

Roop Singh Vs. Jabbar Singh

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Court : Rajasthan

Decided On : Feb-09-1999

Reported in : 1999(3)WLC766; 1999(1)WLN261

Judge : R.R. Yadav, J.

Appeal No. : S.B. Civil Revision No. 972 of 1996

Appellant : Roop Singh

Respondent : Jabbar Singh

Judgement :

R.R. Yadav, J.

1. The instant revision petition has been filed against the order dated 9.10.1996 passed by the learned Additional District Judge, No. 1, Jodhpur in Civil Appeal No. 59 of 1996 setting aside the order passed by the learned Additional Civil Judge (Junior Division), No. 6, Jodhpur in Original Civil Suit No. 65 of 1995 whereby the learned first appellate court reduced the provisional determination of rent of the shop in dispute by the learned trial court from Rs. 500/- to Rs. 50/- per month.

2. Heard learned Counsel for the parties and perused the original record requisitioned from learned trial court.

3. It is evident from perusal of paragraph 2 of the plaint that Rs. 350/- was agreed rent between the parties at the time when the shop in question was let out to defendant-respondent Jabar Singh in the month of January 1986. Later on, the rent was enhanced from Rs. 350/- to Rs. 400/- per month and thereafter from Rs. 400/- to Rs. 500/- per month. It is to be noticed that in the plaint Rs. 500/- per month rent is averred to be last paid rent of the shop in question. The details of enhancement of rent are disclosed in paragraph 3 of the plaint. The defendant-respondent had filed a written statement denying the averments made in paragraph 2 of the plaint. It is stated by him that initially the agreed rent of the shop in question was not Rs. 350/- per month but it was Rs. 50/- per month only. He has further denied enhancement of rent from Rs. 350/- to Rs. 500/- per month on different dates disclosed in the plaint. He had also denied that the landlord plaintiff-revisionist was giving receipts relating to payment of rent of the shop in question. It is strange that the tenant-defendant has not disclosed in his written statement what was last paid rent of the shop in question within the meaning of Sub-section (3) of Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as the Act of 1950').

4. The plaintiff-revisionist moved an application under Sub-section (3) of Section 13 of the Act of 1950 for determination of provisional rent and both the parties adduced evidence by way of affidavits in support of their respective claims. The deponents, who filed affidavits in support of tenant-defendant-respondent have stated that the shops appurtenant and other shops in the same locality are let out at rate of Rs. 5/- to 15/- and no shop in the vicinity of disputed shop is let out at the rate of Rs. 500/- per month whereas the deponents who filed affidavits in support of the plaintiff-landlord revisionist have stated that rent of the shops situated in the same vicinity is from Rs. 500/- to Rs. 700/- per month. One of the deponents stated that he is paying Rs. 700/- per month rent of a shop of the same size in the vicinity of the disputed shop whereas another deponent stated in his affidavit that he is paying Rs. 600/- per month rent in the same locality of a shop of same size.

5. It is true that the order impugned has not finally determined the monthly rent between the parties. It is only provisional determination of rent, therefore, any observations made at this stage regarding actual rent which is paid or legally

payable by the tenant-defendant to the plaintiff-landlord relating to disputed shop would prejudice the case of either side at the stage of final hearing, hence, I declined to discuss in detail rival contentions raised at the Bar in this regard.

6. Looking to all the facts and circumstances of the present case as well as written statement filed by the tenant-defendant, I am satisfied that initially the agreed rent of the disputed shop was Rs. 350/-per month, therefore, the learned first appellate court has no jurisdiction to reduce the agreed rent payable at the rate of Rs. 350/- per month to Rs. 50/- per month.

7. It is to be imbibed that whenever such disputes relating to provisional determination of monthly rent are raised under Sub-section (3) of Section 13 of the Act of 1950 then the Sub-ordinate Courts are required to determine the provisional rent after putting a glance at Sections 3(b)(vi), 5, 6, 8, 10 and 11 of the Act of 1950. It is incumbent upon the courts to look into not only agreed rent but it is also required to look into cumulative effect of the mandatory provisions contemplated under the aforesaid sections of the said Act and should determine such provisional rent which may be fair and just in the facts and circumstances of each case.

8. In the present case, I am of the view that fair and just rent of the premises should not be less than Rs. 350/- per month which is proved to be agreed rent between the plaintiff-landlord and tenant-defendant.

9. An identical question came up for consideration before me in case of Madan Lal v. Laxman Dass reported in 1996 (1) RCR 120. The controversy involved in the present case is squarely covered by decision rendered by me in the case of Madan Lal (supra). On the basis of ratio decidendi laid down in case of Madan Lal (supra), I consider it just and proper to determine monthly agreed rent between the parties to be Rs. 350/-as provisional rent of the disputed shop within the meaning of Sub-section(3) of Section 13 of the said Act. I am of the view that learned lower appellate court has committed jurisdictional error in interpreting the decision rendered by this Court in case of Madan Lal (supra).

10. I am constrained to observe that legal principles propounded by the higher courts are not magic incantations merely for the purpose of mentioning in the

judgment but its importance lies in their application to a given set of facts which exercise is lacking in the present case by the learned lower appellate court.

11. In case of Madan Lal (supra) the correct interpretation of phraseology used under Sub-section (3) of Section 13 of the Act of 1950 to the effect that such amount shall be calculated at the rate at which it was last paid or was payable for the period for which the tenant has made default including the period subsequent thereto. The expressions 'last paid and payable' have been discussed in detail in the aforesaid decision. In paragraph 57 of the said decision, it is held that a conjoint reading of Section 5 and Sub-section (5) of Section 6 of the said Act reveal that the rent payable for any premises situated within the areas to which this Act extends for the time being shall subject to the other provisions thereof be ordinarily such as may be agreed upon between the landlord and tenant. It is reiterated that according to Section 5 of the Act of 1950 ordinarily agreed rent between the landlord and tenant is payable as provisional rent subject to other provisions of the said Act.

12. In the present case, the tenant-defendant-respondent has not disclosed in his written statement as to what was last paid rent hence payable agreed rent at the rate of Rs. 350/-per month for which receipts are produced by the landlord would be just, fair and reasonable monthly rent under Sub-section (3) of Section 13 of the said Act. At the risk of repetition, it is reiterated that while determining just, reasonable and fair provisional rent under Sub-section (3) of Section 13 of the Act of 1950, the courts are under legal obligation to take into account the mandatory provisions of Sections 3(vi), 5, 6, 8, 10 and 11 of the said Act.

13. As a result of the aforesaid discussion, the orders passed by the learned first appellate court and the learned trial court are hereby set aside and instant revision is allowed with direction to the learned trial court to calculate the provisional rent of the disputed shop under Section 13(3) of the Act of 1950 from 1.9.1991 to 31.1.1999 at the rate of Rs. 350/- per month with interest which is to be calculated at the rate of 6% per annum. The tenant-defendant is directed to continue to pay future monthly rent at the aforesaid rate month by month on or before fifteenth of each succeeding month.

14. Record be remitted back to the learned trial court forthwith.

15. Both the parties are directed to appear before the learned trial court on 3.3.1999.

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