

Lalchand Vs. Rameshwarlal

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Court : Rajasthan

Decided On : Nov-26-2002

Reported in : 2003(2)WLC170; 2003(2)WLN427

Judge : Sunil Kumar Garg, J.

Appeal No. : S.B. Civil Revision Petition No. 905 of 2001

Appellant : Lalchand

Respondent : Rameshwarlal

Judgement :

Sunil Kumar Garg, J.

1. This civil revision has been filed by the petitioner-defendant against the judgment dated 24.7.2001 passed by the learned Addl. District Judge No. 2 Bhilwara in Civil Appeal No. 11/2001 (23/2001) by which he allowed the appeal filed by the respondent-plaintiff against the order dated 14.3.2001 passed by the learned Addl. Civil Judge (JD) No. 2, Bhilwara by which the learned Addl. Civil Judge determined the provisional rent at the rate of Rs. 100/- p.m. but the learned Addl. District Judge No. 2 enhanced the provisional rent from Rs. 100/- p.m. to Rs. 2500/- per month.

2. It arises in the following circumstances--

The respondent-plaintiff filed a suit to the Trial Court under Section 6(1) of the Rajasthan Premises (Control of Rent & Eviction Act, 1950) (hereinafter referred to as 'the Rent Control Act') for fixation of standard rent and in that suit, it was also prayed that provisional rent may also be fixed to the tune of Rs. 2000/- or Rs. 2500/- per month.

A reply to that suit was filed by the petitioner-defendant.

The learned Addl. Civil Judge (J.D.) No. 2, Bhilwara through his order dated 14.3.2001 determined the provisional rent at the rate of Rs. 100/- per month of the rented premises holding inter-alia--

(1) That no doubt in the previous suit for eviction from the suit premises between the parties, the rent was fixed by the Court at the rate of Rs. 100/- per month through judgment and decree dated 30.1.1992 and appeal against the said Judgment and decree dated 30.1.1992 was also dismissed by the learned Addl. District Judge No. 1 Bhilwara through judgment dated 15.9.1999, but that determination of rent at the rate of Rs. 100/- p.m. would not operate as res-judicata.

(2) That since the agreed rent since 1973 was Rs. 100/- per month, therefore, for determination of provisional rent in the suit for fixation of standard rent, the learned Addl. Civil Judge (JD) No. 2, Bhilwara came to the conclusion that this rent would be better, and, therefore, under Section 7(1) of the Rent Control Act, he determined the provisional rent at the rate of Rs. 100/- per month in a suit for standard rent filed under Section 6 of the Rent Control Act.

Aggrieved from the said order dated 14.3.2001 passed by the learned Addl. Civil Judge (JD) No. 2, Bhilwara, the respondent-plaintiff preferred an appeal before the learned District Judge, Bhilwara and later on it was transferred to the learned Addl. District Judge No. 2, Bhilwara and the learned Addl. District Judge No. 2, Bhilwara through his impugned judgment dated 24.7.2001 accepted the appeal of the respondent-plaintiff and enhanced the provisional rent from Rs. 100/- to Rs. 2500/- per month holding inter-alia that since the rented premises consist of five rooms, latrin, bath rooms etc., therefore, looking to the prevalent rate of rent, he came to

the conclusion that at present, rented premises should have been let out @ Rs. 4000/- per month, but since rented premises were taken on rent since 1973 and applying the principle of depreciation in the value of the rented premises, he determined the provisional rent at the rate of Rs. 2500/- and thus, he increased the provisional rent from Rs. 100/- to Rs. 2500/- per month.

Aggrieved from the said judgment dated 24.7.2001 passed by the learned Addl. District Judge No. 2, Bhilwara, this revision petition has been filed by the petitioner-defendant.

3. In this revision petition, the main contention of the learned Counsel for the petitioner-defendant is that since in the previous suit for rent and eviction between the parties which was decided on 30.1.1992, the rent was determined at the rate of Rs. 100/- per month and that rent was also maintained by the Appellate Court through judgment dated 15.9.1999 and, therefore, that rent had become final and thus, while determining the provisional rent under Section 7(1) of the Rent Control Act, that rent should have been accepted and in view of this, the impugned judgment of the learned Addl. District Judge No. 2 is bad in law and suffers from basic infirmity and illegality and it should be set aside and secondly, on merits also, the fixation of provisional rent @ Rs. 2500/- per month in place of Rs. 100/- per month was arbitrary and that judgment should not be sustained.

4. On the other hand, the learned Counsel for the respondent-plaintiff supported the impugned judgment passed by the learned Addl. District Judge No. 2, Bhilwara.

5. I have heard the learned Counsel appearing for the petitioner-defendant and the learned Counsel appearing for the respondent-plaintiff and gone through the materials available on record.

Point No. 1

6. So far as the argument No. 1 that the rent at the rate of Rs. 100/- became final because of the dismissal of the appeal by the learned Addl. District Judge No. 1, Bhilwara through judgment dated 15.9.1999 is concerned, both courts below have

taken the view that that judgment would not operate as res-judicata and in my considered opinion, these findings of both courts below are correct one and the argument of the learned Counsel for the petitioner-defendant that the rent determined by the Appellate Court at the rate of Rs. 100/- per month became final, cannot be accepted. Hence, argument No. 1 stands rejected.

Point No. 2

7. Before proceeding further, the concepts of standard rent and provisional rent and the scope of Sections 6, 7 & 13(3)(4)(5) of the Rent Control Act have to be kept in mind.

8. The term 'standard rent' has been defined in Section 3(iv) of the Rent Control Act, which is reproduced here for ready reference:

(vi) 'Standard rent' used in relation to any premises, means the rent therefore determined in accordance with the provisions of this Act.

9. In the second proviso to Sub-section (2) the term 'fair rent' has been used along with standard rent in alternative. The standard rent is also called 'fair rent' in other Acts.

10. Before proceeding further, it may be stated here that Section 6(2) of the Rent Control Act, which deals with determination of standard rent, has been declared unconstitutional by this Court in *Sohanlal v. Badri Narain and Ors.*, 2000 WLC (UC) 85 and this aspect was also kept in mind by both the courts below while fixing the provisional rent under Section 7(1) of the Rent Control Act. but the learned Addl. District Judge No. 2 while determining the provisional rent also kept in mind the provisions of Section 6(3) of the Rent Control Act.

11. The second mode of determining standard rent is found in Section 6(3) of the Rent Control Act and the following factors are to be considered by the Court:

(i) the prevailing rent or standard rent for similar premises in the same locality.

(ii) the various amenities (such as electricity, water connection, sanitary fittings and like) attached to the premises.

(iii) the cost of construction maintenance and repair thereof.

(iv) the special reasons, if any, proved by the plaintiff, and

(v) other relevant considerations.

12. But fixation of provisional rent has to be made as per Section 7(1) of the Rent Control Act.

13. Section 7 is supplementary to Section 6. The opening words of Section 7(1) are, 'upon the institution of a suit under Section 6', which mean that as soon as a suit under Section 6 is instituted in the Court, Sub-section (1) of Section 7 comes into play and it is the duty of the Court to fix a provisional rent in a summary manner within reasonable time.

14. As there is no mention in Section 7 about an application to fix the provisional rent, no application is necessary, it is duty of the Court to do so before proceeding further to fix the standard rent. But when the Court does not take any action under Section 7(1) in the proceedings of suit under Section 6, the affected party landlord or tenant, as the case may be, may request the Court by an application to fix the provisional rent forthwith.

15. Thus, the provisions of Section 6 are the genus of which Section 7 is the specie. Section 7 is supplementary to Section 6 and is not an independent provision. When there is a suit under Section 6 the provisions of Section 7 will then operate otherwise not. Thus, Section 7 operates only when Section 6 is already in operation. The provisional rent fixed under Section 7(1) is adjusted on the decree of fixation of standard rent and it merges into the final order or decree passed under Section 6.

16. Both under Section 13(3) as well as under Section 7, the provisional rent has to be fixed by the Court. Such determination of the rent which is provisional in nature does not finally determine the rights of the parties and such provisional rent will be ultimately subject to the final determination of standard rent to be fixed by the Court under Section 6 of the Rent Control Act.

17. In such circumstances, the Court should apply its mind by taking into consideration cumulatively the provisions of Section 13(3) as well as Section 7 for fixing the provisional rent. In such kind of case, it is not incumbent upon the Court to fix the provisional rent on the basis of principle of agreed rent alone as contemplated under Section 13(3) of the Rent Control Act. The Court in such kind of case should also take into consideration the provisions of Section 7 of the Rent Control Act before determining the provisional rent. After considering both the provisions, the Court should determine such provisional rent which may be fair and just in the facts and circumstances of that case.

18. Thus, it is held that provisional rent under Section 7 of the Rent Control Act can be fixed at a scale different from the contractual rent.

19. Furthermore, since the provisional rent has to be 'reasonable', the Court has to apply its mind and be satisfied itself *prima facie* what provisional rent will be reasonable. The enquiry will be preliminary and summary in nature. The Court may fix the same even on the ground of documentary evidence on record or may require both the parties to furnish affidavits for the purpose. No hard and fast rule can be laid down.

20. So far as the power of the Appellate Court is concerned, it may be stated here that it is the duty of the Trial Court before whom the suit under Section 6 for fixation of standard rent is pending, to fix the provisional rent, but it does not mean that the Appellate Court cannot fix the provisional rent under Section 7 of the Rent Control Act, as the powers to fix provisional rent under Section 7 have been given to the Appellate Court under Order. 41 Rules 32 & 33 of the Code of Civil Procedure and such powers of the Appellate Court are co-extensive with the powers of the Trial Court.

21. Keeping the above principles in mind, the legality and propriety of the impugned judgment of the learned Addl. District Judge No. 2 has to be examined.

22. There is no dispute on the point that through judgment and decree dated 30.1.1992, the learned Munsiff. Bhilwara came to the conclusion that the agreed rent between the parties was Rs. 100/- and appeal against the said judgment and

decree on that point was dismissed by the learned Addl. District Judge No. 1, Bhilwara through judgment dated 15.9.1999.

23. There is also no dispute on the point that the rented premises are in possession of the petitioner-defendant since 1973 and now about 29 years have passed.

24. There is also no dispute on the point that Section 6(2) of the Rent Control Act has been declared unconstitutional by this Court in the case of Sohan Lal, (supra) and the learned Addl. Sessions Judge No. 2 has placed reliance on Section 6(3) of the Rent Control Act while determining the provisional rent, though it should have been kept in mind while determining the standard rent finally in the suit. While determining standard rent under Section 6(3) of the Rent Control Act, the prevailing rent or standard rent for similar premises in the same locality, the various amenities attached to the premises, the cost of construction, maintenance and repairs thereof, have to be kept in mind.

25. There is also no dispute on the point that the learned Addl. Civil Judge (JD) No. 2, Bhilwara through order dated 14.3.2001 determined the provisional rent at the rate of Rs. 100/- per month keeping in mind the agreed rent between the parties.

26. As already stated above, while determining provisional rent under Section 7(1) of the Rent Control Act, the Court can fix the provisional rent different from the agreed rent between the parties. Thus, from this point of view, the basic finding of the learned Addl. Civil Judge (JD) No. 2, Bhilwara cannot be said to be correct one.

27. However, a bare perusal of the impugned judgment of the learned Addl. District Judge No. 2, Bhilwara dated 24.7.2001 reveals that he wrote that judgment in the manner as if he was determining the standard rent under Section 6 of the Rent Control Act and not provisional rent under Section 7 of the Rent Control Act and that is why, at page No. 4 of the impugned judgment, he took into consideration various factors and also taking into consideration the prevailing rent at that time, he came to the conclusion that actually the standard rent of the

disputed premises should have been Rs. 4000/- per month but by applying the principles of depreciation in the value of the disputed premises, he fixed the provisional rent at Rs. 2500/- per month.

28. In my considered opinion, the above findings of the learned Addl. District Judge No. 2 suffer from basic infirmities and the learned Addl. District Judge No. 2 has exceeded his jurisdiction while determining the provisional rent under Section 7(1) of the Rent Control Act.

29. No doubt fixation of provisional rent at Rs. 100/- per month by the learned Addl. Civil Judge (JD) No. 2 Bhilwara vide order dated 14.3.2001 cannot be justified, but on the same principle, fixation of provisional rent at Rs. 2500/- per month by the learned Addl. District Judge No. 2 through judgment dated 24.7.2001 in place of Rs. 100/- p.m. cannot also be justified, especially when the fixation of provisional rent will be ultimately subject to the final determination of the rent under Section 6 of the Rent Control Act.

30. For the reasons stated above, the impugned judgment dated 24.7.2001 passed by the learned Addl. District Judge No. 2, Bhilwara by which he enhanced the provisional rent from Rs. 100/- per month to Rs. 2500/- per month cannot be sustained, but looking to the entire facts and circumstances of the case and taking into consideration the principle of fair rent, it would be just and proper if the provisional rent under Section 7(1) of the Rent Control Act is determined at Rs. 700/- per month in place of Rs. 2500/- per month and this revision is liable to be allowed to this extent.

Accordingly, this revision petition filed by the petitioner is partly allowed in the manner that the provisional rent of the disputed premises under Section 7(1) of the Rent Control Act is fixed at Rs. 700/- per month in place of Rs. 2500/- per month as fixed by the learned Addl. District Judge No. 2, Bhilwara vide order dated 24.7.2001 and the impugned judgment of the learned Addl. District Judge No. 2, Bhilwara dated 24.7.2001 stands modified accordingly to the above extent. It is made clear that the fixation of provisional rent at Rs. 700/- per month will be subject to the final determination of the rent under Section 6 of the Rent Control Act.

Parties are left to bear their own costs.

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