

Ramcharan Sharma Vs. the Rent Control Tribunal and ors.

Ramcharan Sharma Vs. the Rent Control Tribunal and ors.

SooperKanoon Citation : sooperkanoon.com/769270

Court : Rajasthan

Decided On : Jul-04-2008

Reported in : AIR2008Raj184

Judge : Narendra Kumar Jain, J.

Appellant : Ramcharan Sharma

Respondent : The Rent Control Tribunal and ors.

Disposition : Petition allowed

Judgement :

ORDER

Narendra Kumar Jain, J.

1. Heard learned Counsel for the parties.
2. The question involved in the present writ petition is - as to whether the Rent Tribunal, constituted under the provisions of the Rajasthan Rent Control Act, 2001 (hereinafter shall be referred to as 'the Act of 2001') is empowered to issue a certificate in favour of the landlord for recovery of possession of rented premises from the tenant on the basis of compromise entered in between the parties?
3. Briefly stated the facts of the case are that applicants-landlord Ajay Kumar and Smt. Gulab filed an application under Section 9 of the Act of 2001 against the

tenant-petitioner Ramcharan before the Rent Tribunal, Dausa, on the ground of reasonable and bona fide necessity of the rented shop for applicant Ajay Kumar. It was averred in the application that the rented shop was left out to the defendant in 1996 on monthly rent of Rs. 400/-. The said rented premise is required bonafidely by the applicant Ajay Kumar for starting a restaurant.

4. The non-applicant-tenant filed reply to the application and denied the reasonable and bona fide necessity of the rented shop for applicant Ajay Kumar.

5. During the pendency of the proceedings, both the parties entered into a compromise and an application-cum-written compromise, duly signed by both the parties, was filed before the Rent Tribunal on 23rd August, 2006 with a prayer that the application for compromise may be accepted and a certificate for recovery of possession from the tenant be issued in favour of the applicants in terms of compromise. The compromise was attested by the Presiding Officer of the Rent Tribunal on 23rd August, 2006.

6. The learned Tribunal, vide its order dated 28th August, 2006, refused to issue a certificate for recovery of possession in terms of compromise and left it open for the parties to get the matter disposed of in accordance with the provisions of the Act of 2001. Being aggrieved with the said order, the tenant-non-applicant has preferred this writ petition with a prayer to quash and set aside the order dated 28th August, 2006 (Annexure-2) passed by the Rent Tribunal, Dausa, and further to direct the Tribunal to issue a certificate for recovery of possession in favour of the applicant by giving effect to compromise application duly signed by the parties.

7. The learned Counsel for the petitioner contended that the learned tribunal committed an illegality in not allowing the application for compromise filed by the parties and issuing a certificate for recovery of possession of rented premise under Sub-section (7) of Section 15 of the Act of 2001; the reasons assigned by the Tribunal for not verifying the compromise and not issuing the certificate are absolutely illegal and without jurisdiction; the provisions relating to compromise, as enumerated in Rule 3 of Order 23, CPC, were fully applicable in the present case; the ground of eviction i.e. reasonable and bona fide necessity of the rented premise was fully proved as the said fact was admitted by the tenant-petitioner in

writing while signing the compromise, therefore, the ground for eviction was established in the present case.

8. It is further contended that under Sub-section (6) of Section 15 of the Act of 2001 it was a duty of the Tribunal itself to make an effort for conciliation or settlement of dispute between the parties, whereas in the present case the parties have settled their dispute and made a prayer before the tribunal to decide the application for eviction in terms of compromise entered in between them. In these circumstances, the order of the Tribunal cannot be allowed to be sustained and the same is liable to be set aside and a direction is required to be issued to the Tribunal to issue necessary certificate for recovery of possession of the rented shop in accordance with the terms and conditions of the compromise.

9. The learned Counsel for the respondents Nos. 2 and 3/landlord did not contest the matter and supported the arguments of the learned Counsel for the petitioner regarding issue of certificate by the Tribunal on the terms and conditions of the compromise entered in between the parties. It is contended on behalf of the respondents that both the parties have entered into a compromise and the compromise was legal one; the ground of eviction was fully satisfied in the present case and there was no reason for not passing the order issuing certificate by the Tribunal in favour of the landlord for recovery of possession of the rented premise from the tenant as per the terms and conditions mentioned in the compromise.

10. I have considered the submissions of learned Counsel for the parties and examined the impugned order passed by the Tribunal. Annexure-1 is a certified copy of compromise-cum-application for issue of certificate for recovery of possession of the rented premise from the tenant on the basis of compromise duly signed by both the parties. The Tribunal attested the said compromise on the over leaf of the first page thereof. It was agreed upon in between both the parties that in view of the reasonable and bona fide necessity of applicant Ajay Kumar, the non-applicant-tenant Ramcharan has agreed to vacate and handover the peaceful possession of the rented shop on 31st December, 2012 to applicant Ajay Kumar; the tenant will pay monthly rent of the disputed shop at the rate of Rs. 875/- in place of Rs. 400/-, with effect from 1st September, 2006 till the date of vacating

the rented premise; the tenant will deposit the monthly rent in the Bank Account, the details of which were mentioned in the compromise, of the applicant No. 1 every month, and in case the non-applicant fails to pay the monthly rent for four months then in that situation the applicant No. 1 landlord will be entitled to get the shop vacated even before the above mentioned date through process of Court by filing an application for execution. The aforesaid compromise was signed by both the parties and they were identified by their respective counsel also. The parties were present-in-person before the Tribunal at the time of submitting the compromise before the Tribunal on 23rd August, 2006. The Tribunal, vide its impugned order, refused to verify the compromise and did not issue the certificate on the basis of compromise; and the Tribunal left it open for the parties to get the matter disposed of in accordance with the provisions of the Act of 2001. The Tribunal observed that as per Section 8 of the Act of 2001 the landlord can obtain certificate for recovery of possession for a period of three years in respect of rented premise but, so far as commercial premise is concerned, there is no such provision in the Act of 2001. The grounds of eviction of tenant have been enumerated in Sections 9 and 10 of the Act of 2001. The Tribunal observed that although as per Sub-section (6) of Section 15 of the Act of 2001 the Tribunal may hold summary inquiry as it deems necessary and decide the petition and it may make effort for conciliation or settlement of dispute between the parties, but the said conciliation or settlement should be in consonance of the provisions of the Act. The Tribunal observed that in case the duty assigned to Tribunal is left open to be done by the parties then the parties may pressurize to each other and may put any unreasonable terms and conditions in the compromise. The Tribunal also observed that if any compromise has been entered in between the parties, which is contrary to the provisions of the Act, and the same is verified and certificate is issued then it will be contrary to the provisions of the Act of 2001. The parties in the present case have entered into a compromise with a condition that the rented premise will be vacated within a period of six years, therefore, grant of certificate for recovery of possession after six years is not in accordance with the law.

11. The object of the Act of 2001 is to provide for control of eviction from, letting of, and rents for, certain premises in the State of Rajasthan and matters incidental thereto. The grounds of eviction of tenant have been enumerated under Section 9

of the Act of 2001. The premise is required reasonably and bona fidely by the landlord for the use or occupation of himself or his family or for the use or occupation of any person for whose benefit the premises are held, is one of the grounds of eviction of tenant under Sub-section (1) of Section 9 of the Act of 2001.

12. The disputed shop was let out by the landlord to tenant in the year 1996 at the rate of Rs. 400/- pet month; the necessity of the rented premise for applicant Ajay Kumar was admitted by tenant Ramcharan in the compromise and, looking to the fact that it was a commercial premises i.e. shop, the landlord also agreed to grant time to tenant to vacate the premise in a period of six years i.e. up to 31st December, 2012. The ground of eviction, as enumerated in Sub-section (1) of Section 9 of the Act of 2001 is established in the present case. The Hon'ble Supreme Court in Nagindas Ramdas v. Dalpatram Iccharam alias Brijram : [1974]2SCR544 observed that '...The admission in the compromise was thus an admission of the material facts which constituted a ground for eviction...'

13. So far the reasons assigned by the learned Tribunal in respect of Section 8 of the Act of 2001 are concerned, the same are not applicable in the facts and circumstances of the present case. Section 8 of the Act of 2001 relates to limited period of tenancy, and it provides that a landlord may let out the premises for residential purposes for a limited period not exceeding three years. In such cases the landlord and the proposed tenant shall submit a joint petition before the Rent Tribunal for permission to enter into the limited period tenancy and for grant of certificate for recovery of possession; the rent tribunal shall grant permission immediately and issue certificate for recovery of possession of such premises executable on expiry of the period mentioned in the certificate. However, such permission shall not be granted for more than three times for the same premises. The provisions of Section 8 applies only before commencement of the tenancy and a right has been given to landlord to obtain a certificate for recovery of possession in respect of rented premises even before it is let out to proposed tenant.

14. So far as the present case is concerned, the rented shop was let out in the year 1996 and the present application for eviction was filed in the year 2004. The

period of three years, as referred in Section 8, has no bearing or application at all in the present case.

15. Section 21 of the Act of 2001 provides for procedure and powers of the Rent Tribunal and the Appellant Rent Tribunal. Sub-section (3) of Section 21 is relevant for decision of the present case as it relates to the applicability of certain provisions of CPC, therefore, Sub-section (3) of Section 21 is reproduced as under:

(3) The Rent Tribunal and the Appellate Rent Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (Central Act No. 5 of 1908), but shall be guided by the principle of natural justice and subject to other provisions of this Act or the Rules made thereunder and shall have powers to regulate their own procedure, and for the purpose of discharging their functions under this Act they shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act No. 5 of 1908) while trying a suit or an appeal in respect of following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) reviewing its decision;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) dismissing petition for default or deciding it ex parte;
- (f) setting aside any order of dismissal of any petition for default or any order passed by it ex parte;
- (g) bringing legal representatives on record; and
- (h) any other matter as may be prescribed.

16. The above provision makes it clear that entire provisions of CPC are not applicable on the Rent Tribunal or the Appellate Rent Tribunal but they will be guided by the principles of natural justice and subject to other provisions of this Act or Rules made thereunder. The Tribunal as well as the Appellate Tribunal shall have powers to regulate their own procedure and for purpose of discharging their functions under this Act they will have the same powers as are vested in a Civil Court under the CPC 1908 while trying a suit or an appeal in respect of following matters, namely, summoning and enforcing the attendance of any person and examining him on oath; requiring the discovery and production of documents; reviewing its decisions, issuing commissions for the examination of witnesses or documents; dismissing petition for default or deciding it ex parte; setting aside any order of dismissal of any petition for default or any order passed by it ex parte; bringing legal representatives on record; and any other matter as may be prescribed. Although, the provisions of Rule 3 of Order 23 of the CPC relating to compromise in a suit same has not been specifically incorporated in it nor has been specifically excluded from it. The above quoted provisions in Sub-section (3) of Section 21 of the Act of 2001 are only illustrative in nature and not exhaustive. It is relevant to mention that there is a specific provision under Sub-section (6) of Section 15 of the Act of 2001 for holding summary enquiry by the tribunal in the application under Section 9 of the Act and for making efforts for conciliation or settlement of dispute between the parties. Sub-section (6) of Section 15 of the Act of 2001 reads as under:

15. Procedure for eviction of tenant:

(1) to (5)...

(6) The Rent Tribunal during the course of such hearing may hold such summary inquiry as it deems necessary and decide the petition. The Rent Tribunal may also make efforts for conciliation or settlement of dispute between the parties.

17. The above provision makes it clear that the application under Section 9 of the Act of 2001 can be disposed of in a summary manner after holding summary inquiry by the Tribunal; a duty has also been cast upon the Rent Tribunal to make efforts for conciliation or settlement of dispute between the parties.

18. The aforesaid provision makes it clear that the dispute can be settled or reconciled by the parties either at the instance of the Tribunal or at their own. If a dispute is settled by the parties at their own then certainly the Tribunal has to act upon the same and the compromise, if it is filed by the parties duly signed by them, should be attested in the manner as it thinks fit and proper, and decide the application under Section 9 of the Act of 2001 in terms of the compromise. When a matter or dispute is to be settled then naturally certain conditions are likely to be mentioned while settling the dispute and the said terms and conditions will be a part of the compromise and thereafter the said terms and conditions will also be a part of the certificate for recovery of possession to be issued under Sub-section (7) of Section 15 of the Act of 2001.

19. The Hon'ble Supreme Court in *Hiralal Moolchand Doshi v. Barot Raman Lal Ranchhoddas (dead) by L.Rs.* : AIR 1993 SC1449 observed that whenever there is any lawful agreement the Court is bound to record the agreement or compromise. There is no provision in the Act of 2001 which made Rule 3 of Order 23 of the Code of Civil Procedure inapplicable to proceedings contemplated by the Act. Nor there is any provision in the Act which prohibits parties entering into a compromise in the suit for eviction filed under the Act, para 15 of the above referred judgment is reproduced as under:

15. It is clear that whenever there is any lawful agreement the Court is bound to record the agreement or compromise. There is no provision in the Act which made Rule 3 of Order 23 of the Code of Civil Procedure inapplicable to proceedings contemplated by the Act. Nor there is any provision in the Act which prohibits parties entering into a compromise in the suit for eviction filed under the Act.

20. The provisions of the Act of 2001 make it clear that there is no provision in the Act which made the Rule 3 of Order 23 of the CPC inapplicable to proceedings contemplated by the Act of 2001 and also there is no provision in the Act of 2001 which prohibits the parties to enter into a compromise in the application for eviction filed under Section 9 of the Act of 2001, rather there is a specific provision under Sub-section (6) of Section 15 of the Act of 2001 for making an effort for conciliation or settlement of dispute between the parties.

21. In these circumstances I am of the view that the Rent Tribunal committed an illegality in not verifying the compromise filed by the parties in the present case and in not issuing the certificate for recovery of possession under Sub-section (7) of Section 15 of the Act. The impugned order passed by the Tribunal is absolutely illegal and without jurisdiction and cannot be allowed to be sustained. The ground of eviction was in existence in the present case as personal and bona fide need of rented premise of landlord was accepted by the tenant. The need of rented premise is purely a question of fact, which can be admitted by the tenant while executing a compromise in writing. When a matter is settled then certain terms and conditions are also liable to be mentioned in the compromise and a reasonable time is required to be given to the tenant to vacate the premise and at the same time the tenant may also agree upon to pay the enhanced rent till the actual date of delivery of possession of the rented premise. The landlord agreed to grant six years time in the present case to the tenant to vacate the premise voluntarily and the tenant agreed to pay the enhanced monthly rent i.e. mesne profit at the rate of Rs. 875/- per month till the actual date of delivery of possession of the rented premise. The parties have also agreed that in case the tenant fails to pay the monthly rent for four months then it will be open for the landlord to get the certificate executed even before the date of vacation of rented premise, agreed by the parties. The compromise in the present case appears to be perfectly legal and justified. The terms and conditions incorporated in it are also legal and cannot be said to be contrary to the provisions of the Act of 2001, therefore, it is held that the Tribunal is empowered to issue a certificate for recovery of possession in favour of the landlord under Sub-section (7) of Section 15 of the Act of 2001 on the basis of legal compromise entered in between the parties.

22. In view of the above discussion, the writ petition filed by the tenant-petitioner is liable to be allowed and the same is hereby allowed. The impugned order dated 28th August, 2006 passed by the Rent Tribunal, Dausa, is set aside. The Rent Tribunal is directed to verify the compromise and to issue certificate in favour of the landlord applicants for recovery of possession from the tenant of the rented premise under Sub-section (7) of Section 15 of the Act of 2001 on the basis of the compromise entered in between the parties as soon as possible preferably within a period of one month.

23. It is necessary to mention here that one of the conditions of the compromise was that the tenant will pay enhanced monthly rent at the rate of Rs. 875/- with effect from 1st September, 2006 and in case the tenant fails to pay the monthly rent for four months then the landlord can get the certificate for recovery of possession executed even before the stipulated period. Since the certificate under Sub-section (7) of Section 15 of the Act of 2001 was not issued and application for compromise was dismissed by the Tribunal, the learned Counsel for both the parties prayed and agreed during the course of arguments that in case the tenant has not paid or deposited the monthly rent with effect from 1st September, 2006 at the rate of, Rs. 875/- per month in the Bank Account of the applicant No. 1 then the said amount or the difference thereof may be deposited by him how in the Bank Account of the applicant No. 1 within a period of two months from the date of the order. Ordered accordingly.

24. As agreed by both the parties through their respective counsel, it is directed that the arrears of rent or difference thereof, as per. agreed enhanced rent with effect from 1st September, 2006, if already not deposited will be deposited by the tenant-petitioner in the Bank Account of the applicant No. 1 within a period of two months from the date of order, and the condition regarding eviction of tenant on failure to deposit the monthly rent for four months will not come into effect on failure of the petitioner to deposit the monthly rent the period up to 31st July, 2008, and the said condition will be applicable for further period commencing from 1st August, 2008. The landlord will also be entitled to get the certificate for recovery of possession executed immediately if tenant fails to deposit the arrears of rent or difference thereof for the period up to 31st July, 2008 within a period of two months, as mentioned above. There will be no order as to costs.