

Naresh Sachdeva Vs. Prithvipal Singh and ors.

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Court : Rajasthan

Decided On : Mar-05-1999

Reported in : 1999(3)WLC732; 1999(1)WLN314

Judge : Shiv Kumar Sharma, J.

Appeal No. : S.B. Civil Misc. Appeal No. 237 of 1999

Appellant : Naresh Sachdeva

Respondent : Prithvipal Singh and ors.

Disposition : Appeal dismissed

Judgement :

Shiv Kumar Sharma, J.

1. Defendant appellant seeks to challenge the order dated January 12, 1999 of the learned Additional District Judge No. 1 Kota whereby provisional rent under Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short the Rent Act) has been determined.

2. Brief 'resume' of the facts is that the plaintiff respondents (for short the landlord) instituted suit for ejectment and recovery of rent in respect of tenanted property against the defendant appellant (for short the tenant) on December 18, 1997 on the ground of default in payment of rent alleged to be due since March 5, 1996 to

November 30, 1997 on the date of presentation of plaint. It was averred that the tenant agreed to pay Rs. 39,172/- per month as rent and rent deed was executed by him on November 16, 1995. The tenant filed written statement on July 8, 1998. Learned trial court vide impugned order determined the rent under Section 13(3) of the Rent Act).

3. What was vehemently argued, however to assail the impugned order was that the court below despite perpetual pleas, prayers and pursuation did not conduct the legal enquiry which was necessary before determination of provisional rent under Section 13(3) of the Rent Act. The plea of the tenant that the suit was premature and under the circumstances no order could have been passed, was ignored. The court below did not deal with the detailed affidavits filed by the tenant and also did not appreciate the relevant points. Advance payment of rent was also not adjusted. The court below passed the impugned order without application of judicial mind. Reliance was placed on Ganesh Lal v. Ladu Ram 1997 (3) WLC (Raj.) 638 and Om Prakash v. Khem Raj 1998 (1) WLC 135.

4. Strenuous efforts were made on the other hand, supporting the order impugned. It was canvassed that the order of the court below is based on material on record. Parties were permitted to file affidavits and proper enquiry was conducted. The tenant does not want to pay the rent and with a view to prolonging the case, the instant appeal has been filed.

5. I have pondered over the rival submissions and carefully weighed the material on record.

6. In order to thresh out the controversy poised before me a look at the relevant statutory provisions is necessary. Section 13(3) of the Rent Act reads thus-

(3) In a suit for eviction on the ground set forth in Clause (a) of Sub-section (1) with or without any of the other grounds referred to in that sub-section, the Court shall, on the first date of hearing or on any other date as the Court may fix in this behalf which shall not be more than three months after filing of the written statement and shall be before the framing of the issues, after hearing the parties and on the basis of material on record provisionally determine the amount of rent

to be deposited in Court or paid to the landlord by the tenant. Such amount shall be calculated at the rate of rent at which it was last paid or was payable for the period for which the tenant may have made default including the period subsequent thereto upto the end of the month previous to that in which such determination is made together with interest on such amount calculated at the rate of six per cent per annum from the date when any such amount was payable upto the date of determination.

Provided that while determining the amount under this sub-section, the court shall not take into account the amount of rent which was barred by limitation on the date of the filing of the suit.

Sections 13(7) and (8) provides as under-

(7) 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 fit.

(8) In case at the time of decision of the suit-

(a) the court finds that the amount of rent provisionally determined by it under Sub-section (3) and deposited in Court or paid to the land lord under Sub-section (4) is less than the amount of rent finally decided as payable by the tenant, the court shall pass a decree for the balance amount against the tenant;

(b) the Court finds that the amount determined and deposited or paid as aforesaid is in excess of the amount of rent finally decided as payable by the tenant, the Court shall, in the event of passing a decree for eviction against the tenant on ground other than that set forth in Clause (a) of Sub-section (1), also pass a decree in favour of the tenant for such excess amount deposited or paid by him and in the event of dismissing the suit for eviction it shall direct in the decree that such excess amount will be adjusted by the landlord against future rent payable by the tenant.

7. Sub-sections (3), (7) and (8) of Section 13 of the Rent Act were substituted by Section 8 (1) of the Rajasthan Premises (Control of Rent and Eviction) (Amendment) Ordinance 1975 (Rajasthan Ordinance No. 26 of 1975). The detailed procedure for determination of provisional rent has not been provided in Sub-section (3), but a bare perusal of the sub-section reveals that the court has to hear the parties before determining provisional rent on the basis of material on record i.e. pleadings and other documents submitted by the parties. Calculation has to be made on the basis of rent last paid and interest will be allowed on arrears of rent at the rate of six per cent per annum. The time barred arrears of rent shall not be taken into consideration for such calculation. Clause (b) of Sub-section (8) deals with the situation when the amount of rent paid by the tenant as provisionally determined under Sub-section (3) is in excess of the amount finally decided by the Court. Thus Sub-section (8) is based on equitable principle that one has paid more than due, must get his money back. The provisional rent if determined in excess of the amount due may be refunded back to the tenant. In *Brij Mohan v. Hargun Dass* 1988 (1) RLR 705 (Raj.), it was indicated that the determination rent under Section 13(3) is only provisional and Section 13(8) of the Act takes sufficient care of the tenants interest in case at the time of decision of the. suit, the trial court finds that the amount determined and deposited or paid under Section (3) is in excess of the amount of rent finally decided payable by the tenant. In *Pratibha Mishra v. saroj Kumari* 1996 (3) RLW 198 it was held that final rent is to be determined under Section 13(8)(b) at the end of the trial. If the provisional rent is determined on the basis of the record available, no prejudice is caused to the tenant as the final decision will be taken at the end of the trial under Section 13(8)(b) of the Rent Act and amount deposited could be adjusted.

8. It is well settled that the phrase 'material on record' includes all the documents submitted in support of the pleadings of the parties. The court is enjoined with a legal duty to apply its mind to all the documents submitted by both the parties in addition to the pleadings of the parties and application of mind should be reflected in the order, which should be a speaking order.

9. In the case on hand, it appears from the perusal of the order sheets of the trial court dated 7th January, 1999 and 12th January, 1999 that enquiry was conducted

by the learned court below. Landlord filed affidavit and the tenant submitted counter affidavit. There is no dispute about the execution of the rent deed. A look at the impugned order demonstrates that in view of the pleadings of the defendant the amount in the sum of Rs. 1,50,000/- was adjusted by the court below while determining provisional rent. I am unable to persuade myself to agree with the submissions of learned Counsel appearing for the tenant that the legal enquiry was not conducted by the court below. It is not necessary to deal with in detail the pleadings of the parties at the stage of determination of provisional rent. The only requirement is that the judicial application of mind should be reflected in the order and the order should be speaking one. In my considered opinion application of judicial mind is reflected in the impugned order as amount in the sum of Rs. 1,50,000/- has been adjusted on the basis of pleadings of the defendant. In so far as the other contentions averred in the written statement are concerned they may be adjudicated upon under Section 13(8) of the Rent Act. In *Om Prakash v. Khem Raj* (supra), the trial court did not consider the rent receipts filed by the tenant which were on record on the date of the determination of the provisional rent and in those circumstances this court directed that the tenant should be saved from making double payment. The ratio of *Om Prakash v. Khem Raj* (supra) and *Ganesh Lal v. Ladu Ram* (supra) is not applicable in the facts and circumstances of the instant case. I do not see any infirmity in the order impugned. The objections raised in the written statement may be adjudicated upon after framing the relevant issues at the time of decision of the suit under Section 13(8) of the Rent Act.

10. The appeal of the tenant being devoid of merit, is accordingly dismissed with costs.