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Court : Rajasthan

Decided On : Mar-03-2008

Reported in : RLW2008(3)Raj2670

Judge : Gopal Krishan Vyas, J.

Appellant : Phool Chand

Respondent : The Appellate Rent Tribunal and ors.

Disposition : Petition dismissed

Judgement :

Gopal Krishan Vyas, J.

In this writ petition, the petitioner is challenging the order passed by the Appellate Rent Tribunal, Bikaner dated 1.9.2007 in appeal No. 141/2004 and further prayed that application filed by the petitioner before Appellate Rent Tribunal under Order 6 Rule 17 of CPC for seeking amendment in written statement may kindly be allowed.

2. The facts, inter alia, stated in the writ petition are that an application under Section 9(i), (j) & (k) of the Rent Control Act, 2001 for eviction of shop situated near Vishwajyoty Cinema Street, inside cotgate, Bikaner was filed by Late Mohan Lai- father of respondent No. 2 and 3. The main ground raised by the applicant

Mohanlal that his son Hanuman is unemployed and wants to do the business of electric parts. Since he is not having shop to run the said business, as such, while showing bonafide necessity, it was prayed before the Tribunal that eviction decree may be passed, the petitioner-non-applicant filed his written statement in the said eviction suit. The suit was decreed in favour of respondents-plaintiff vide judgment dated 24.9.2004.

3. Against the judgment dated 24.9.2004, an appeal was preferred by the petitioner before the Appellate Rent Tribunal, Bikaner. According to the petitioner during pendency of the appeal an important fact came to his knowledge that Hanuman son of Mohanlal-present respondent No. 2 has got employment as Lower Division Clerk in State Bank of Bikaner and Jaipur, Branch-Godu, Tehsil-Kolayat, District Bikaner and he has joined the services, therefore, there remains no bonafide necessity for eviction of said shop.

4. Having come to know of this fact, the petitioner moved an application before the Appellate Rent Tribunal, Bikaner under Order 6 Rule 17 CPC read with Section 21 of the Rent Control Act, 2001 for seeking amendment in the written statement by way of incorporating the ground that the ground of bonafide necessity ceased to exist due to appointment of Hanuman in SBBJ Bank, Respondent Nos. 2 and 3 filed reply to the application filed by the petitioner. The Appellate Rent Tribunal, Bikaner rejected the said application for amendment of written statement vide impugned order dated 1.9.2007.

5. Learned Counsel for the petitioner vehemently argued that while rejecting the application for amendment in written statement, the learned Appellate Tribunal erred in law because at any stage, even at appellate stage, amendment can be sought under Order 6 Rule 17 CPC, so also, under Section 21 of the Act of 2001, which deals with the procedure and powers of the Rent Tribunal and the Appellate Rent Tribunal under which Tribunals can adopt such procedure, which appears to it necessary in the interest of justice, therefore, the Tribunal was under'an obligation to allow the application filed by the petitioner in the interest of justice when it was specifically brought to its notice that the ground of bonafide necessity does not survive now, because respondent No. 2 Hanuman got appointment in the

SBBJ Bank. But, the learned Appellate Tribunal illegally and arbitrarily rejected the application filed under Order 6 Rule 17 read with Section 21 of the Act of 2001. It is further submitted by the learned Counsel for the petitioner that for deciding the real controversy in question between the parties, it is necessary for the Appellate Court to provide an opportunity to the petitioner for amending the written statement, though the fact, which is proposed to be introduced by way of amendment in written statement was not in existence at the time of final adjudication of the matter by the Rent Tribunal during trial, but if any important fact arose during pendency of proceedings even at appellate stage then petitioner is entitled to incorporate the said ground in the written statement by way of seeking amendment.

6. Learned Counsel for the petitioner has invited the attention of this Court towards Order 6 Rule 17 of CPC and urged that amendment can be granted at any stage. Similarly, referring to Section 21 of the Act of 2001, it is submitted that the Appellate Rent Tribunal is having power to grant an opportunity for amendment in written statement even at the appellate stage in the interest of justice. According to learned Counsel for the petitioner, there is no restriction upon the Appellate Court not to allow any amendment in the written statement, therefore, for fair adjudication of the matter, it is necessary in this case to allow amendment in the written statement.

7. In this regard, learned Counsel for the petitioner has invited the attention of the Court towards the decisions of Hon'ble Supreme Court in Sampath Kumar v. Ayyakannu and Anr. : [2002]SUPP2SCR397 & Andhra Bank v. ABN Amro Bank N.V. and Ors. : AIR 2007 SC2511 . According to the petitioner, as per the aforesaid judgments, it is clear that amendment can be allowed at any stage in the interest of justice but the learned appellate Court has committed an error while rejecting the application filed by the petitioner.

8. Per contra, learned Counsel for the respondents argued that learned Rent Tribunal passed the decree in favour of respondent- plaintiff not only on the ground of personal bonafide necessity but also under Section 9(j), which provides that if the tenant has built or acquired vacant possession of or has been allotted

suitable premises adequate for his requirement. In this case, petitioner tenant has purchased two shops just near to the shop in question. Thus, the learned Rent Tribunal rightly passed the decree and certificate on two counts namely; (i) bonafide personal necessity & (ii) that the petitioner has purchased alternative premise which is adequate for his requirement, while deciding issue No. 3. Thus, opportunity to amend the written statement cannot be granted because the issues will be decided by the Appellate Court on its own merits. Learned Counsel for the respondents further argued that after amended in CPC, Order 6 Rule 17 can be invoked during the course of trial only and not at appellate stage. For this purpose, he has invited the attention of the Court towards the proviso to Rule 17 of Order 6, which reads as under:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

9. While referring to above proviso, it is vehemently argued that it is not open for the Appellate Court to allow such application filed under Order 6 Rule 17 at appellate stage and the learned Appellate Rent Tribunal has rightly rejected the application filed by the petitioner. Further, it is argued that in the present case, admittedly, the proceedings were initiated under the Rent Control Act, 2001 in which learned Rent Tribunal or Appellate Rent Tribunal is not bound to follow the procedure laid down in CPC except certain provisions of law. More so, the learned Rent Tribunal has been conferred discretion based on principle of natural justice.

10. Similarly, it is argued by the learned Counsel for the respondent that though there is a discretion left with the learned Rent Tribunal and appellate Rent Tribunal under Section 21 of the Act of 2001 to follow the procedure as deemed just and proper but Tribunals are not bound by the procedure laid down by CPC except those which are enumerated under Sub-section (3) of Section 21 of the Act of 204l. Meaning thereby, learned Appellate Rent Tribunal has rightly arrived at with the finding that the ground which is now raised by the petitioner was not in existence at the time of filing application for eviction or on the date of adjudication

made by the Rent Tribunal.

11. In this connection, learned Counsel for the respondents has invited the attention of the Court towards the judgment of Hon'ble Supreme Court rendered in Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal and Ors. reported in : AIR 2006 SC770 and submitted that bonafide requirement of landlord is to be adjudged at the time of filing suit and subsequent events cannot be taken into consideration for the purpose of adjudicating the matter by the Appellate Rent Tribunal.

12. Similarly, while citing another judgment of Hon'ble Apex Court in case of Pratap Rai Tanwani and Anr. v. Uttam Chand and Anr. reported in : (2004)8SCC490 , it is pointed out that the crucial date is the date of the filing petition, none else. Thus, according to the learned Counsel for the respondents, the ground which is tried to be raised now is not available in view of the judgment rendered by Hon'ble Apex Court and the writ petition is liable to be dismissed.

13. I have considered the rival submissions of the parties. In this case, the contention of the petitioner that under Order 6 Rule 17 the trial Court and appellate Court, at any stage, amendment can be allowed is not excepted because after amendment in CPC in the year 2001, a proviso to Order 6 Rule J 7 was added whereby it is expressly provided that amendment can be allowed at the trial and not at appellate stage, therefore, the application of the petitioner under Order 6 Rule 17 CPC was not maintainable at appellate stage. Thus, the learned Appellate Rent Tribunal is Justified in rejecting the application filed under Order 6 Rule 17 CPC, It is also an admitted position in this case that till final adjudication of the case by the Rent Tribunal, the ground of bonafide necessity was in existence and during the course of proceedings in appeal new ground came in the knowledge of the petitioner upon which application for amendment was filed. The learned Appellate Rent Tribunal was not required to grant any opportunity to amend the written statement and to send the case back to the Rent Tribunal for fresh adjudication because the fact of appointment of Hanuman came to the knowledge of petitioner after decision by Rent Tribunal. In my opinion, the plea of the petitioner that learned Appellate Rent Tribunal ought to have allowed his

application for amendment is lacking feet to stand because the fact of appointment of Hanuman was not in existence at the stage of trial and for new ground which came in existence during appeal and if such application will be allowed at appellate stage then certainly at every stage after adjudication, the parties will take plea of amendment and no trial Court will be able to adjudicate the matter finally and there will be no end of dispute. The judgment of Apex Court in case of Pratap Rai Tanwani and another (supra) is complete answer to the aforesaid question and covers the present controversy. In that case also, an application to amend the written statement was filed on the ground that during the pendency of the matter one Naresh Talreja son of Uttam Chand had acquired a degree in Engineering and got employment in an Indian Company and subsequently settled in USA and was working there with no chance of coming back to India. With these facts, it was prayed in that case that the alleged bonafide need and requirement for which the application was filed had become non-existent and, therefore, plaintiff was not entitled for any relief. The Hon'ble Apex Court, while dealing with the similar circumstances in case of Pratap Rai Tanwani reported in : (2004)8SCC490 (supra), held that:

7. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the even of his reaching the finale after passing through all the previous levels of the litigation merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.

8. We cannot forget that while considering the bona fides of the need of the landlord the crucial date is the date of the petitioner. In Ramesh Kumar v. Kesho Ram a two-judge Bench of this Court (M.N. Venkatachalia,), as he then was and

N.M. Kasliwal, J.) pointed out that the normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the Court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. What the learned Chief Justice observed therein is this:(SCC PP.626-27,para 6)

6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Whereversubsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the Court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief.9....

10. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long years from the start to the ultimate ternimi, is a malady afflicting the system. During this long interval many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the list. If the cause of action is to be submerged in such subsequent events on account of malady of the system, it shatters the confidence of the litigant, despite the impairment already caused.

14. In these circumstances, in this case also the ground which was non-existent on the date of filing eviction suit and even on the date of final adjudication by the Rent Tribunal, cannot be allowed to take away the ground of personal bonafide necessity of the respondent-plaintiff merely because one of his sons, Hanuman got employment in the Bank.

15. The contention of the petitioner that under Order 6 Rule 17, at any stage, amendment can be allowed cannot be accepted in view of the amendment CPC in which a proviso is added to Order 6 Rule 17 which clearly provides that amendment can be allowed at the stage of trial only, therefore, the learned Appellate Rent Tribunal has rightly rejected the application of the petitioner under Order 6 Rule 17 CPC so also in view of the judgment of Hon'ble Apex Court in

Pratap Rai Tanwani and another (supra), wherein, it has been categorically held that the crucial date is the date of petition. Therefore, learned Appellate Rent Tribunal has also rightly refused to entertain the application under Section 21 of the Rent Control Act, 2001.

16. The judgments cited by the petitioner in case of Sampath Kumar v. Ayyakannu and Anr. : [2002]SUPP2SCR397 (supra) & Andhra Bank v. ABN Amro Bank N.V. and Ors. : AIR 2007 SC2511 are not applicable to the facts of present case. In the aforesaid judgments the controversy related with regular civil suit for which procedure laid down in CPC was required to be-followed. But, in the present case, admittedly, the proceedings were initiated under the Rent Control Act, 2001 in which learned Rent Tribunal or Appellate Rent Tribunal is not bound to follow the procedure laid down in CPC except certain provisions of law, More so, the learned Rent Tribunal has been conferred discretion based on principle of natural justice. It is further required to be observed that as per amended CPC, the Appellate Court cannot allow any amendment. Amendment can be allowed during trial only under Order 6 Rule 17 of CPC. In this case, learned Rent Tribunal has passed the judgments on two grounds in favour of respondent-plaintiff which are under Section 9(i) and (j) and petitioner is raising voice only on one ground i.e. Section 9(j) for seeking amendment.

17. While following the law laid down by Apex Court in case of Pratap Rai Tanwani reported in 2005(8) SCC 490, I am of the opinion that no interference is required in the order dated 1.9.2007 passed by the learned Appellate Rent Tribunal in rejecting the application of the petitioner filed under Order 6 Rule 17 read with Section 21 of the Act of 2001.

18. Accordingly, the writ petition is dismissed.

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