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Court : Rajasthan

Decided On : Dec-17-1986

Reported in : 1987WLN(UC)675

Judge : Surendra Nath Bhargava, J.

Appeal No. : S.B. Civil Second Appeal No. 85 of 1986 and S.B. Civil Revision No. 194 of 1982

Appellant : Mool Chand

Respondent : Poonam Chand

Disposition : Appeal allowed

Judgement :

Surendra Nath Bhargava, J.

1. The present second appeal has been filed by the defendant in a suit for arrears of rent and ejection.
2. The plaintiff-respondent Poonam Chand, filed a suit on 27-3-1973 for arrears of rent amounting to Rs. 234/-, and eviction on the ground of default, denial of title and personal necessity. Notice was issued for appearance of the defendant for 11-5-1973. On 11-5-1973, the defendant moved an application under Section 13(4) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950, here in after

referred to as the 'Act' submitting that he has not committed any default in payment of rent, and further that he used to go to the plaintiff for paying rent but the plaintiff used to avoid accepting rent, by money order which was also refused and further that he was willing to deposit arrears of rent upto date along with interest amounting to Rs. 310.25 for which necessary orders may be passed. The tender form was also submitted along with the application. The application was contested by filing reply but however, the court passed order on 11-5-1973 itself that the tenant may deposit rent, subject to objection, as a result thereof, the tenant deposited the sum of Rs. 310.25 on 25-5-1973. The court did not determine the arrears of rent and the application was fixed for arguments, however, no orders on the said application were passed, nor the amount of rent as claimed in the suit and disputed by the defendant in the written statement was determined till final decision of the suit itself nor any directions were given to the defendant tenant to deposit the arrears of rent and for depositing the monthly rent in future. However, the defendant continued to deposit the rent month by month and plaintiff also withdrew the same from time to time.

3. The plaintiff filed an application on 3-12-1979 that the defendant has not deposited the future rent in time and as such, he was a defaulter, therefore, his defense should be struck off. The defendant filed reply and also examined the Nazir in support of his case as also produced certificate from the Treasury, Jhalawar. The court vide its order dated 28-7-1981 found that the defendant did not deposit the rent for the month of May, 1977, May 1978, November 1978 and May, 1979 in time and therefore, he was a defaulter and his defence was struck off.

4. The defendant preferred an appeal against the said order. Learned Civil Judge, Jhalawar vide his order dated 20-1-1982 held that the defendant did not deposit the rent of November, 1978 only and therefore, he also held that the defendant was a defaulter and his defence was rightly struck off and ultimately, he dismissed the appeal. Against that order, S.B. Civil Revision Petition No. 194/82 Moolchand v. Poonam Chand has been filed and the same is being disposed of by this common order.

5. The trial court without even awaiting for the decision of the appeal filed against the order dated 28-7-1981, striking out the defence of the defendant, proceeded with the case, and after recording evidence decreed the suit of the plaintiff on the ground of denial of title and default but rejected the ground of reasonable and bonafide necessity and decreed the arrears of rent amounting to Rs. 235.30p.

6. Defendant appellant preferred an appeal and the plaintiff filed cross-objections. Learned Civil Judge Jhalawar, dismissed the cross-objections filed by the plaintiff and agreed with the finding of the trial court that the suit premises were not required reasonably and bonafide, whereas it also accepted the appeal in part in so far as it held that the plaintiff is not entitled to decree of eviction on the ground of denial of title but ultimately, dismissed the appeal as it also held that the defendant-appellant was a defaulter in payment of rent and therefore, the trial court was justified in passing a decree for eviction. It is against this judgment and decree that the present second appeal has been filed.

7. Respondent put in appearance and therefore, after calling for the record, the appeal was admitted on 18-7-1986 and the following substantial question of law was framed:

Whether after depositing the arrears on the first date of hearing and because of the ground of default becoming non-existent, the provisions of Sections 13(3), 13(4), 13(5) and 13(6) of the Act become wholly inapplicable and the defence could not be struck off?

8. The respondent has also filed cross-objections and they are also being disposed by this judgment.

9. Learned counsel for the appellant has submitted that since the defendant has deposited arrears of rent even prior to the determination, therefore, the ground of default disappeared and became non-existent and hence, Sections 13(4), 13(5) and 13(6) of the Act will not apply and defence of the defendant could not be struck off. In this connection, he drew my attention to *Sivasharan v. Sagarmal Modi and Ors.* (1982 RLR 304); *Shyam Lal and Anr. v. Upbhokta Sahkari Samiti* (1982 RLR 1005) and also *Prof. Krishna Dutt v. Pawan Kumar* (1984 WLN 793).

10. On the strength of above authorities, learned Counsel for the appellant has submitted that the cause of action on the ground of default comes to an end and does not subsist since the arrears of rent are deposited under Section 13A of the Act and thereafter, no decree on the ground of default can be passed, even if the suit is continuing on other grounds. He has further submitted that Section 13-A of the Act does not provide ground for eviction. It was only enacted to give additional facility for the protection of tenants and the only ground for ejection is under Section 13(1)(a) of the Act. Learned counsel for the appellant has also submitted that the trial court had passed decree for a sum of Rs. 234/- as arrears of rent. The appellant had amount in excess and that could have been adjusted and taken into account. Then, the appellant will not be a defaulter in payment of rent even for November, 1978 and therefore, his defence should not be struck off. He has placed reliance on *Gulab Chand v. Raghuveer Nath*, 1981 WLN (UC) 237, where in it has been held that the amount deposited under Section 19CC has to be adjusted while ascertaining the amount due from the tenant. He has also placed reliance on : AIR 1985 SC369 wherein it has been held that the amount spent on repairs etc. have also to be adjusted towards arrears of rent, defence cannot be struck out. The appellant's counsel has also placed reliance on *Bheru v. Ghasilal and Anr.* (1986 (1) WLN 167).

11. On the other hand, learned Counsel for the respondent has submitted that the present suit was filed in 1973 before the Act came to be amended in 1975 and therefore, determination of rent under Section 13(4) by the court was not at all necessary on the first date of hearing and the defendant had also made an application under Section 13(4) of the Act not for determining the rent but for depositing the amount of arrears of rent so calculated by him. Written statement was filed on 20th September, 1973 and no dispute was raised regarding the amount payable either in the application or even in the, written statement. In the present case, there was no application under Section 13-A of the Act. He has placed reliance on *Man Mohan Chawla v. Jaswant Singh* (1969 RCJ 334) and *Jagdish Prasad v. Ferozi Bai* (1981 RLW 171).

12. He has further submitted that the cases cited by learned Counsel for the appellant are distinguishable on facts and do not apply to the present case. He

has also placed reliance on *Dhansukh Lal v. Dali Chand* : [1968]3SCR346). He also relied on 1983 WLN 210.

13. Learned counsel for the respondent has further submitted that the appellant cannot be allowed to raise a new case in second appeal. Defendant has not pleaded regarding payment of rent in excess and adjustment. Moreover, in the application dated 11-5-1973, he has himself computed arrears of rent plus interest and therefore, the amount of interest having been computed, cannot now be adjusted towards the payment of rent for the month of November, 1978. Under the old law a tenant was liable to pay even the time-barred rent, if he wanted to take, benefit under Section 13(4) of the Act, as has been held in *Nathulal v. Vishnu Chand* (1971 RLW 469) He has also relied on *Martin and Harris Pvt. Ltd. v. Prem Chand* (1974 RLW 115-FB) wherein, it has been observed that the tenant must raise the dispute on the first date of hearing even if the tenant had already deposited rent under Section 19-A and that such dispute cannot be raised later on. In the present case the tenant did not raise the dispute on the first date of hearing. He has also placed reliance on a recent decision of a division bench of this court in *Firm Kriparam Ganeshilal v. Vijay Kumar* (1986(1) WLN 450) where in it has been held that Sections 13(4) and 13(5) of the Act are mandatory & not merely directory or permissive and therefore, the court has no option but to strike off the defence for not depositing arrear of rent determined by court under Section 13(4) of the Act.

14. I have given my thoughtful consideration to the whole matter.

15. The Act has been enacted for the benefit of the tenants and is a beneficial legislation in favour of the tenants. The legislature while enacting Section 13 has expressed that a tenant so long as he is ready and willing to pay rent, will not be evicted unless at least one of the conditions mentioned in (a) to (1) exists and one of them is (a) that the tenant has neither paid nor tendered the amount of rent due from him for six months. The legislature has also enacted sub-clause (3) (4) and (5) of Section 13 of the Act which further give right to the tenant to deposit the arrears of rent in court on the first date of hearing or on or before such date as the court may, on an application made to it fix in this behalf. In the present case, the

defendant moved an application under Section 13(4) of the Act on 11-5-1973 itself stating that he had been ready and willing to pay rent and in fact, he offered the rent to the landlord but the landlord did not accept the same. Therefore, he had sent the rent by money order which was also refused by the plaintiff and therefore, the defendant was not a defaulter under Section 13(1)(a) of the Act, and moreover, he was prepared to pay the rent and in fact, deposited a sum of Rs. 310.25p. in view of order dated 11-5-1973 passed by the court but prior to passing the order determining rent by the court. Since obviously the rent due was only Rs. 234/- as has been found by the trial court while decreeing the suit of the plaintiff, he has deposited some amount in excess which could have been adjusted while determining as to whether he has committed default in making payment of rent in future from month to month and if that is accounted for, the tenant cannot be said to have committed default in payment of rent for the month of November, 1978. I find full support in this view by the observations in the cases of *Shia Sharan, Shyam Lal & Prof. Krishna Dutt (supra)*.

16. Learned counsel for the respondent argued that the dispute with regard to amount of arrears of rent was not raised on the first date of hearing but I find that this is not correct, in as much as, in the written statement in para 10, it was clearly contended that the arrears of rent claimed are barred by limitation and decree cannot be passed in respect of such amount which, is barred by limitation. On the other hand learned Counsel for the appellant has placed reliance on (1986(1) WLN 167), where in my brother Judge Hon'ble G.M. Lodha, J. has clearly held that raising of dispute in this manner in the written statement amount to raising contest with regard to arrears of rent and therefore, it was incumbent on the trial court to have first determined the actual amount which was to be deposited by the tenant under Section 13(3) of the Act. Only after passing such order, the provisions of section 13(4) of the Act can be made applicable. In the present case, the trial court determined the arrears of rent only while deciding the suit itself and therefore, even if any default was committed in payment of monthly rent prior to determination of the arrears by the court, the defence of the defendant against eviction could not have been struck off. The facts of the case (1986(1) WLN 167) are quite similar to the present case and therefore, order by which defence of the defendant was struck off is illegal and consequently, the decree passed on this

basis also cannot be sustained.

17. While pressing his cross-objections, learned Counsel for the respondent has submitted that both the courts below have rejected the contention of the plaintiff only on the ground that allegations made in the plaint are vague both with respect to denial of title and reasonable and bonafide necessity. The defendant did not ask for better particular which he ought to have done and therefore, when the issues had already been framed and parties have led evidence, he cannot take up the plea now at this stage. He ought to have pressed that no cause of action had been shown or the pleading is insufficient. This point cannot be taken up in appeal for the first time and since no prejudice has been caused to the defendant he cannot be allowed to raise this plea in appeal. Reliance has been placed on the following authorities: *Rumchandra v. Chhal Beharilal* (1977(1) RCJ 540); *Prabhulal v. Kaluram* (1986(1)WLN 289); *Shyam Sunder v. Mode Ram* (1981 RLW 178); *Onkarnath v. Ved Vyas*(1978(2) RCJ 158); 1983 RLW 591, and 1985 Del. 248.

18. He has further submitted that the defendant was fully aware about the fact that he had denied the title of the plaintiff in his earlier suit and, therefore, denial of title in an earlier suit entitles the landlord for a decree on this ground, as has been held in *Moolchand v. Ishvarlal* (1973 RLW 333) and *Shivarain v. Balkishan* (1979 (2) RCJ 33).

19. On the other hand, learned Counsel for the appellant has submitted that the pleadings with regard to the ground of denial of title & bona fide need are very vague and insufficient and prejudice to the appellant is obvious. Defendant had no notice as to when he denied the title, under what circumstances, when and in what words. Moreover, if this fact would have been mentioned in the plaint, the defendant could have taken the plea that his case is covered by Section 13(1)(f) proviso that the landlord has waived his right or condoned the conduct of the tenant denying the title of the landlord. A copy of the statement should have been filed alongwith the plaint or atleast referred and the words quoted in the plaint so that he would have also denied whether they really amounted to denial of title or not. Moreover, in the present case, the defendant has admitted in the written statement that he was a tenant and even before the suit was filed he had sent the

money order of rent treating himself as a tenant. It was for the plaintiff to have given details and more particulars. Plaintiff even did not file any rejoinder to give these details. Moreover, with regard to the ground of bona fide need, he has submitted that it is a concurrent finding of fact of both the courts and in second appeal, this court cannot interfere.

20. I have given my thoughtful consideration to the whole matter and have also perused the record of the case.

21. In my opinion, the cross-objections are without any force and have to be rejected. The pleadings in regard to the denial of title and bona fide necessity are pretty vague. Findings with regard question of bonafide and reasonable need and comparative hardship are purely findings of fact and in the present case, there are concurrent findings of both the courts below. The courts below have discussed the evidence led by the parties and, therefore, sitting in second appeal, they cannot be interfered with.

22. With regard to the ground of denial of title, the prejudice to the defendant is obvious. The defendant is not aware as to when he had denied the title of the plaintiff, in what words, under what circumstance. Moreover, if the date, time etc. with regard to denial of title of the plaintiff had been given, the defendant could have pleaded that the landlord had waived his right and condoned the denial.

23. In this view of the matter, the cross-objections filed by the plaintiff are rejected.

24. In the result, this appeal is allowed, the cross objections filed by the plaintiff are dismissed and the suit of the plaintiff-respondent is also dismissed. The revision Petition (S.B. Civil Revision No. 194/82) automatically stands allowed but looking to the facts and circumstances of the case, the parties as left to bear their own costs.