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Court : Rajasthan

Decided On : Jun-03-1994

Reported in : 1994(2)WLN354

Judge : Arun Madan, J.

Appeal No. : S.B. Civil Second Appeal No. 113 of 1984

Appellant : Chand Devi

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Shri. J.C. Jain, Mr. Jain

Disposition : Appeal allowed

Judgement :

Arun Madan, J.

1. This second appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 12th October, 1983 passed by the Civil Judge, Ajmer in Civil First Appeal No. 146/82, arising out of the judgment and decree dated 14th October, 1982 passed by the Addl. Munsiff & Judicial Magistrate No.1, Ajmer in Civil Suit No. 125/79.

2. The following substantial questions of law have arisen for consideration of this Court, in this second appeal:

(1) Whethr a Government School fully run and managed by the State can be considered as 'a recognised educational institution' within the meaning of Section 6(2)(a) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1955 (hereinafter to be referred as 'the Act')?

(2) Whether 'a recognised educational institution referred to in Section 6(2)(a) of the Act refers to only privately run educational institutions which are recognised by the State for the purpose of giving grants holding examinations and similar other purposes?

(3) Whether the provisions of Section 6(2)(b) of the Act are applicable to the Government schools fully run and managed by the State?

(4) Whether the provisions of Section 10 the Act are enforceable over and above the increase of rent permissible Under Section 6 of the said Act.?

(5) Whether the increase in rent permissible Under Section 10 of the said Act is in addition to the increase in rent permissible Under Section 6 of the Act?

3. The facts, giving rise to the filing of this appeal, brief stated, are that the appellant filed a suit against the respondent for increasing the monthly rent of the suit premises bearing AMC No. 571/1 from Rs. 255/- to Rs. 637.50 being 2 1/2 times of the basic rent of the suit premises, in the Court of Addl. Munsiff & Judicial Magistrate No.1, Ajmer vide Civil Suit No. 125/79. The aforesaid premises were let out to the respondent by the appellant for running Government Middle School, Ram Nagar, Ajmer. First letting look place on 25th November, 1963 on the monthly rent of Rs. 255/-. Subsequently, some additions and alterations were made in the suit premises by the landlord and in view of this the landlord claimed increase in the monthly rent of the suit premises keeping in view the provisions of Section 6(2)(b) of the Act on the ground that as per the instructions of the District Education Officer, Ajmer, certain additions and alterations were made in the tenanted premises and that the appellant-plaintiff had incurred a sum of Rs.

2,000/- in carrying out such additions and alterations as per Section 10 of the Act which permits suitable increase of rent on account of any improvement of structural alterations of the premises, not being expenditure incurred on decoration, maintenance and formal repairs which is permissible under the said provision. It was contended by the appellant's counsel that such expenditure has not been taken into account in determining the standard rent of the suit premises. Section 10 of the Act permits the landlord to increase the rent by an amount which shall secure him a return of income not exceeding 7 1/2% per annum of such expenditure. Section 6(2) (b) of the Act provides that where the premises are let for any other purpose, the standard rent shall not exceet. 2 1/2 times the basic rent thereof:

Provided that where the premises have been (first) let after the first day of January, 1965, the standard rent shall not exceed the basic rent thereof:

Provided further that where the fair rent or the standard rent for any premises has been determined or re-determined (by any Court under this Act) or by any authority under any law or order repealed or Section 30 (before the amendment in Raj. Premises Ordinance, 1975) and the amount of such fair rent is the same as would be determinable as standard rent by the Court under this Section, the fair rent or the standard rent previously determined or re-determined shall not be disturbed.

Explanation: for the purposes of this sub-section, the basic rent of any premises shall mean the rent at which the premises were let on the first day of January, 1962 and if not let on that day, the rent at which they were first let after that date.

4. In view of the above additions and alterations carried out by the landlord in the aforesaid premises, the landlady further claimed increase of rent of Rs. 12.50 in the monthly rent and so appellant claimed that the existing rent of Rs. 255/- should be increased to Rs. 637.50 in view of the aforesaid provisions of Section 6(2)(b) of the Act read with Section 10 of the Act.

5. In the written statement filed by the respondent in the trial Court, the basic rent of the tenanted premises of Rs. 255/- was admitted but it was contended that the

basic rent can only be increased by 50% under the provisions of Section 6(2)(a) of the Act and Section 6(2)(b) of the Act was alleged to be not applicable. In this connection it will be pertinent to mention the provisions of Section 6(2)(a) of the Act which provides that where the premises are let for residential purposes or for any of the purposes of a public hospital, Ausdhalya or Davakhana, a recognised educaional institution, a public library or reading room or any orphanage, the standard rent shall not exceed the basic rent increased by 50% thereof. Such increase is permissible Under Section 10 of the Act which deals with the circumstances under which the standard rent is liable to increase as stated in the foregoing para above.

6. The trial Court i.e. Additional Munsiff & Judicial Magistrate, Ajmer increased the monthly rent of the aforesaid premises from Rs. 255/- to Rs. 382.50 on the ground that the provisions Under Section 6(2)(a) of the Act are applicable to the facts of the present case and no increase Under Section 10 of the Act was allowed. The appellant preferred an appeal against the said Judgment and decree of the trial Court to the District Judge, Ajmer which was subsequently transferred to the Court of Civil Judge, Ajmer for disposal in accordance with law. Learned Civil Judge dismissed the appeal of the appellant vide judgment dated 12th October, 1983 in Civil Appeal No. 146/82 arising out of the Civil Suit No. 125/79 of Addl. Munsiff & Judicial Magistrate No. 1, Ajmer.

7. During the course of hearing it was contended on behalf of the appellant that first appellate court did not agree with the contentions of the appellant that there should also have been simultaneous increase of the rent which is permitted Under Section 10 of the Act. It was further argued by the learned Counsel for the appellant that the courts below have committed error of law by not taking into consideration the difference between a purely Government school fully run and managed by the respondent and the recognised educational institutions which are partly aided by the State.

8. Learned Counsel for the appellant further argued that there is a clear distinction between the Government schools wholly run and managed by the State Government and the recognised educational institutions which are partly aided by

the State and the courts below have committed error of law in not distinguishing the aforesaid difference between the two educational institutions. Shri J.C. Jain, learned Counsel for the appellant contended that the premises which was let out by the appellant to the respondent was falling within the second category of privately owned Government schools which was not recognised by the State and was partly aided by the State and, therefore, the provisions of Section 6(2)(b) of the Act are applicable and not Section 6(2)(a) of the Act.

9. Shri N.L. Pareek, learned Addl. Govt. Advocate for the State contended that the provisions of Section 6(2)(a) of the Act are attracted and that the maximum increase of the monthly rent permissible under the Act is 50% of the monthly rent and the increase of rent by 2 1/2 times is not justified.

10. It will be pertinent to refer to the findings of the trial court in the judgment dated 14th October, 1982 in civil suit No. 125/79, wherein after examining the rival contentions of the parties and the legal position as envisaged by the Act the Additional Munsif came to the conclusion that the plaintiff- appellant is entitled to the increase in the monthly rent only to the extent of Rs. 382.50 w.e.f. 1st March 1976 instead of Rs. 255/- which was being received by the appellant earlier. The trial court further held that the provisions of Section 6(2)(a) of the Act are applicable to the facts of the case and not the provisions of Section 6(2)(b) of the Act.

11. Against this judgment the appellant had preferred first appeal before the Civil Judge, Ajmer vide civil appeal No. 146/82 which was decided by the said court on 12th October, 1983 against which the present second appeal has been preferred to this Court. The learned civil judge, Ajmer while affirming the findings of the trial court has given a positive finding in para 14 of his judgment by observing that the provisions of Section 2(b) of the Act which deal with those tenancies or other like relationship created by grant from the State Government or the Central Government in respect of the premises taken on lease or requisitioned by the Government, are not applicable to the facts of the present case in view of the fact that the tenancy in this case has not been created by any grant from the State Government and, therefore the contentions of learned Counsel for the appellant

are not acceptable, since this provision itself, is not applicable and, therefore, the appellant was not entitled to any additional increase in the rent Under Section 10 of the Act. The first appeal of the plaintiff-appellant was consequently dismissed with the aforesaid finding.

12. Learned Counsel for the appellant placed strong reliance upon the provisions of Section 6(2) (a) of the Act by arguing that the said provision of the Act is attracted only to recognised educational institutions and since recognition is not required in case of Govt. institutions Section 6(2)(a) of the Act is excluded and instead Section 6(2)(b) of the Act is attracted. During the course of hearing the attention of this Court was invited to a letter Ex.7 dated 29th December, 1975 of the District Education Officer (Boys), Ajmer to the Executive Engineer, P.W.D. (B & R) Ajmer wherein recommendation was made for increase of rent in view of the additions and alterations made by the appellant. Subsequently another letter was written by the appellant; on 17th February, 1976 to the Education Commissioner and Secretary, Govt, of Rajasthan, Jaipur and other concerned officers wherein the appellant had repeated the request for increase of monthly rent from Rs. 255/- to Rs. 637.50 per month w.e.f. 1st March, 1976 with an alternative request to get the entire building re-assessed by the P.W.D. This was followed by a statutory notice Under Section 80 CPC dated 9th August, 1977 wherein reference was made to the provisions of Section 6 of the Act with a request for increase of monthly rent to Rs. 637.50 being 2 1/2 times of the basic rent of the said premises Under Section 6(2)(b) of the Act. A request was also made for increase of the monthly rent by Rs. 12.50 Under Section 10 of the Act w.e.f. 1st March, 1976.

13. In support of the aforesaid Contentions learned Counsel for the appellant placed reliance up on the evidence of Brijbhan (husband of the plaintiff-appellant) who was examined in trial court as PW. 1 and had deposed in his statement that Notice order Section 80 CPC (Ex.2) was duly served on the respondent by registered AD post with a request for re-assessment of the monthly rent to the District Education Officer, Ajmer but the said request was not aceded to by the respondent. It was further contended that such additions and alterations which were carried out by the appellant in the suit premises were strictly in accordance with the site plan Ex.10. No dispute was raised regarding such repairs either with

reference to statutory notice Under Section 80 CPC or with regard to the additional expenditure of Rs. 2000/- incurred by the appellant for carrying our the necessary repairs in the suit premises in cross-examination of PW. 1. Reference was also made to the corroborative statement of PW. 2 Sohanlal, neighbour of the appellant. It was contended by the learned Counsel for the appellant that the additions and alterations were carried out by the appellant in the suit premises in the year 1970 at the cost of Rs. 2000/-

14. In rebuttal evidence led on behalf of the respondent, DW. 1 had admitted the repairs and the cost incurred by the plaintiff-appellant in lieu thereof. It was contended on behalf of the state that there is statutory bar Under Section 22(2) of the Act which provides that no second appeal shall lie from any such order or decree of the civil court under this Act provided that nothing herein shall affect the powers of the High Court for Rajasthan in revision. In other words although no second appeal is maintainable by virtue of the aforesaid provisions of the Act, but there is no bar for filing a revision Under Section 100 read with Section 115 CPC. against the decisions rendered by the subordinate civil courts, if the High Court is satisfied that the case involves the substantial questions of law, and in such cases the High Court is within its competence to entertain such revision petitions limited to the formulation of substantial questions of law for correcting such jurisdictional errors as may be apparent on the face of the orders passed by the courts below Under Section 115 CPC which envisage as under:

The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which appeal lies thereto, and if such subordinate court appears:

(a) to have exercised jurisdiction not vestd in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit;

Provided that the High Court shall not under this section, vary or reverse any order made, or any order deciding an issue in the course of a suit or other proceeding except where:

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to party against whom it was made.

15. It is clear from the aforesaid provision of Section 22 of the Act that the revisional jurisdiction of the High Court Under Section 115 CPC is part and parcel of the appellate jurisdiction of the High Court. In other words in appropriate cases even an aggrieved party instead of having resort to the provisions of Section 115 CPC has inadvertently preferred an appeal instead of revision, the High Court should have no difficulty in converting an appeal to revision and treating the same as revision petition preferred Under Section 115 CPC for the reason that the High Court is certainly within its competence to correct such jurisdictional error committed by the courts below as if it was exercising its appellate powers by way of second appeal under the Act. This principle has been affirmed by the Apex Court in the matter of Immigration and Naturalization Service v. Veljko Stanisic: : [1970]1SCR322 . The Kerala High Court in the matter of Choudhary v. Mohammad : AIR1984 Ker198 has followed the aforesaid view of the Apex Court. There is no restrain or embargo either on the appellate or the revisional powers of the High Court Under Section 22 of the Act which clearly lays down that nothing contained in Section 22(1) of the Act shall afect the powers of the High Court for Rajasthan in revision. The conditions for exercise of the revisional powers of the High Court are those which are provided in Section 115 CPC and even if one of the conditions laid down therein is satisfied, the High Court has been empowered to interfere in exercise of its revisional jurisdiction against the appellate orders passed by a Civil Court Under Section 22(1) of the Act.

16. Consequently, I am of the view that notwithstanding that the appellant had preferred an appeal to this Court Under Section 100 CPC, this Court is competent to treat this second appeal as a revision in the ends of substantial justice and the

same being treated as Revision is disposed of accordingly.

17. Mr. Jain, learned Counsel for the appellant placed reliance upon the judgment of this Court in the matter of Arun Kumar Saini v. Smt. Ram Dulari and Ors. reported in 1993(2)WLN 356 (Raj.) wherein this Court held that an appeal can be converted into a revision Under Section 115 CPC. A reference was also made to the judgment of the Apex Court in the matter of The Principal and Ors. v. The Presiding Officer and Ors., reported in : [1978]2SCR507 , wherein distinction was made by the Apex Court between 'Affiliation' and 'Recognition'.

18. In the matter of Arun Kumar Saini v. Smt. Ram Dulari and Ors. S.B. Civil Writ Petition No. 597 and 598 of 1991 this Court (Hon'ble K.C. Agarwal, CJ.) while deciding the said matter on 4th August, 1993 held that in appropriate cases where the interest of substantial justice demands notwithstanding an appeal having been preferred, this Court is fully competent to ignore the mistake and permit the petitioner to convert the revision into an appeal. Likewise on the same analogy in this case also notwithstanding the statutory bar Under Section 22(2) of the Act, this Court is fully competent to convert this second appeal into a revision Under Section 115 CPC.

19. It is well settled law that in exercise of its inherent powers in appropriate cases where the interest of substantial justice so demands the technicalities of procedure need not be insisted upon by the appellate court and that the court should not adopt narrow pedantic approach in the matters concerning technicalities of procedure. This view has been affirmed by the Apex Court in the matter of Collector, Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors. reported in : (1987)ILLJ500SC wherein relying on the earlier judgment of the Apex Court in : [1979]118ITR507(SC) the Hon'ble Supreme Court held that court should adopt liberal approach in the matters of condonation of delay Under Section 5 of the Limitation Act and further held that the approach of the courts must be to do even handed justice on merit, in preference to the approach which scuttles a decision on merits (para 3). It was further held by the Hon'ble Supreme Court that a litigant does not stand to benefit by resorting to delay and in fact he runs a serious risk. The courts must, of course, see whether in such cases there is any taint of

malafides or element of recklessness or ruse. If neither is present, legal advice only sought and actually given, must be treated as sufficient cause when an application Under Section 5 of the Limitation Act is being considered.

20. Applying the above analogy and the proposition of law as laid down by the Apex Court, I am of the view that in this case the appellant does not stand to gain by having filed an appeal Under Section 100 CPC based on the legal advise instead of a revision petition which he should have filed Under Section 115 CPC in view of the bar Under Section 22(2) of the Act and accordingly I am further of the view that applying the above principle as laid down by the Apex Court, the approach of this Court should be to do even handed justice on merits in preference to the approach which scuttles a decision on merits and accordingly this appeal should be treated a revision petition instead of an appeal as already preferred.

21. In this case the tenancy in the suit premises is that of an education department of the State of Rajasthan and the premises were let out to the respondent school w.e.f. 25th November, 1963. The monthly rent was fixed at Rs. 255/- at the time of creation of the tenancy in favour of the Govt. school and it remained consistent through-out notwithstanding the corresponding increase in the price index and the existing inflationary cost of living having gone up many fold since 1963. I am therefore, of the view that there should have been a corresponding increase of monthly rent of the premises in question voluntarily by the tenant i.e., education department of the State Government which is running a school in the suit premises. But instead the petitioner landlady was subjected to great diadvantage, harassment at the instance of State agency and pecuniary loss. It is the duty of the State to protect the rights and liberties of the citizen which are guaranteed Under Article 21 of the constitution of India and in this case the respondent which is a Govt. School being run by the State education department being funded wholly out of the State funds, it was expected that it's management shall, behave better than an ordinary citizen rather than fighting out the litigation against the plaintiff-appellant all these years. In such cases if the State department or a Government functionary would not safeguard the rights of the citizen by restoring confidence in them, then who else would do? In view of the aforesaid circumstances the

increase of the monthly rent from paltry sum of Rs. 255/- to a sum pittance of Rs. 382.50 by holding that the provisions of Section 6(2)(a) of the Act are applicable, while permitting no increase Under Section 10 of the Act, I am of the opinion that the courts below have committed manifest error and the approach adopted by the courts below does not stand to reason and hence is not justified.

22. Keeping in view the facts and circumstances of this case, the legal position on the subject, and the arguments advanced by the learned Counsel for the parties, I am of the view that there is clear distinction between the Govt. schools wholly run and managed by the State Government and the recognised educational institutions which are partly, aided by the State Government and that this major distinction has not been taken into consideration by the courts below. I am consequently of the view that the courts below had fallen into clear error in not appreciating the clear distinction between the two institutions as referred to above. I am of the view that the Courts below have committed a legal error in not taking into consideration that recognition is necessary only in cases of private aided institutions and not in case of Govt. Schools or the educational institutions. Consequently the case of the appellant falls Under Section 6(2)(b) of the Act and not Under Section 6(2)(a) of the Act. In case of Govt. schools no such recognition is necessary; whereas the question of recognition would arise only in case of private educational institutions receiving grant in aid by the State Govt.

23. As I have stated above that in this case the provisions of Section 6(2)(b) of the Act are attracted and are applicable to the Govt. schools i.e. Govt. middle school Ramnagar, Ajmer which is being run in the appellant's tenanted premises and to such an institution which is purely government institution, question of recognition does not arise.

24. I am therefore, of the considered opinion that the provisions of Section 6(2)(b) of the Act are fully applicable to this case, read with the provisions of Section 10 of the Act which permits increase of rent over and above the permissible increase as stipulated Under Section 6 of the Act. Under Section 6(2)(b) of the Act, where the premises are let for any other purpose, the standard rent shall not exceed 2 1/2 times the basic rent thereof and, therefore, the appellant is consequently entitled

to such increase in the standard rent not exceeding 2 1/2 times of the basic rent le. Rs. 637.50 instead of Rs. 255/- as fixed earlier. This increase shall be operative w.e.f. 1st March, 1976 as claimed in the statutory notice Under Section 80 CPC dated 9th August, 1977.

25. Consequently this appeal now revision petition is allowed and the judgment and the decree passed by Addl. Munsiff, Ajmer dated 14th October, 1982 and that of civil judge, Ajmer dated 12th October, 1983 are set aside and the plaintiff-appellant's suit is decreed with costs. It is therefore, directed that the plaintiff appellant shall be entitled to monthly rent of Rs. 637.50 claimed in the suit instead of Rs. 155/- as originally fixed w.e.f. 1st March, 1976. The appellant is also held entitled to a sum of Rs. 2000/- incurred by her towards the cost of additions and alterations carried out in the suit premises as claimed by her in the suit Under Section 10 of the Act.

26. The respondent is further directed to pay arrears of rent to the landlord at the revised rate of Rs. 637.50 w.e.f. 1st March, 1976 within a period of eight weeks from today, failing which the appellant shall be at liberty to move this Court for such appropriate directions as may be deemed necessary in accordance with law.