
(2014) 04 RAJ CK 0144

In the Rajasthan High Court

Case No : Civil MiscWrit Petition No. 20118/2013

Har Chand @ Harish Chand

APPELLANT

Vs

Rent Tribunal, Jhunjhunu and Another

RESPONDENT

Date of Decision : 23-04-2014

Acts Referred:

Citation : (2014) 04 RAJ CK 0144

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Advocate : Amit Jindal, Advocate for the Appellant; R.K. Daga, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The petitioner-defendant is aggrieved by the order dated 15.10.2013 passed by the Rent Tribunal, Jhunjhunu, whereby the learned Tribunal has dismissed an application filed by the petitioner u/s 21 of the Rajasthan Rent Control Act, 2001 for amending the reply submitted by him.

2. The brief facts of the case are that the respondent No. 2, Smt. Vinod Devi filed an application u/s 9 of the Rajasthan Rent Tribunal Act, 2001 (henceforth, "the Act of 2001, for short) for eviction of the petitioner-defendant, Har Chand @ Harish Chand, from the suit premises on the ground of bona fide necessity. The petitioner-defendant filed his reply to the application and denied the averments made in the application. During the pendency of the suit, the petitioner-defendant moved an application u/s 21 of the Act of 2001 for amending his reply to the application with regard to the fact that vacant possession of the adjacent shop has been taken by the respondent No. 2. By order dated 15.10.2013, the learned Tribunal dismissed the said application. Hence, this writ petition before this Court.

3. The learned counsel for the petitioner has vehemently contended that on 25.5.2013, Manoj Kumar Swami had lodged an fir, wherein he claimed that he

was forced to vacate the shop, which is adjacent to shop which is under dispute. This clearly shows the fact that a shop adjacent to shop in dispute has now come in possession of the respondent-plaintiff. Since it was a subsequent development, which would affect the final outcome of the eviction suit, the learned Judge ought to have permitted the amendment in the reply. Secondly, whether the adjacent shop has been vacated and the possession has been handed over to the respondent-plaintiff is a question of fact, which could have been decided only after the petitioner-defendant is granted a chance to prove his stand. Therefore, the rejection of his application is a premature act committed by the Tribunal.

4. On the other hand, Mr. R.K. Daga, the learned counsel for the respondent No. 2 has vehemently contended that even after the fir was lodged by Mr. Manoj Kumar Swami, after a thorough investigation, the police had submitted a negative Final Report. According to the investigation of the police, the adjacent shop was given by the respondent-plaintiff on rent to Shri Ram. Shri Ram had vacated the shop so that the repair works in the shop could be carried out. Moreover, even after 24.5.2013, Shri Ram has been continuously paying rent for the said shop to the respondent-plaintiff. Moreover, an affidavit has been submitted by Shri Ram to the police, clearly stating that the shop was vacated temporarily for the purpose of carrying out repair works in the shop. In his affidavit he has also submitted the fact that he has been paying the rental amount to the respondent-plaintiff. Thus, the possession continues to be with Shri Ram, who happens to be tenant of the respondent-plaintiff. Lastly, the petitioner-defendant has not submitted any evidence to even make out in prima facie case for carrying out any amendment in his reply. Thus, the learned counsel for the respondent has supported the impugned order.

5. In rejoinder, the learned counsel for the petitioner pleads that the affidavit of Shri Ram submitted before this Court was not submitted before the learned Tribunal.

6. Heard the learned counsel for the parties and perused the impugned order.

7. Undoubtedly, the petitioner-defendant does have a right to bring the subsequent development of the case to the notice of the learned Tribunal. However, while seeking permission to amend the reply, the petitioner-defendant is required to prima facie satisfy the learned Tribunal. Merely, because a fir has been lodged by Manoj Kumar Swami against the respondent-plaintiff, would not lead to inference that the shop has been vacated and the possession has been handed over to the respondent-plaintiff. Moreover, in the negative Final Report (Annexure-4), the police has clearly recorded the fact that Shri Ram had informed them that he had voluntarily cleared the shop. Moreover, according to the statement of the neighbours, Manoj Kumar Swami was present when the shop was vacated. Thus, it seems that the shop has been vacated for temporary purpose. Hence, the petitioner-defendant has not been able to make out even a prima facie case for getting the reply amended.

8. A bare perusal of the impugned order clearly reveals that the learned Tribunal has given cogent reasons for dismissing the application filed by the petitioner. Therefore, this Court does not find any illegality or perversity in the impugned order.

9. For the reasons stated above, this court does not find any merit in the writ petition; the writ petition is, hereby, dismissed. The stay application also stands dismissed.