

Sadiq Mohammed Vs. Parvati Devi

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Court : Rajasthan

Decided On : May-06-2002

Reported in : RLW2003(1)Raj624

Judge : H.R. Panwar, J.

Acts : Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 6, 7, 7(1), 7(5) and 22

Appeal No. : S.B. Civil Misc. Appeal No. 225 of 2002

Appellant : Sadiq Mohammed

Respondent : Parvati Devi

Advocate for Pet/Ap. : Vijay Mehta, Adv.

Disposition : Appeal dismissed

Judgement :

Panwar, J.

1. This appeal has been filed under Section 22 of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (in short, referred to hereinafter as 'the Act') by the defendant-tenant feeling aggrieved by order dated 23.03.2002 of the learned Addl. District Judge No. 2, Jodhpur whereby the trial Court has passed order under

Section 7 of the Act fixing provisional rent.

2. Briefly stated, facts of the case to the extent they are relevant and necessary for the decision of this appeal, are that: the defendant-appellant is plaintiff-respondent in shop No. 2 since 1972. The plaintiff-respondent brought up suit under Section 6 of the Act for fixing standard rent. Alongwith the plaint, the plaintiff also moved in application under Section 7 of the Act for fixing provisional rent. Both the parties filed affidavits in support of their respective contentions and, on the basis of material on record, the trial Court vide order impugned dated 23.03.2002 fixed provisional rent at the rate of Rs. 1,000/- per month.

3. It is contended by learned counsel for the appellant that the order impugned is based on surmises and conjectures and the learned Court below has seriously erred in relying upon the report of a private valuator despite the fact that the report was not supported by any affidavit. He also contended that the trial Court had no ground for relying upon the affidavits submitted by the plaintiff and discarding those submitted by the defendant- appellant. It has been submitted by the learned counsel that under Section 7 of the Act, the trial Court was only required to fix provisional rent which could not be much higher than the prevailing rent.

4. Sub-section (1) of Section 7 of the Act says that upon institution of a suit under Section 6, the Court shall forthwith make an order fixing in a summary manner a provisional rent for the premises in question, which shall be binding on all parties concerned and shall remain in force till a decree fixing the standard rent therefore is finally made in such suits. Obviously, Section 7 of the Act does not cast responsibility upon the Court to arrive at a ratio for determination of the provisional rent. Disposal of an application under Section 7 of the Act is a summary proceedings and, in fact, discretionary which shall be binding on all parties concerned and shall remain in force till a decree fixing the standard rent is finally made. Sub-section (5) of Section 7 provides that all amounts paid as provisional rent shall be adjusted towards payment of the standard rent Finally decreed. The expressions 'forthwith' and 'in a summary manner' occurring in the language of Section 7 of the Act alongwith rider-clause 'which shall be binding on all parties concerned' leave little scope for, interference rendering access to appeal against

such order under Section 22 of the Act limited to restricted exercise of jurisdiction and the appellate Court would only interfere with an order passed under Section 7 of the Act if it ex facie appears that the trial Court has grossly erred in exercising Jurisdiction under Section 7 for determination of the provisional rent.

5. Admittedly, the appellant is tenant in the suit shop since March 1972 and the present rent is Rs. 170/- per month only. The Court below has duly taken into account various documents placed on record by both the parties and observed that affidavits filed by the defendant do not disclose the tenure of the rate of rent. Besides, it is in the discretion of the Court to take judicial notice of various other relevant facts which are general and germane to the issue. Under these facts and circumstances, I do not find any illegality or irregularity in the order impugned.

6. No interference is called for. The appeal is summarily dismissed.

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