

Ram Lal Vs. Mohan Lal

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Court : Rajasthan

Decided On : Feb-17-2009

Reported in : RLW2009(4)Raj3502

Judge : Vineet Kothari, J.

Appellant : Ram Lal

Respondent : Mohan Lal

Disposition : Petition dismissed

Judgement :

Vineet Kothari, J.

1. This revision petition is directed against the order dated 20.1.2009 passed by the learned trial Court rejecting the application under Order 7 Rule 11 C.P.C. of the petitioner-defendant. The petitioner submitted that the earlier the suit filed by the plaintiff-landlord was returned for proper presentation on 21.12.1999 against the plaintiff approached this Court and this Court remanded the matter back to the learned District Judge and the learned District judge disposing of the appeal filed by the plaintiff on 1.11.2004 directed that if valuation of the suit is reduced below Rs. 50,000/- by waiving of claim of arrears of rent by Rs. 7,000/-, the suit in question may be entertained by the learned trial Court. Accordingly, the said suit originally filed on 19.8.1995 was again filed by the plaintiff waiving his claim of

arrears of rent by Rs. 7000/- and thus amended suit registered on 1.11.2004 as suit No. 23/2004 - Mohan Lal v. Ram Lal was instituted in the learned trial Court of Civil Judge (Sr. Div.), Pali.

2. The defendant again filed the present application under Order 7 Rule 11 C.P.C. inter alia stating that in the meanwhile since new Rent Control Act, 2001 had come into force w.e.f. 1.4.2003, therefore, the amended suit as instituted on 10.11.2004 was not maintainable in the said Court, but could be filed only before the Rent Tribunal as per the provisions of new Rent Control Act, 2001. The learned trial Court has rejected the said application under Order 7 Rule 11 C.P.C. by impugned order, which is being challenged in the present revision petition.

3. Mr. Pankaj Bohra, learned Counsel appearing for the petitioner drawing attention of the Courts towards Section 32 of the new Rajasthan Rent Control Act, 2001 submitted that no right vested in the plaintiff and therefore, the earlier suit instituted which was returned for proper presentation when was re-instituted on 10.11.2004, was required to be so instituted only in the Rent Tribunal as per the provisions of new Rajasthan Rent Control Act, 2001 and the said proceedings could not be continued in the year 2004 in the same Court.

4. Having heard the learned Counsel and upon perusal of the provisions of Section 32 of the Act, this Court is satisfied that the learned trial Court has not committed any error in rejecting the application under Order 7 Rule 11 C.P.C. of the present petitioner-defendant. Section 32 of the said Act is reproduced in extenso:

Section 32. Repeal and saving.--(1) The Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (Act No. 17 of 1950) shall stand repealed with effect from the date notified under Sub-section (3) of Section 1 of this Act.

(2) The repeal under Sub-section (1) shall not affect:

(a) anything duly done or suffered under the enactment so repealed; or

(b) any right, title, privilege, obligation or liability acquired or incurred under the enactment so repealed; or

(c) any fine, penalty or punishment incurred or suffered under the provisions of the enactment so repealed.

(3) Notwithstanding the repeal under Sub-section (1)--

(a) all applications, suit or other proceedings under the repealed Act pending on the date of commencement of this Act before any Court shall be continued and disposed of, in accordance with the provisions of the repealed Act, as if, the repealed Act had continued in force and this Act had not been enacted. However, the plaintiff within a period of the hundred and eight days of coming into force of this Act shall be entitled to withdraw any suit or appeal or any other proceeding pending under the repealed Act with liberty to file fresh petition in respect of the subject matter of such suit or appeal or any other proceeding under and in accordance with the provisions of this Act and for the purpose of limitation such petition shall, if it is filed within a period of two hundred and seventy days from the commencement of this Act, be deemed to have been filed on the date of filing of the suit which was so withdrawn and in case of withdrawal of appeal or other proceeding, on the date of which the suit, out of which such appeal or proceeding originated, was filed;

(b) the provision for appeal under the repealed Act shall continue in force in respect of applications, suit and proceedings disposed of thereunder.

(c) all suits and proceedings instituted under the provisions of the repealed Act shall be effective and disposed of in accordance with such repealed law.

(d) any rule or notification made or issued under the repealed Act and in force on the date of commencement of this Act shall continue to govern the pending cases.

5. Sub-section (3) of Section 32 of the said new Rent Control Act, 2001 is complete answer of the submissions, made at the Bar by the learned Counsel for the petitioner. The said provision clearly provides that all applications, suit or other proceedings under the repealed Act pending on the date of commencement of this Act before any Court shall be continued and disposed of in accordance with the provisions of repealed Act as if the repealed Act has continued in force and this

Act had not been incorporated. Reinstitution of the suit in the year 2004 namely, suit No. 23/2004 is mere continuance of the proceedings which were originally instituted by the plaintiff in the year 1995 when suit No. 190/1995 was filed by him on 19.8.1995. The waiver of Rs. 7000/- of arrears of rent and thus bringing it within the pecuniary jurisdiction of learned trial Court was an act of the plaintiff in compliance with the directions of the learned Distt. Judge while deciding the appeal on 1.11.2004 in Appeal No. 23/2002 and the said reinstated suit was mere continuance of those proceedings which were instituted in the year 1995. Therefore, these proceedings are fully saved and protected by Sub-section 3(a) of Section 32 of the new Rent Control Act, 2001. Therefore, there was no question of said suit being not maintainable under the old Rajasthan Rent Control Act, 1956 (sic 1950).

6. The case laws cited by the learned Counsel for the petitioner in support of his submission rather supports the reasoning: given by the learned trial Court in the impugned order.

7. In the case of M. Subba Rao and Sons v. Vishodamma and Ors. reported in AIR Supreme Court in CD-ROM 1950-2007, the Hon'ble Supreme Court has held as under:

13. ... This Court upheld the eviction of tenant under Section 12(1)(a) of the Act. Before this Court the tenant pleaded that the New Act having been brought into force during the pendency of the proceedings conferred certain additional protection on the tenant who's eviction was sought for on the ground of default in payment of areas. Vide Para 6, this Court refused to evaluate the legality of the decree passed under the old Act by testing it by reference to the provisions of the New Act on the twin grounds that the rights of the parties to litigation ordinarily stand crystallized on the date of the commencement of lis and have to be determined by reference to the law applicable on that day, and that the provisions of the New Act are not retrospective in their application.

8. In the case of Vinod Gurudas Raikar v. National Insurance Ltd. and Ors. AIR Sc 1950-2007, the Hon'ble Supreme Court observed as under:

In such a case; Clause (e) of Section 6 of General Clauses Act is not attracted because, by the enactment of the new law the remedy of the claimant has not been affected at all. His right to claim compensation by filing the claim within the same period of limitation has been preserved. And there was no application for condonation of delay in a proceeding pending at the time of repeal so as to allow him to claim any privilege available under the old Act. Though the claimant earlier could file an application even more than six months after the expiry of the period of limitations, but this cannot be treated to be a right which the appellant had acquired. The claim to compensation which the claimant was entitled to, by reason of the accident was certainly enforceable as a right.

It cannot be said in such a case that the present case must be considered as one where an accrued right has been affected because the option to move an application for condonation of delay belatedly filed should be treated as a right.

There is a vital difference between an application claiming compensation and a prayer to condone the delay in filing such an application. Liberty to apply for a right is not in itself an accrued right or privilege.

Moreover, claimant's right to claim compensation was not affected at all by the substitution of one Act with another. Since the period of limitation remained the same there was no question of the claimant being taken by surprise. So far as the question of condonation of delay of six months was concerned, there was no change in the position under the new Act.

9. Thus, the observation of the Hon'ble Supreme Court that the rights of parties to litigation ordinarily stands crystallized on the date of commencement of the lis and have to be determined by reference to the law applicable on that day, is absolutely correct proposition of law and that seals the fate of the present petitioner before this Court. Commencement of the list is obviously the date when the suit was instituted which in the present case was instituted by the plaintiff landlord on 19.8.1995 and whenever the decree is passed at any level of Courts below where such litigation is pending, that determines the right which existed on the said date. Therefore, the contention of the learned Counsel for the petitioner defendant that no right vested in the petitioner as no decree was passed in favour of the plaintiff

is misconceived. It is commencement of lis and continuance of which is protected by Section 32(3)(a) of the Act, and consequently, the reinstated Suit No. 23/2004, instituted on 10.11.2004 is mere continuance of old proceedings and they are saved by the aforesaid provisions.

10. The revision petition is thus found to be devoid of merit and the same is accordingly dismissed.

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