rajasthan Rent Control Act, 2001 (hereinafter to be referred to as 'the Act') and an appeal against the order has

failed. Resultantly, the monthly rent of the premises has been determined at Rs. 804.89.

3. The facts of the case are that the respondent filed an application under Section 6 of the Act, alleging inter-alia, that the premises have been let out to the petitioner on 15.11.1973 at a monthly rent of Rs. 150/- and at present he is paying rent of Rs. 200/- per month, while according to provisions of Section 6, as on 15.11.1993, monthly rent should have been Rs. 460/- and as on 15.11.2003 it should be Rs. 805/-. With these allegations it is prayed that monthly rent of the premises be determined at Rs. 805/-. The application was supported by affidavit of the plaintiff applicant respondent. The application was contested by the petitioner, contending that the present rent of Rs. 200/- has been increased under pressure. In para 6 a plea has been taken to the effect, that the shop was constructed for the first time in the year 1972 and was let out to one Kanaram son of Bhuraram for operating a lathe machine at a monthly rent of Rs. 60/-. Thereafter in the year 1973 the premises were let out to the petitioner at a monthly rent of Rs. 125/-, and then it was increased to Rs. 150/- and presently he is paying Rs. 200/- per month. With this pleading it was contended, that in 1972 the basis rent of the premises was Rs. 60/-, and therefore, determination of rent could be made only on the basis of treating that rent to be Rs. 60/-. Inter-alia on this basis, it was prayed that the application be dismissed. The petitioner also filed an affidavit in support of the reply.

4. During the trial the petitioner moved an application, praying that the applicant has concealed the fact, as to who was the tenant in the premises prior to the petitioner, and therefore, it was prayed that Kanaram be summoned to give evidence on oath about his being tenant in the premises. Likewise, another application was filed, praying for the permission to cross examine the applicant, as he has concealed the fact of the premises being already on rent with Kanaram.

5. Learned trial court vide order dated 10.2.2004 (Annex.8) rejected both the applications, by holding, that according to Section 6 the determination of the rent is to be made on the basis of present tenancy, and not on the basis of the rent at which the premises were earlier let out to any other tenant. Thereafter learned trial

court vide order Anx.2 dated 5.4.2004 has made the determination as noticed above, and the appeal has been dismissed vide Anx.1.

6. Assailing the impugned orders, learned counsel for the petitioner placed reliance on the language of Section 6(1)(b) which reads as under:-

'6(1) (b) where the premises have been let out on or after 1st January, 1950, the rent payable at the time of commencement of the tenancy shall be liable to be increased at the rate of 7.5% per annum and the amount of increase of rent shall be merged in such rent. The amount of rent so arrived at shall again be liable to be increased at the rate of 7.5% per annum in similar manner upto the year of commencement of this Act.'

7. On the basis of above language, it was contended, that according to this provision, since this applies to the cases where the premises have been let out on or after 1.1.1950, for making determination of the rent, the rent to be taken into account is the rent at which the premises were let out after 1.1.1950. It was also contended that the expression used in clause (b) 'the rent payable at the lime of commencement of the tenancy' is not required to be interpreted to mean the 'rent payable at the commencement of the tenancy of the present tenant' but is required to be interpreted to mean 'the rent payable at the commencement of the tenancy which was created after 1.1.1950.' Learned counsel referred to some judgments of Hon'ble Supreme Court on the question of interpretation of statutes, taking the view that it is not open for the Court to supply words in the statutes, rather statutes is to be interpreted on the plain language, as it is enacted by the legislature. Other submissions made is, that the learned trial court was in error in refusing the petitioner's request for cross examination of applicant, so also for summoning the previous tenant Kanaram. The last submission made in on the authority of the judgment of this Court in Madanlal v. Laxman Das, 1996(2) WLC (Raj.) 474, to contend that expression 'payable' used in Section 6(1)(b) is required to be interpreted in the manner that the rent which was payable for the premises when it was let out to Kanaram in the year 1972 is required to be taken to be the rent 'payable,'

8. I have considered the submissions and do not find any force in any of the submissions.
9. In my view if the language of Section 6(1)(b) is considered on the face of it, it makes it clear, that it makes only two categories. The first being covered by clause (a) where under the premises have been let out prior to 1.1.1950 and a fiction is created to the effect that those premises shall be deemed to be let out as on 1.1.1990, and the other category is provided under clause (b) comprehending cases where the premises have been let out on or after 1.1.1950. Undisputably the present case falls in the category covered by clause(b).
10. The precise question then is, as to whether for the purpose of clause (b), in making determination of the rent, the rent at the commencement of the tenancy required to be taken into account is to be the rent at which the premises was first let out after 1.1.1950, or the rent at which it was let out to the tenant regarding whose tenancy, the application for determination of rent has been made? Having read the provision of clause (b), I do not find any legal authority for the proposition, that the rent required to be taken into account is, the rent at which the premises was first let out after 1.1.1950. The simple reason is, that in taking this interpretation, the word 'first' shall have to be added to clause (b). As against this the plain language of clause (b) is 'the rent payable at the time of commencement of the tenancy. 'The term commencement of the tenancy has not been given any artificial definition under the act, and a plain and simple meaning of the expression is, that it is to relate to the tenancy which is subsisting, and the rent at the commencement thereof.
11. At this place I may refer to the corresponding provisions of the old Act, being Section 6 thereof. It is a different story, that some part of Section 6 of the old Act has been struck down by this Court as ultra vires, but then a look at the language of the old section does show that under that Act, the legislature specifically provided for taking into consideration the rent of the premises at which it was first let after 1.1.1950, and under the new Act, this expression (first let out) has deliberately been omitted.

12. In this view of the matter, for the purpose of making determination under Section 6, in cases covered by clause (b), the rent to be taken into account, being prevalent 'at the commencement of the tenancy', is to be the rent prevalent at the commencement of the tenancy of the present tenant only, and not of any antecedent one after 1.1.1950. that being the position, the fact of the premises having been let out to Kanaram at any lesser rent has no relevance whatsoever, and, therefore, the order Anx.8 cannot be found fault with. Having read the judgment in Madan Lal's case I do not find it to be having any bearing on this controversy.

13. Taking the rent of the premises at the commencement of the present tenancy being Rs. 150/- the determination has been made by the learned courts below which on this parameter is not shown to be wrong.

14. Thus, I do not find any ground to interfere in the impugned orders Anx. 1 and 2. The writ petition is, therefore, dismissed summarily.

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