

Ram Chandra Vs. Ramesh Chandra

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Court : Rajasthan

Decided On : Oct-14-1977

Reported in : 1977WLN(UC)431

Judge : S.N. Modi, J.

Appeal No. : S.B. Civil Second Appeal No. 5/1977

Appellant : Ram Chandra

Respondent : Ramesh Chandra

Disposition : Appeal dismissed

Judgement :

S.N. Modi, J.

1. This is a second appeal arising out of a suit for: eviction and arrears of rent.
2. It is common ground between the parties that the plaintiff had filed suit No. 99/70 against the tenant appellant and sought his eviction on the ground of default in payment of rent under Section 13(1)(a), of the Rajasthan Premises (Control of Rent & Eviction) Act, 1954, (hereinafter referred to as the Act). That suit was dismissed because the tenant, took advantage of Section 13(4) of the Act by depositing all arrears of rent, and interest thereon on the first date of hearing. In respect of the same premises the plaintiff respondent has filed the present suit for

eviction and, arrears of rent on 9-11-1973 and again sought eviction of the defendant on the ground inter alia that the defendant had committed default in payment of rent for a period more than 6 months. The plaintiff claimed arrears of rent from 26-1-1973 to 25-9-1973 at the agreed rate of 25.75 per month. He further claimed mesne profits from 26-9-1973 to 9-11-73 at the same rate. The defendant contested the suit and denied having committed any default in payment of rent. The trial court held that the defendant had taken the advantage of Section 13(4) of the Act in the previous suit filed by the plaintiff. The trial court further held that no second default within the meaning of Section 13(1)(a) of the Act was committed by the defendant because the defendant had deposited arrears of rent on 10-9-1973 for the period commencing from 26-1-1973 to 25-7-1973 Under Section 19-A of the Act. The trial court accordingly dismissed the suit. On appeal by the plaintiff respondent the learned Additional District Judge, Sirohi reversed the finding of the trial court and found that the defendant tenant had committed second default by non-payment of rent of more than 6 months He further held that the subsequent deposit of arrears of rent by the tenant under Section 19-A of the Act would not protect him from eviction. The learned Additional District Judge accordingly decreed the suit in favour of the plaintiff landlord. It is against this judgment and decree that the defendant-tenant had preferred this appeal.

3. The only point involved in this appeal is whether the lower appellate court came to a correct conclusion that the defendant-tenant had committed default within the meaning of Section 13(1)(a) of the Act. There is no denying the fact that the defendant did not pay rent to the landlord from 26-1-1973 i.e. for more than six months. There is also no evidence to show that during this period of 8 months the defendant ever tendered rent to the landlord. The defendant to doubt in his written statement mentioned that he had sent a money order to the landlord but no particulars of that money order were mentioned by him. He also did not produce money order coupon along with the written statement.

4. The main contention on behalf of the learned Counsel for the defendant is, that the defendant cannot be deemed to be a defaulter within the meaning of Section 13(1)(a) of the Act as the, defendant had deposited the entire rent due from him prior to the date of the suit, under Section 19 A of the Act. There is no substance

in the above contention. As pointed out above it is not in dispute that the defendant neither tendered nor paid rent to the landlord continuously for 8, months from 26-1-1973 to 10-9-73. The first deposit of arrears of rent under Section 19-A of the Act was made by the defendant on 10-9-1973 i.e. after the lapse of more than six months. The rent o deposited by the tenant was not accepted by the plaintiff and, therefore, it cannot be said that the plaintiff waived his right to claim' eviction on the ground of default. The deposit of an ears of rent made under Section 19-A after having become a defaulter within the meaning of Section 13(1)(a) of the Act was of no consequence to the defendant as he had already taken benefit of Section 13(4) of the Act in the previous suit. The proviso to Sub-section (6) of Section 13 clearly provides that a tenant shall not be entitled to any relief under Section 13(4) if he having obtained such benefit again makes a default in the payment of rent of that accommodation for six months. Since the defendant in the present case had neither paid nor tendered rent to; the landlord continuously for more than six months, he became a defaulter within the meaning of Section 13(1)(a) of the Act. The subsequent deposit of the arrears of rent by the defendant under Section 19-A of the Act would have protected him from eviction under Section 13(4) of the Act, if he had not taken benefit of Section 13(4) of the Act in the earlier suit. In this view of the matter the decree passed by the lower appellate court cannot be said, to be illegal or erroneous.

5. For the reasons stated above, the appeal fails and is dismissed. Having regard to the circumstances of the case the parties are left to bear their own costs in this Court.