

**Swaroop Singh Vs. the Additional District Judge and Others**

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**Court :** Rajasthan

**Decided On :** Jul-28-2011

**Judge :** Mahesh Bhagwati, J.

**Acts :** Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Section 13 (3), (7)

**Appeal No. :** S.B. Civil Writ Petition No.6924 of 2003; S.B. Civil Misc. Stay Application No. 5784 of 2003

**Appellant :** Swaroop Singh

**Respondent :** The Additional District Judge and Others

**Advocate for Def. :** Mr. Mukesh Agarwal, Adv

**Advocate for Pet/Ap. :** Mr. Bihari Lal Agarwal, Adv

**Judgement :**

1. By way of the instant writ petition, the petitioner-plaintiff has beseeched to quash and set-aside the order dated 24th July, 2001, whereby the learned Additional District Judge No.2, Sikar, set-aside the orders dated 17th August, 2000 and 18th July, 2000 passed by learned Civil Judge (Sr. Division), Sikar.

2. Adumbrated in brief, the facts giving rise to this writ petition are that the petitioner-plaintiff filed a suit for eviction relating to suit property on the grounds of

material alteration and non user against the respondents-defendants no. 3 and 4 as also the proforma respondents-defendants no. 5 and 6. The respondents no. 3 and 4 filed the written statement gainsaying the allegations made in the plaint. Based on the pleadings, the learned trial court framed the following issue:

i) Whether the plaintiff is the owner of the disputed property and whether there is a relationship of tenant and landlord between the plaintiff and defendants no. 1 and 2?

3. Having recorded the evidence of both the parties, the learned Civil Judge, Sr. Division, decided the said issue in favour of the petitioner-plaintiff vide his order dated 18th July, 2000. It has emerged on record that no revision was preferred by the respondents-defendants against the said order in the High Court and thus, this order dated 18th July, 2000 (Annexure-1) attained finality. Thereafter the learned Civil Judge determined the provisional rent of the suit premises under Section 13 (3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (here-in-after to be referred to as "Act, 1950") on 17th August, 2000. The provisional rent was determined at Rs. 6050/- for the period from 1st August, 1990 to 31st July, 2000 and an amount of Rs. 1830/- was allowed as interest on the determined amount of rent. Thus, an amount of Rs. 7880/- were directed to be deposited with a further direction that the monthly rent shall be deposited by the defendants on the prescribed date of every month.

4. The respondents-defendants preferred an appeal against both the orders dated 18th July, 2000 (Annexure-1) and 17th August, 2000 (Annexure-2) in the Court of Additional District Judge No.2, Sikar. The learned Additional District Judge, set-aside both the impugned orders on 24th July, 2001. The petitioner-plaintiff filed a revision against the order dated 24th July, 2001 in the High Court and the High Court, having found the revision petition "not maintainable", dismissed the same vide order dated 26th May, 2003. The petitioner-plaintiff, on account of there being no other alternate, efficacious and equally effective remedy available to him, filed the instant writ petition.

5. Heard the learned counsel for the parties and carefully perused the relevant material on record.

6. Learned counsel for the petitioner made a scathing attack on the impugned order dated 24th July, 2001 rendered by the learned Additional District Judge No.2, Sikar contending the same to be arbitrary and contrary to law. He further canvassed that the order dated 18th July, 2000 passed by the trial court decided the issue with regard to the relationship of landlord and tenant between the parties. This order is not appealable and no revision was preferred against the said order by the respondents-defendants no. 4 to 6 resulting the order to have attained the finality. So far as the order dated 17th August, 2000 is concerned, the same was albeit appealable, but the learned trial court provisionally determined the rent under Section 13(3), which was finally to be decided under the provisions contained under Section 13(7) of the Act, 1950 at the time of final adjudication of the suit. Therefore, the appellate court ought not to have legally interfered with the order dated 17th August, 2000. In view of this legal position, the learned trial court committed a grave error in interfering with both the orders dated 18th July, 2000 as also 17th August, 2000 rendered by the learned Civil Judge (Sr. Division), Sikar. The impugned order having passed by the appellate court cannot be said to be a good order in the eye of law and thus, the same deserves to be set-aside.

7. E Converso, the learned counsel for the respondents defended the impugned order and stated the same to be just and proper, which did not warrant any intervention. He further canvassed that the respondents in the very beginning gainsaid all the averments of plaintiff in the written statement and further denied the relationship between the parties to be of landlord and tenant. At the very outset the respondents had claimed themselves to be the owner of the suit premises and thus, the learned Civil Judge (Sr. Division) was not correct in determining the provisional rent under Section 13 (3) of the Act, 1950 and the learned appellate court rightly set-aside both the impugned orders, whereby the relationship between the parties being landlord and tenant was settled in favour of the petitioner-plaintiff and the provisional rent was determined under section 13(3) of the Act, 1950. Hence the writ petition is liable to be jettisoned.

8. Having reflected over the submissions made by the learned counsel for the parties and carefully scanned all the legal provisions, it is noticed that the learned Civil Judge (Sr. Division) framed the afore-stated issue as to whether the plaintiff

was the owner of the disputed property and whether there was a relationship of landlord and tenant between the petitioner and the respondents no. 3 and 4. The learned trial court, having recorded the evidence of both the parties, decided this issue in favour of the petitioner-plaintiff and held that there appeared to be a relationship of landlord and tenant between the petitioner-plaintiff and the respondents no. 3 and 4 - defendants. This order is not appealable under the provisions of Rule 1 of Order 43 of CPC. It is also tangible from the record that no revision was filed by the respondents no. 3 and 4 against this order before the High Court and thus, this order dated 18th July, 2000, whereby the learned Civil Judge (Sr. Division) decided the relationship of landlord and tenant between the petitioner and respondents no. 2 and 3 which attained finality.

9. Now advertent to the impugned order dated 17th August, 2000, it is found that the learned trial court by way of this order, determined the provisional rent under Section 13(3) of the Act, 1950 to be Rs. 6050/- per month with effect from 1st August, 1990 to 31st July, 2000 together with interest of Rs.1830 thereon with the direction that after 31st July, 2000, the determined rent shall be kept on paid on the fixed date of every month. The learned counsel for the petitioner contended that it was the provisional rent determined by the learned trial court and under sub-section (7) of Section 13 of the Act, 1950, the learned trial court could settle the dispute with regard to the amount of rent payable by the tenant finally at the time of decision of the suit. Sub-section (7) of Section 13 of Act, 1950 envisages thus:

“13 (7) If in any suit referred to in sub-section (3), there is any dispute as to the amount of rent payable by the tenant, the court shall decide the dispute finally at the time of decision of the suit and may, at that time pass such orders regarding costs or interest, as having regard to the circumstances of the case it deems fit.”

10. From a bare perusal of the aforesaid legal provisions, it, thus, becomes tangible that the order dated 18th July, 2000 passed by the learned trial court was not appealable and the rent, which is found to have been determined by the learned trial court was provisional. From no stretch of imagination, the order dated 18th July, 2000 was assailable in appeal before the court of Additional Sessions Judge No.2, Sikar and if this order, as stated earlier, attained finality, which adjudicated

the relationship of landlord and tenant having found between the plaintiff and defendant, then there was no alternative left before the trial court, but to provisionally determine the rent under Section 13(3) of the Act, 1950 with regard to the suit premises. The arguments advanced by the learned counsel for the respondents, in view of above, do not sustain and ample force is found in the contentions of the learned counsel for the petitioner, who has taken all these grounds in the memo of appeal.

11. To sum up, the impugned order dated 24th July, 2001 passed by the learned Additional District Judge No.2, Sikar is found to be contrary to law in respect of setting aside the order dated 18th July, 2000, whereby the learned trial court decided the issue in favour of the petitioner-plaintiff. Once we find that the order dated 18th July, 2000 was not appealable and no revision was filed against the same by the respondents-defendants, the said order had attained the finality, then in such a situation, the impugned order dated 17th August, 2000 passed by the learned trial court is not found to be erroneous as it was the bounden duty of the trial court to determine the provisional rent under Section 13(3) of the Act, 1950 of the suit premises. Thus, the impugned order is found to be totally perverse and contrary to the provisions of law and the same deserves to be set-aside.

12. For the reasons stated above, the writ petition succeeds and the impugned order dated 24th July, 2001 passed by the learned Additional District Judge No.2 stands set-aside and further, both the orders dated 18th July, 2000 and 17th August, 2000 rendered by the learned Civil Judge (Sr. Division), Sikar are upheld.

13. Consequent upon the disposal of the writ petition, the stay application, filed therewith, does not survive and that also stands disposed of.

14. No order as to costs.

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