

Rajeev Kumar Vs. Dr. Kailash Nath Bhargava and ors.

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Court : Rajasthan

Decided On : Feb-05-1990

Reported in : 1990WLN(UC)477

Judge : D.L. Mehta, J.

Appeal No. : S.B. Civil Revision Petition No. 206 of 1989

Appellant : Rajeev Kumar

Respondent : Dr. Kailash Nath Bhargava and ors.

Judgement :

D.L. Mehta, J.

1. Niceties of law, technicalities of law and the feeblity landlord in the administration of justice has led the people to think that the court are not the proper forum where justice can be delivered without delay, without costs in its proper time. Our retired Chief Justice and other Judge of the Hon'ble Supreme Court have observed that the surgical treatment is necessary for the improvement of the system.

2. Courts are meant for justice and not for the benefit of those who want to get advantage out of the litigation. In the instant case, Mr. Ranjan appearing on behalf of the petitioner submitted that the cumbersome provisions of withdrawal from the

Treasury of the amount deposited by the tenant is not effective and the landlords are suffering a loss in the process of withdrawal. Judicial notice can also be taken of the fact that the amounts are not refunded for years together and there is a cumbersome provision. Landlords' feeling is that the paper of refund will not move as there may not be a weight over it. This feeling has been expressed by the members of the Bar particularly at Jaipur, number of times when I had the opportunity to visit the Jaipur Bar.

3. Law should be interpreted for the benefit of the society and old trend of interpreting the law may be given a go by and concept of interpreting the law looking to the needs of the present society should be imparted. It is always not necessary to see within permissible limits as to what was the intention of the Legislature, when the law was enacted. The Court may find out what will be intention of the legislature today within the premises of law.

4. It is the duty of the Judges to think of innovation, renovation and even change of the rules within the premises of law. I will like to emphasize the words 'within the premises of law' may not be misunderstood-When I used the words innovation, renovation, and change of the rules. The word 'within the premises' means within the frame work of law, where the law directly or by implication does not prohibit doing of a particular act then the Court is duty bound to enforce the law in such a way which may be beneficial for the Society, for the consumer litigants. Neither we the Judges who are sitting on the Bench nor the members of the Bar can appreciate in better the functioning of the law. The real appreciation will come only from the consumer litigants and we may only give them, assistance in the matter of enforcement of law.

5. Mr. Ranjan has invited me authority to the Circular No. 27 P.I., dated December 3, 1986, which is reproduced as under:

To: All Subordinate Courts,

Sub: Simplification of the procedure regarding refund of rent deposited Under Sections 13(4) and 19-A (3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950.

Sir,

It has been observed by the court that the system of deposit of rent amount in the Treasury in cases under 'The Rajasthan Premises (Control of Rent and Eviction) Act, 1950 and the refund thereof later on, is so cumbersome that it dislocates the office-work and the person entitled to refund has to face many difficulties.

The court has considered the matter and ordered that till necessary amendment in this regard is made in the General Rules (Civil) 1952, the concerned court should ask the landlord in ejectments suits to give his option about the mode of acceptance of the rent amount and if he opts to receive the money through the Bank, he should be asked to disclose his bank account number and the tenant be directed to deposit the rent and other amount etc. in the Bank account of the landlord. This deposit of rent amount will, however, be without prejudice to rights of the parties concerned. The tenants having so deposited the rent amount shall be under obligation to produce photo copy of such receipt in the Court which may be placed on record of the case. It would be a deposit and payment Under Sections 13 and 19A of the aforesaid Act.

6. Apart from that the courts must feel that they are not subordinate to the Government. I may add that the framers and fathers of the Constitution have specifically provided Under Clause 229(3) of the Constitution that the administrative expenses of the High Court including all the salaries and allowances as also the pensions payable to the employees of the Court shall be charged upon the consolidated fund of the State. Thus, from the perusal of Article 229 Clause (3) it seems that the Hon'ble Judges of the High Court should not go with a request for allotment of fund before the Executive as the payment of the administrative expenses of the High Court including the salary and allowances are charged from the Consolidated Fund. It will not be out of place here to mention that the Legislature cannot pass the charges which are to be provided for the expenses of the High Court. How the Executive can have an over riding power of the Legislature also. Though, it is not necessary, yet I may observe that the practice for going and coming beg for the salaries and expenses of the High Court to the Executive needs a reconsideration by the Hon'ble Judges and it will be

better if the Hon'ble Chief Justice takes note of the submissions made to him by few Judges of this Court, in which I was also a member.

7. As far as the subordinate Judiciary is concerned, it is clear that the Subordinate Judiciary is under the control of the High Court and no administrative instructions can be issued in any respect by the Executive and Subordinate Judiciary is not bound to honour any instructions issued by the Executive unless approved by the High Court. No rules guiding the functions of Subordinate Judiciary can be framed or enacted by the Executive without the approval of the High Court. If the government is allowed to frame the Rules or to issue the instructions in one way or the other, it may amount to the interference in the functioning of the Judiciary and it will destroy the foundation of the democracy. In such circumstances, even if there are any Rules, I am of the view that the Rules are not of binding effect and the Courts have a power to plan the administrative functioning under the guidance of the High Court. The directions issued by High Court will over side government rules not approved by High Court.

8. The prayer of the landlord that the amount of the rent should be deposited in the Bank account, is a good prayer and should be accepted by the Court and the landlord should not be forced to run pillar to post to collect his own amount by way of refund. The normal practice should be that the Court should direct the landlord to open the account in a particular Bank and the tenant should be directed to deposit the same in the same account and intimate the Court that he has deposited the same. Landlord should also be given an opportunity to make submission in case there is a default or there any dispute about the deposit of the amount. The Court should also see the convenience of the tenant and should pass an order of opening the account in a Bank which is nearer to the place of his residence or business place of the tenant. There may be landlords who are residing out of Jaipur and they may be having accounts at Udaipur and Bikaner and the tenant cannot be asked to deposit the amount at Udaipur or Bikaner. In such circumstances, the best course will be that the tenant should be asked to deposit the amount in the city where the property is situated or where the tenant is residing. However, the Court will act according to its own wisdom and apply the principle with flexibility and not rigidly; with a view that the interest of the consumer

litigant is above all. In the instant case Mr. Jain submits that there is a dispute about the right of landlord and provisional rent has been determined. If there is a dispute inter-se between the parties or between the claimants the position may change in some circumstances. If there are two landlords and the tenant is accepting that he is landlord of the dead person and who ever is the successor of the late landlord, he is ready to pay the tenant. In such circumstances, the provisions of inter-pleader suit may be applied and if the interpleader suit has not been filed, then the principle may be applied in the matter. Both the persons who are claiming themselves to be the landlord, may be allowed to litigate or to settle their dispute inter-se, but the tenant cannot be asked to select one of them. He has a right to say that he is ready to recognise any person as landlord and it is for the court to determine as to who is the landlord as he was the tenant of late person who has died, he is not in a position to settle the inter-se dispute between the successors. In such circumstances, the Court has a right to pass an order for furnishing the Bank guarantee at the time of withdrawing the amount, so that the proper landlord, if he is a party in the suit may get the advantage and the tenant may not suffer. However, this cannot be a direction, it is to be decided by the Court in the facts and circumstances of each case.

9. In the result, the revision petition is accepted. It is directed that the tenant shall deposit the amount in the Bank account which is to be opened if not opened so far under the directions of the Court. Court below has a right to safe-guard the interest of the tenant looking to the inter-se dispute between the claimants if any. No order is necessary to be passed except that in further ordinarily the system of depositing the rent in the Bank account should be allowed and the financial rules will not come in the way and the State cannot be allowed to earn interest on the rent deposited by the tenant in favour of the landlord.

10. With these observations the revision petition is disposed off. No order as to costs.