

Champalal Vs. Jasnath

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Court : Rajasthan

Decided On : Nov-25-2002

Reported in : 2003(2)WLC90; 2003(2)WLN156

Judge : B.S. Chauhan, J.

Appeal No. : S.B. Civil Second Appeal No. 159 of 2001

Appellant : Champalal

Respondent : Jasnath

Advocate for Pet/Ap. : Shri. Nagori

Disposition : Appeal dismissed

Judgement :

B.S. Chauhan, J.

1. This second appeal has been filed against the judgment and decree of the First Appellate Court dated 31.3.2001 by which it has affirmed the judgment and decree of the trial Court dated 15.7.1996 by which the learned trial Court has passed the decree of eviction of the defendant appellant from the suit premises.

2. The facts and circumstances giving rise to this appeal are that plaintiff-respondent filed a suit for eviction of the defendant-appellant on various grounds,

including second default in payment of rent, reasonable and bonafide need etc. The defendant-appellant contested the suit denying the averments made in the plaint and in view of the pleadings of the parties, the issues were framed. Thereafter, the parties were permitted to lead evidence. The evidence of the plaintiff-respondent was over, subsequently when the defendant-appellant was asked to lead evidence, inspite of giving several opportunities he could not examine even a single witness and therefore his evidence was closed. Being aggrieved and dissatisfied of the order of closure of evidence, defendant-appellant filed Revision Petition No. 236/95 before this Court which stood dismissed vide order dated 6.4.1995. On the basis of evidence available on record, the trial Court decreed the suit of the plaintiff-respondent only on the ground of second default and other issues were decided against the plaintiff respondent and in favour of the defendant-appellant. Being aggrieved and dissatisfied, the defendant-appellant filed appeal, wherein the trial Court was directed to determine the interim rent under Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short 'The Act, 1950'). While determining the interim rent, a finding was also recorded by the trial Court that the rent had been deposited by the defendant-appellant from 1.5.1977 to 21.8.2000 in the trial Court. The First Appellate Court considered the issues and after re-appreciating the evidence, dismissed the appeal only on the ground that though the rent had been deposited under Section 19-A of the Act, 1950 by the defendant-appellant but such deposition was not preceded with either of the pre-requisite conditions provided in the Statute. As the rent could be deposited under Section 19-A of the Act, 1950 only after meeting either of the pre-requisite conditions mentioned in the Statute, deposit of rent under Section 19-A of the Act, 1950 did not tantamount to a legal and valid tender. The finding recorded by the learned trial Court for depositing the rent was only for the purpose of determining the arrears of interim rent and as the defendant-appellant did not ensure compliance of the pre-requisite condition i.e. offering the rent by a legal and valid tender to the landlord. Hence this Second Appeal.

3. Before this appeal could be taken up, Shri Nagori learned Counsel appearing for the appellant pressed an application under Order 41 Rule 27 CPC to permit the appellant to lead additional evidence to show that the pre-requisite conditions had been met by the defendant appellant. At this juncture Shri Maheshwari, learned

Counsel appearing for the respondent raised the preliminary objection regarding maintainability of such application in view of the order passed by this Court in Revision Petition No. 236/95 on 6.4.1995, wherein this Court did not interfere with the order of the trial Court, closing the evidence of the defendant-appellant. Shri Maheshwari has submitted that entertaining this application would amount to setting aside the order passed by this Court in Revision Petition or sit in appeal against that order, which is not permissible in law.

4. The submission made by Shri Maheshwari is full of substance.

5. It is settled proposition of law that what cannot be done 'per directum is not permissible to be done per obliquum', meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of 'quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud.'

6. In Jagir Singh v. Ranbir Singh, : 1979 CriLJ318 , the Apex Court has observed that an authority cannot be permitted to evade a law by 'shift or contrivance.' While deciding the said case, the Hon'ble Supreme Court placed reliance on the judgment in Fox v. Bishop of Chester, (1824) 2 B&C; 635, wherein it has been observed as under:

To carry out effectually the object of a statute, it must be construed as to defeat all attempts to do, or avoid doing in an indirect or circuitous manner that which it has prohibited or enjoined.

Law prohibits to do something indirectly which is prohibited to be done directly. Similar view has been reiterated by the Apex Court in M.C. Mehta v. Kamal Nath and Ors., AIR 2000 SC 1997 wherein it has been held that even the Supreme Court cannot achieve something indirectly which cannot be achieved directly by resorting to the provisions of Article 142 of the Constitution, which empowers the Court to pass any order in a case in order to do 'complete justice.

7. Thus, in view of the above as the order of closing evidence has attained finality on dismissing the Revision by this Court vide order dated 6.4.1995, I am of the

considered opinion that entertaining the application under Order 41 Rule 27, CPC would amount to sit in appeal against the order dated 6.4.1995 passed by this Court in Revision and such a course is not permissible. Thus, the application under Order 41 Rule 27, CPC is rejected.

8. There is no dispute to the settled legal proposition that deposit of rent by the tenant in Court is permissible only in the following circumstances--

(i) where the money order sent for payment of rent is received back by the tenant with endorsement of refusal or unfound; or

(ii) where the landlord does not specify the name and address of the Bank or number of his Bank Account on being asked by the tenant; or

(iii) where there is a bonafide doubt that person/persons to whom the rent is to be tendered. Vide *Kuldeep Singh v. Ganpat Lal*, : AIR 1996 SC729 .

9. The Hon'ble Supreme Court, in *Fakir Mohd. (dead) by LRs. v. Sita Ram*, : AIR 2002 SC433 , has reiterated the same view observing that before depositing the rent in the Court under Section 19-A of the Act, 1950, either of and not all the pre-requisite conditions mentioned therein should be complied with by the tenant. In the instant case, as the rent had been deposited in the Court under the Statute without meeting either of the pre-requisite conditions, no ground to interfere with the findings of fact is made out. No substantial question of law is involved in the second appeal. The appeal stands accordingly dismissed.

10. However, in the facts and circumstances of the case as the tenant defendant-appellant has been in possession of the suit premises for a long time, one year time from today is granted to the defendant-appellant to vacate the suit premises on his furnishing undertaking before the trial Court within a period of four weeks from today that he shall hand over the vacant and peaceful possession to the respondent; shall not Sub-let the suit premises to any other person; or induct someone therein; shall not make any alteration in the suit premises and shall make the payment of rent by 10th of every month.

