
(2013) 04 RAJ CK 0042

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Petition No. 952 of 2013

Anand Choudhary and Others

APPELLANT

Vs

Trilok Chand and Others

RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 5

Citation : (2013) 2 WLN 593

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Advocate : Vijay Choudhary, for the Appellant;

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant petition is directed against order of learned trial Judge dt. 10.01.2013 rejecting application filed by defendant-petitioner under Order 14 Rule 5 CPC. In the eviction proceedings after the written statement came to be filed issues were framed on 25.11.2009 and as it reveals from the record that the defendant petitioner moved application at later stage under Order 14 Rule 5 CPC seeking additional issue to be framed to the effect that the rent which the respondent plaintiff is claiming was not paid but utilised towards improvement undertaken by the petitioner defendant of the rented premises referred to in para-3 of the suit with prior permission. The learned trial Judge taking note of the submissions made observed that the issues were framed on 25.11.2009 & noted by both the parties and even on merits there was no sufficient reason forthcoming for granting permission to frame additional issue and accordingly dismissed the application.

2. The main thrust of submission of counsel is that from the order-sheet it reveals that it was noted by plaintiff's counsel and not by the defendant petitioner or his counsel and that appears to be factually incorrect and he has referred to plaintiff petitioner and apart from the fact referred to, the additional issue even if framed as prayed for may not in any manner defer the pending

proceedings.

3. This Court does not find substance in either of the submission made for the reason that even if it was not noted in specific terms but issues are always framed in presence of the parties and there was no objection ever raised by the petitioner before the learned trial Judge that he was not aware of when the issues are framed and as regards the submission on merits, what has been contended by the petitioner before this Court can always be examined in the pending issue No. 3 framed by learned trial Judge for adjudication.

4. This Court does not find any manifest error being committed by the learned trial Judge under order impugned which may require interference. Consequently, the petition is without merit & accordingly stands dismissed.