

Devi Narayan Mathur Vs. Shital Prasad

Devi Narayan Mathur Vs. Shital Prasad

SooperKanoon Citation : sooperkanoon.com/768354

Court : Rajasthan

Decided On : Dec-14-2005

Reported in : RLW2006(1)Raj556; 2006(2)WLC104

Judge : Shiv Kumar Sharma, J.

Acts : Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 13 and 13(4)

Appeal No. : S.B. Civil Second Appeal No. 592 of 2001

Appellant : Devi Narayan Mathur

Respondent : Shital Prasad

Advocate for Pet/Ap. : R.K. Mathur, Adv.

Disposition : Appeal dismissed

Judgement :

Shiv Kumar Sharma, J.

1. Learned trial court after extending benefit of first default to the tenant defendant, dismissed the suit for eviction of the plaintiff landlord. Learned first appellate court however reversed the finding of trial Court and allowed the appeal of the landlord holding mat the tenant had committed second default. It is against the decree of

the first appellate court that the instant appeal has been filed by the tenant.

2. I have heard learned counsel for the appellant and scrutinised the material on record.

3. Since the rent was deposited after expiry of period of limitation, the finding of learned trial Court was rightly reversed by the learned first -appellate Court. In *Nasiruddih v. Sita Ram Agarwal* : [2003]1SCR634 , the Apex Court indicated that:-

The word 'shall', which is ordinarily Imperative in nature, has been used in Sub-section (4) of Section 13. The power of the Court has also been limited to the extent that it can extend time for such deposit not exceeding three months and so far as the deposit of monthly rent is concerned, by fifteen days. The Court's power, therefore, is restricted. In case tenant deposits the provisional rent as determined by the Court within stipulated period the tenant is relieved by the eviction decree. Sub-section (4) of Sec. 13 is mandatory.

4. In *Arumugham v. Sundarambal* : [1999]2SCR950 the Apex Court held that it is open to the first appellate court to consider the evidence adduced by the parties and give its own reasons for accepting the evidence on one side or rejecting the evidence on other side. It is not permissible for the second appellate court to interfere with such findings of the first appellate court only on the ground that the first appellate court had not come to grips with the reasoning given by the appellate trial Court.

5. I am satisfied that no substantial question of law arises in this appeal and it stands dismissed without any order as to costs.