

(1996) 07 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Revision Petition No. 428 of 1996

Babulal

APPELLANT

Vs

Rajendra Singh

RESPONDENT

Date of Decision : 19-07-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 3A

Citation : (1997) 1 CivCC 296 : (1997) 2 RCR(Civil) 80 : (1996) 2 RLW 600 : (1996) 3 WLC 527 : (1996) 1 WLN 483

Hon'ble Judges : Pana Chand Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.C. Jain, J.—The question for determination in this revision petition filed by the defendant-petitioner is whether the learned Additional Civil Judge (Junior Division) No. 5 Jodhpur has erroneously decided the application filed by the defendant-petitioner under Order XII, Rule 3A C.P.C.

2. The facts necessary to be noticed for the disposal of this petition may briefly be stated as follows: The plaintiff-non- petitioner No. 1 filed a suit for eviction of the defendant- petitioner from the disputed premises mainly on the ground of sub-letting of the suit-premises of the defendants-non- petitioners No. 2 and 3 to the petitioner-defendants No. 3. The defendant-petitioner resisted the suit. From the proceedings of the suit, the petitioner came across a very important document viz., an affidavit filed by the plaintiff in which he admitted that the premises in question were let out to the father and brother of Balchand. That document was relevant and crucial for deciding the controversy of the parties. The defendant- petitioner, therefore, moved an application under Order XIII, Rule 2 CPC and the same was allowed by the learned trial court on payment of costs.

3. However, inadvertently no order was passed regarding the proof of the above document. The defendant wanted an opportunity to prove the above document but before doing so he wanted to obtain admission and denial of the plaintiff-

non- petitioner and despite many requests, the plaintiff avoided the same.

4. The defendant. therefore, moved an application before the court under Order 12 Rules 2, 2A and 3A CPC requesting the court to call upon the plaintiff to admit the above document after making an enquiry from the plaintiff whether the plaintiff admits or refuses or neglects to admit such document, the above application was dismissed by the learned trial court.

5. I have heard the learned counsel appearing for the petitioner and the non-petitioners and have carefully gone through the record of the case.

6. The learned counsel appearing for the petitioner has submitted that the whole purpose of bringing the above important document on record will be frustrated if the defendant is not allowed to prove the document. Before the defendant decides whether to lead evidence or not, it was imperative for the plaintiff to admit or deny the above document. The defendant made efforts to get admission or denial of the plaintiff but the latter avoided the same. The defendant was, therefore, compelled to move the above application. According to the learned counsel the learned Additional Civil Judge has committed jurisdictional error in dismissing the above application and thereby denied the defendant the advantage of bringing the above document on record in as much as if the document is not proved substantial injustice will be caused.

7. The learned counsel for the non-petitioner has submitted that initially under Rule 18 of the General Rules (Civil), it was the duty of the defendant to obtain admission and denial of the plaintiff before the document was produced in the court. Be that as it may, the application of the defendant was not maintainable because the court was having jurisdiction to entertain the same duxing any stage of the proceedings but since the present suit has been fixed for judgment after hearing arguments of the parties, the learned trial court has not committed any error. In this connection, he has derived support from *Rajkumar Rajmani v. Union Bank of India* and Anr. RLW 1995 (2) 289.

8. I have considered the rival submission made at the bar. It may be stated here that the present case was posted for judgment and arguments of the plaintiff were heard and the defendant was given an opportunity to advance his arguments. Eventually, the case was concluded and only the judgment was to be pronounced. Similarly in *Raj Kumar Rajmani's* case "(Supra)", the case was fixed for the pronouncement of the judgment and therefore, it was held that the application under Order 13, Rule 2 CPC is not maintainable as no proceedings are pending.

9. R.3-A of Order XII CPC reads as under:

3-A. Power of court to record admission. Notwithstanding that no notice to admit documents has been given under Rule 2, the court may at any stage of the proceedings before it, of its own motion, call upon any party to admit any document and shall in such a case record whether the party admits or refuses or

neglects to admit such document.

Since the present case was posted for judgment after conclusion of final arguments and therefore, it cannot be said that any proceedings were pending before the Court and hence, it cannot be said that the defendant filed the above application at any stage of the proceedings.

10. In this view of the matter the learned Addl. Civil Judge has not committed any jurisdictional error. Thus no interference can be made in this revision petition.

11. The revision petition is therefore, dismissed.