

Mehmood Vs. Himmat Singh

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Court : Rajasthan

Decided On : Oct-21-2008

Reported in : RLW2009(2)Raj934

Judge : Prakash Tatia, J.

Appellant : Mehmood

Respondent : Himmat Singh

Disposition : Appeal dismissed

Judgement :

Prakash Tatia, J.

1. Heard learned Counsel for the parties.

2. A suit for eviction was filed by plaintiff/respondent Himmat singh alleging that the defendant/appellant Mehmood is tenant in the suit premises and he encroached upon some more portion of the property purchased by him. The suit was filed in the trial court i.e. Court of District Judge, Udaipur on 8.7.1988. The appellant denied the tenancy and pleaded that he is not the tenant of the respondent but he is tenant of Wakf Board. The respondent claimed rent for the premises as Rs. 200/- per month. As required under the provisions of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short 'the Act of 1950'), the

trial court was required to determine the interim rent on the basis of the material placed on record by both the parties. The trial court after hearing the arguments and after considering the plea of the appellant that the appellant is not tenant of the respondent, vide order dated 22.8.1990, determined the rent of the premises as Rs. 50/- per month and relied upon the receipt dated 1.9.1969 and the affidavit submitted by Mohammed Shah in support of the said document and directed the appellant to pay the arrears of rent for the period from 26.7.1985 to 26.7.1990 to the tune of Rs. 3,000/with interest of Rs. 725/-. As per law, the said amount was required to be paid or deposited within 15 days from the order passed by the trial court and the tenant was, further required to pay rent month by month. The order dated 22.8.1990 was challenged by the appellant by preferring this misc. appeal before this Court on 4.10.1990. This Court on 22.10.1990 stayed only the operation of the order passed by the trial court on 22.8.1990 and that too was limited upto December 15, 1990. However, the said order was confirmed by order dated 15.7.1991. Further proceedings in the suit before the trial court were never stayed by this Court. The appeal was put in due course after service of the respondent and as per the Rules, intimation was sent to the trial court on 12.11.1990 that the appeal against the impugned order has been admitted by the High Court and the trial court was informed that all material papers in the case would be required and, therefore, whenever an intimation is received by the trial court, the record be sent to the High Court in the appeal.

3. It appears that the appeal was listed for hearing in the year 2002 after service of the respondent in the year 1991. As mentioned above, further proceedings in the suit were not stayed by this Court and the record remained with the trial court for almost more than 10 years but without there being any progress in the suit. From the record, it appears that the adjournments were sought for evidence of the plaintiff and the trial court went on adjourning the matter and that too a Court of the level of Additional District Judge. The matter was in relation to the payment of rent and that too at the rate of Rs. 50/- per month only. The appeal has come up for hearing before this Court and before that, the sole respondent died and his legal representatives were taken on record. 18 years have passed to challenge such an order determining the rent at the rate of Rs. 50/- per month determining the arrears of Rent to the tune of Rs. 3,725/- with interest.^

4. It is clear from the facts mentioned above that the respondent himself had no interest in pursuing his suit as he did not produce evidence in 10 years in the trial court. His legal representatives also had no interest in the suit and in the appeal. Therefore, except, the legal representatives of sole respondent No. 1/1 to 1/3, nobody chose to appear before this Court inspite of the fact that all the legal representatives are Class I Heirs of the sole respondent and some of them put in appearance as though they had only interest to put in appearance and not to assist the Court in deciding this old matter Irrespective of the fact that their claim is that they are owners of the property and their ownership to the property has been denied by the appellant.

5. When the matter was listed before this Court yesterday i.e. on 20.10.2008, this - Court found that nobody had any knowledge about the stage of the suit in the trial court, then this Court directed the registry to get information telephonically from the trial court about the stage of the suit, then it was brought to the notice of the court that the record has already been sent to this Court, therefore; there is no progress in the suit and that could not have been after 2002.

6. This Court came across several glaring examples where the litigation is pending in the Court because of no interest of the party in the litigation including the plaintiff and that is the most important reason for dead litigations pending in the Courts of law. The consequence is that the burden is upon the entire judiciary. There is no mechanism for weeding out such absolutely unimportant and insignificant litigations wherein none of the parties have interest. Before the Court, hundreds of cases are listed everyday because of the reason that such type of litigations are not taken care in proper way by having administrative and managerial system for managing the litigation in the Courts. This is one of the case wherein the High Court did not stay the further proceedings in the trial court for the suit and the record remained with the trial court for 12 years without there being any stay order. The interim order passed by this Court staying only the operation of the impugned order was sent to the trial court and was received by the trial court on 12.11.1990, therefore, the trial court was fully aware that the High Court did not stay the further proceedings in the suit, yet it was stay in fact of the proceedings by the trial court, may it be because of the connivance of both the parties - plaintiff and defendant.

The plaintiff/respondent sought time and the defendant appellant did not object to it. The defendant may have reasons not to object to the adjournment but what was the Court doing for all long period mentioned above. 'When the interim order dated 22.10.1990 was confirmed by this Court vide order dated 15.7.1991, its intimation was sent to the trial court which was received by the trial court on 26.7.1991, at that time also, the parties who had no interest got the relief of litigation pending from the Court as the Court had no supervisory control over the suit pending before it wherein the issues were already framed and the stage was for the evidence of the parties. Before this Court also, none of the parties had any interest in this appeal and when this Court found that the misc. appeal of 1990 is pending, then looked into the order dated 22.10.1990 and found that none else than the plaintiffs legal representatives are no more interested in the appeal and obviously not in the suit wherein they are claiming possession of the property. Since the original landlord plaintiffs estate is sufficiently represented by some of the legal representatives of deceased plaintiff/respondent, therefore, service of the remaining legal representatives is dispensed with.

7. The case management cannot be left to the discretion of the litigants. More is the duty of the Court who has power to check and control the case management. Having so much power to control the frivolous litigation and unnecessary adjournments vesting in the Court, even the Courts cannot do much because of the reason that the Courts are overburdened with the workload and that is not because of the inflow of litigation but because of mismanagement in handling the cases and that too because of the reason that uninterested parties have burdened the Courts. Whenever any explanation was sought from the Court staff or registry, this Court found the reports from the staff that they are overburdened. If we look into the cause list of the High Court, then we can found that there are few number of cases listed for admission as fresh case than the cases listed for orders due to non-service of the respondents and due to non-filing of notices and process fees and even because of non-filing of notices and process fees in time or because there is delay of one or a few days in filing notices and process fees. Entire proceeding in the appeal/revision/writ etc. Will come to a halt for recovery of Rs. 2.50p. (the process fees). This issue of nonpayment of Rs. 2.50p. or if more respondents, than of Rs. 5/- or Rs. 10/- will consume how many man hours of

highly paid person, is not taken into account. This issue will be examined by digit clerk in the Section then in outward register then to Assistant Registrar, then peshi Section then cause list Section then computer cell, then it will be published in cause list, then court master, Judge of the Court, then stenos etc. Etc. This all is due to law and procedure providing for handling of trivial issues by Judge, may he be Judge of the High Court. Handling these issues by the Court and to the level of High Court, cannot have any justification and there is need to think over the managing such petty matters in more effective manner without coming the matters before the Court. The law if continued for decades and century, that may be good when enacted but it is now burden in present time.

8. It is right time to think why the petty amount of process fees of Rs. 2.50p. Or Rs. 5/- is so important that the notices cannot be issued without the filing of process fees and notices repeatedly again and again which only burdens the staff and the Court, why there cannot be one time process fees and why there cannot be a liberty to the litigant not to file process fees with the duty upon the Court to issue notice after charging one time fees. In the same sequence, why there cannot be independent management system of case management. At this juncture, this Court is constrained to observe that recently Rules have been framed for sending matters in track system so that the Courts may decide the matters expeditiously and within given time. How that can work if the affairs, efforts, procedure remain the same, which created the burden. If the litigation like this i.e. the suit filed for eviction of tenant can be kept pending for long 20 years without there being stay of the proceedings by any Court, then what can be the reason for framing the law that merely filing of the appeal will not operate as stay of the proceedings of the suit. It is right time for the rule framers for the affairs of the High Court as well as for the Trial Courts to look into these types of matters, procedure and strategy by which the judiciary can be defamed and rightly can be defamed for not actively looking into the working and case management in the High Court. This is not only the solitary example which has come before this Court (before this Bench) but equally grave matters have come up before this Court wherein orders were passed by this Court.

9. So far as the merits in the appeal are concerned, the plaintiffs claim is that he is landlord and the defendant is tenant and the rent of the premises is Rs. 200/- per month. The defendant admits that he is tenant in the suit premises but not of the plaintiff but of the Wakf Board. The Wakf Board tried to assert its title over the property but that was not accepted by this Court in S.B. Civil First Appeal No.78/1997 decided on 6.8.2003. It is submitted that Special Leave to Appeal No. CC 7799-7800/2003 was preferred against the order of this Court dated 17.9.2002 (copy of which is not produced) and therein, the operation of order passed by this Court in revision petition dated 17.9.2002 has been stayed. It is stated by learned Counsel for the appellant that that SLP is pending.

10. In view of the above reasons, when the trial court on the basis of the receipt and on the basis of affidavit of Mohammed Shah, prima-facie found that the defendant is tenant of the plaintiff and in view of the order passed by the Hon'ble Apex Court in Special Leave to Appeal, their appears to be claim of title of Wakf Board, therefore, it will be just and proper to direct the defendant/appellant to deposit the rent as determined by the trial court with rider that the rent shall not be paid to the plaintiff till the decision of the suit and there is no reason to hold at this stage on the basis of the plea taken by the defendant that he is not tenant of the plaintiff. That will be the issue in the suit and according to the decision in the suit, the trial court may pass appropriate order for the disbursement of the deposited rent amount.

11. Since the order under challenge dated 22.8.1990 was stayed by this Court and looking to the long period passed, the appellant is granted three months' time from today to deposit the arrears of rent as determined by the order dated 22.8.1990 as well as the arrears of rent accrued thereafter. The appellant shall further continue to pay the rent in accordance with law.

12. With the aforesaid directions, this appeal is dismissed. The record of the trial court be sent to the trial court forthwith. The trial court is requested to decide the suit expeditiously preferably within a period of one year from the date of receipt of the record and copy of this order, which may be sent to the trial court along with the record.

