

Prof. Krishna Datt Singh Vs. Pawan Kumar

Prof. Krishna Datt Singh Vs. Pawan Kumar

SooperKanoon Citation : sooperkanoon.com/764676

Court : Rajasthan

Decided On : Jul-26-1984

Reported in : 1984WLN793

Judge : K.S. Lodha, J.

Appeal No. : S.B. Civil Revision Petition No. 15 of 1984

Appellant : Prof. Krishna Datt Singh

Respondent : Pawan Kumar

Disposition : Petition dismissed

Judgement :

K.S. Lodha, J.

1. The defendant Prof. Krishna Datt Singh has filed this revision against the order of the learned Addl. District Judge, Udaipur dated 31-10-83 dismissing his appeal against the order of the learned Addl. Civil Judge, Udaipur dated 3-11-82 refusing the petitioner's application Under Section 7(3) of the Rajasthan Premises (Control of Rent and Eviction) Act (hereinafter referred to us 'the Act').

2. The facts giving rise to this revision briefly stated are that the non-petitioner-plaintiff Pawan Kumar Sled a suit for ejectment and recovery of arrears of rent against the defendant-petitioner Prof. Krishna Datt Singh on 19-1-78. Ejectment

was sought only on the ground of default in payment of rent. The rate of rent alleged by the plaintiff was Rs. 250/- per month. The defendant contested the suit by filing a written statement on 18-4-78. He not only contested the ground of default but alleged that the rent was excessive. He also prayed for fixation of the standard rent under Section (sic)6 of the Act and thus filed a counter claim regarding fixation of the standard rent.

3. On the pleadings of the parties, the learned trial court framed the necessary issues on 22-10-78. Before doing that on 19-8-78 the trial court provisionally determined the amount of rent to be deposited by the tenant under Section 13(3) of the Act. He also determined the provisional rent @ 250/ p.m. The defendant filed an appeal against this order but the same was dismissed by the appellate court on 4-2-80. Thereafter the¹ matter proceeded on and the plaintiff produced his evidence and closed the same on 9-2-79. The Case was then fixed for the evidence of the defendant. The defendant, however, did not examine any witness till 24-11-81 and the court has directed on the proceeding date that the defendant should produce all his evidence on that date of hearing and no further opportunity shall be granted to him. However, despite this deaf direction the defendant did not produce any evidence on 24-11-81 but he moved an application under Section 7(3) of the Act praying that till his counter claim under Section 6 of the Act for fixation of standard rent is disposed of the proceedings in the plaintiff's suit may be stayed. The learned Civil Judge after hearing both the parties dismissed this application by his order dated 3-11-82. The defendant-petitioner filed an appeal against this order but without success and, therefore, the present revision.

4. I have heard the learned Counsel for the parties.

5. Two contentions have been raised before me by the learned Counsel for the petitioner. His first contention is that since the amount of rent as provisionally determined by the court under Section 13(3) of the Act had been deposited by the defendant within prescribed time, the ground of ejection pleaded in the plaint namely default did not survive and no decree for ejection can now be passed against the defendant, therefore, the suit now remains merely a suit for arrears of rent and, therefore, Section 7(3) of the Act is clearly applicable. He further

contended that when the defendant filed a counter claim and pays court fee, thereon that counter claim is treated as a cross suit and, therefore, when there are two suits one by the land-lord for recovery of arrears of rent and the other by the tenant for fixation of standard rent then proceedings in the suit for recovery of rent have to be stayed under Section 7(3) of the Act. According to the learned Counsel the courts-below were wrong in refusing to apply Section 7(3) of the Act to the present proceedings on the wrong assumption that there were no two suits and the suit filed by the land-lord also could not be deemed to be a suit merely for recovery of arrears of rent. In order to support his contention that the suit of the land-lord now only remains a suit for recovery of arrears of rent, he placed reliance upon *Shyam Lal and Anr. v. Upbhokta Sahakari Samiti* and in order to show that the counter claim filed by the tenant must be deemed to be a separate suit, he relied upon the provisions of Order VIII Rule 5, 6(A) to 8(D) CPC. He also contended that the learned courts-below were under a wrong assumption that more than one decree cannot be passed in a single suit, assuming that the plaintiff's suit and the defendant's counter claim were to be treated as one suit and in this connection be referred to Order XXII Rule 5 CPC as also to Section 2 CPC.

6. On the order band, the learned Counsel for the non-petitioner supported the orders of the courts-below and argued that the plaintiff land-lord's suit in the present case does not cease to be a suit for ejectment merely on the deposit of the amount provisionally determined under Section 13(3) of the Act and, therefore, the provisions of Section 7(3) of the Act would not be applicable.

7. I have given my careful consideration to the rival contentions and I am of the opinion that the contention raised by the learned Counsel for the petitioner do not hold any water. Now, for the applicability of Section 7(3) of the Act the condition precedent is that the suit sought to be stayed must be a suit for recovery of arrears of rent and, that the other suit must be for fixation of standard rent under Section 6 of the Act. Assuming that the counter claim of the defendant for fixation of the standard rent was a suit under Section 6 of the Act, the provisions of Section 7(3) of the Act would not apply to the present case because the suit filed by the land-lord was not merely a suit for recovery of arrears of rent. The suit as brought by the plaintiff land-lord was a suit for ejectment on the ground of default as also for

recovery of the arrears of rent and when the amount of rent payable by the tenant was determined provisionally by the court under Section 13(3) of the Act and the defendant-tenant deposited the same, the suit does not cease to be a suit for ejectment, although, it may be that a decree for ejectment could not be passed on the ground of default as envisaged under Section 13(6) of the Act. The authority relied upon by the learned Counsel for the petitioner in Shyam Lal's case does not help him. In the first place that authority was under the provisions of the Act as it stood before its amendment in 1975. Section 13 of the Act had undergone substantial changes thereafter. Under the unamended provisions of Section 13, Sub-section (5) provided that if in any suit referred to Sub-section (4) there is any dispute as to the amount of rent payable by the tenant the court shall determine having regard to the provisions of this Act the amount to be deposited or paid to the land-lord by the tenant Under Sub-section (4) and, therefore, before the court determined the amount under Section 13(4) of the unamended Act the court was bound to resolve the dispute about the amount of rent and after that the tenant had to deposit the same and on such deposit Sub-section (7) OF Section 13 of the unamended Act would apply and no decree for eviction on the ground of default could be passed but this is not the position now Under Sub-section (3) of Section 13 of the Act. The amount of rent, now, has only to be determined provisionally. Although, on payment of this rent so determined provisionally a decree for ejectment on the ground of default has been prohibited Under Sub-section (8) of Section 13 of the Act. Sub-section (7) of that Section clearly provides that 'if in any suit referred to in Sub-section (3), there is any dispute as to the amount of rent payable by the tenant, the court shall decide the dispute finally at the time of decision of the suit and may, at that time, pass such orders regarding costs or interest, as having regard to the circumstances of the case, it deems (sic)it.' Therefore, even after the deposit under Section 13(3) and (4) the dispute about the amount payable survives and the suit has still to proceed and finally the question has to be determined at the time of the final decision of the suit. This final decision is permitted by Section 13(7) of the Act and therefore, suit for ejectment must be deemed to be continuing till the final disposal of the suit despite the fact that the decree for ejectment may not be passed in the suit. That was not the position under the unamended provision of the Act. As already stated above the

amount had to be finally determined by the court under Sub-section(5) of Section 3 of the Act and the tenant was to deposit the rent so finally determined Moreover, in Shyam Lal's case the court was concerned with the question of striking of the defence on the non payment of the monthly rent and, therefore, any observations made by the court regarding the nature of the suit after deposit under Section 13(3) and (4) must be deemed only to be obiter I am, therefore, already of the opinion that this authority cannot help the petitioner.

8. Now coming to the question whether as a matter of fact the counter claim filed by the defendant for fixation of standard rent can be deemed to be a different suit altogether as envisaged under Section 7(3) of the Act. It may be stated, here that for the determination of the first question above it was assumed that it may be treated as a separate suit but for the application of Section 7(3) of the Act whether this can in fact be deemed to be a separate suit has to be determined. The learned Counsel for the petitioner had referred to Order VIII Rule 6 and 6(A) to 6(D). Let me examine these provisions. Order VIII, Rule 6 provides for claims of set off. It is not applicable to the present case.

Order VIII, Rule 6(A)(1) A defendant in a suit may in addition to his right of pleading a set-off under Rule 6, set up, by way of counter claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not;

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

Order VIII Rule 6(C)...

Order VIII Rule 6(C): Exclusion of counter claim:

Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counterclaim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.

Order VIII Rule 6(D): Effect of discontinuance of suit:--If in any case in which the defendant sets up a counter-claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter claim may nevertheless be proceeded with.

9. Now a perusal of these provisions would go to show that they are in the nature of deeming provision and may also be treated as enabling provisions but all the same while the two matters proceed together simultaneously they are to be treated for all purposes a single suit, because that provision has been made as Sub-rule (2) of Rule 6(A) shows that the Court may be able to pronounce a final judgment in the same suit both on the original claim and on the counter-claim and choice has also been given to the plaintiff to contend that the counter claim may not be disposed of by way of a counter-claim but in an independent suit and this has to be done by the plaintiff before the issues are settled. Therefore, the counter claim has to be treated as a cross suit only for the purposes mentioned under Order VIII Rule 6(A) to 6(c) but strictly speaking it need not be treated as a separate suit for all purposes and, therefore, also Section 7(3) of the Act would not apply to such a suit where a counter claim has been filed by the defendant in a suit for ejectment and arrears of rent.

10. So far as the contention that more than one decree can be passed in a single suit, there cannot be any quarrel with this proposition and the courts below were

probably under some mis-apprehension but that does not, however, affect the conclusion arrived at by then and that conclusion can be sustained on the other ground as stated above.

11. The matter does not rest here. The defendant has come up in revision which is a discretionary remedy and in the facts and circumstances of the case, I am clearly of the opinion that the conduct of the petitioner clearly disentitles him to any relief by this Court. As already stated above the issues have already been framed and the plaintiff has completed his evidence, thereafter the defendant went on taking adjournments for the evidence from 9-2-79 to 24-11-81 and it was only when he found that his evidence was likely to be closed then he came up with an application under Section 7(3) of the Act. Apart from that the order passed by the courts-below if allowed to stand would not occasion any failure of justice or cause any irreparable injury to the petitioner and, therefore, under the proviso to Section 115 CPC also, this Court cannot and need not interfere with this order.

12. For the reasons stated above, the revision fails and is hereby dismissed with costs.