
(2009) 04 RAJ CK 0075
In the Rajasthan High Court

Bhagwan Das Sindhi

APPELLANT

Vs

Gopesh Mishra and Others

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Rajasthan Rent Control Act, 2001 — Section 6, 9

Citation : (2009) 04 RAJ CK 0075

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—This Court vide order dt.29/05/08 observed to finally dispose of the matter at admission stage.

2. Instant petition has been filed by tenant assailing orders dt.09/04/07 (Ann.1) of Rent Tribunal, Jaipur (Org. Appl.782/04) and so also dt.17/03/08 (Ann.2) of Appellate Rent Tribunal, Jaipur City dismissing Appeal No. 83/2007. Respondent No. 1 (Plaintiff) filed suit for eviction u/s 6 & 9 of Rajasthan Rent Control Act, 2001 ("Rent Act") on 19/05/04 with the grievance that agreed rent between the parties which petitioner (tenant) was under obligation to pay was Rs. 430/- per month; and when there was default on account of non-payment of the rent, respondent plaintiff served legal notice dt.03/04/2004 as required under Rent Act served on 08/04/2004 in which it was specifically mentioned that petitioner had failed to make payment of agreed rent from December, 2003 to April, 2004.

3. It is relevant to mention that in legal notice served as required under proviso to Section 9(a) of Rent Act, plaintiff also disclosed his bank account in which petitioner tenant was supposed to deposit the rent due & payable, which he failed to make even on legal notice being served; as a result whereof, tenant committed alleged default in payment of the rent, which is one of the grounds for eviction u/s 9(a) of Rent Act. On the basis of material on record, learned Rent Tribunal framed two issues with regard to (1) default in making payment of

agreed rent and (2) as to whether the rent could be determined in terms of formula provided u/s 6 of the Rent Act. After taking note of material on record, learned Rent Tribunal recorded the finding on both the issues in favour of respondent plaintiff holding that once legal notice dt.03/04/04 (Ex.2) was served on 08/04/04 - in response whereof, tenant was under obligation to deposit agreed rent within thirty days, of which he admittedly committed default and according to petitioner-defendant, he deposited due rent partly on 10/06/04 and balance on 09/07/04, much after thirty days of legal notice being served as provided u/s 9 of Rent Act and therefore, defendant was defaulter in making payment of rent of suit shop. As regards issue No. 2, since no rent could be agreed between the parties, learned Rent Tribunal in terms of formula provided u/s 6 of Rent Act, determined the rent having become payable from the date of filing of original application dt.19/05/04; and accordingly, the suit filed by plaintiff was decreed vide judgment dt.09/04/07 (Ann.1) - against which petitioner preferred appeal but was dismissed by Appellate Rent Tribunal vide judgment dt.17/03/08 (Ann.2). Counsel for petitioner submits that the Rent Tribunal has failed to grant permission to cross examine respondent plaintiff, through whom he could have made out a case that rent was tendered on various occasions, and if plaintiff failed to accept the rent, that should not be considered a ground of default as contemplated u/s 9 of the Act.

4. Counsel further submits that once rent was deposited, may be after expiry of thirty days as required under Rent Act on 10/06/04 & 09/07/04 in bank account of plaintiff, who if once has utilised the rent deposited, petitioner has a right to question about his right being waived of alleged default provided u/s 9 of Rent Act and both the issues have not been properly appreciated by the Rent Tribunal or appellate Tribunal while rejecting his appeal. Counsel for respondent (plaintiff) while supporting the findings recorded by the Rent Tribunal & Appellate Tribunal, submits that once petitioner failed to make payment of agreed rent within thirty days of legal notice being served, which was in compliance of Section 9 of Rent Act, there was no defence available, except to get order of eviction on the ground of default in payment of agreed rent; and that apart, as regards determination of the rent, since there was no agreement arrived at between parties, learned Rent Tribunal determined the rent in terms of formula as provided u/s 6 of Rent Act and made the rent determined payable from the date of original application; which is the only requirement u/s 6(4) of Rent Act; in such circumstances, no error was committed by learned Rent tribunal & Appellate Tribunal which may call for interference.

5. I have considered rival contentions of Counsel for the parties and with their assistance, examined material on record. As regards factual matrix, from material on record, it certainly remains un-controverted that legal notice (Ex.2) was served upon tenant on 08/04/04 thereby fulfilling requirement u/s 9 of Rent Act; and petitioner was under obligation to make payment of agreed rent within thirty days from notice being served; and indisputably, tenant failed to deposit agreed rent within thirty days of notice being served, that certainly could be a

ground of eviction on having committed default in payment of rent which is one of grounds u/s 9 of Rent Act.

6. At the same time, as regards increased rate of rent, since there could not have been agreement between parties, learned Rent tribunal after taking note of formula as provided u/s 6 of Rent Act, determined the rent payable from the date of filing of original application for eviction and not from the date if agreed between the parties which is certainly in compliance of Section 6(4) of Rent Act.

7. Counsel for petitioner (tenant) failed to show as to what was the error being committed by Rent Tribunal in determining the rent in terms of formula as provided u/s 6 of Rent Act - in absence whereof, issue No. 2 as decided by Rent Tribunal does not call for interference. As regards contention of Counsel for petitioner about opportunity being not afforded to him to cross examine respondent plaintiff, suffice it to say that when the facts remain uncontroverted on record, the permission which the petitioner sought for cross examination of plaintiff about a plea that he offered or tendered the rent, it is nothing but an excuse, which could not be claimed as a matter of right under statute. Since no satisfactory material has come on record on which he could claim cross examination of respondents, in the facts of instant case, in the opinion of this Court, learned Rent Tribunal has not committed any error in rejecting his plea, which may warrant interference.

8. Consequently, writ petition fails and is hereby dismissed. No order as to costs.