
(2010) 04 RAJ CK 0010
In the Rajasthan High Court

Jagdish Chandra

APPELLANT

Vs

Rent Tribunal and Another

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Rajasthan Rent Control Act, 2001 — Section 9(j)

Citation : (2010) 3 RLW 2452

Hon'ble Judges : Jagdish Bhalla, C.J.;Dinesh Maheshwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—By way of this special appeal, the petitioner-appellant-tenant seeks to question the order dated 26.02.2010 passed in CWP No. 1989/2010 whereby the learned Single Judge of this Court has dismissed in limine the writ petition preferred against the order dated 17.02.2010 as passed by the Rent Tribunal, Chittorgarh ("the Tribunal") in Execution Case No. 1/2010. By the said order dated 17.02.2010, the Tribunal proceeded to reject the objections taken by the appellant against execution of the certificate for recovery of possession dated 20.04.2005 that had been issued pursuant to an order passed in terms of the compromise between the parties.

2. Briefly put, the relevant facts and the background aspects of the matter are that on 02.06.2004, the respondent-landlord, said to be a society registered under the Rajasthan Societies Registration Act, 1958 ("the Act of 1958") filed a petition before the Tribunal seeking eviction of the appellant-tenant on the grounds referable to Clause (i) and Clause (j) of Section 9 of the Rajasthan Rent Control Act, 2001 ("the Act of 2001") i.e., of the landlord having reasonable and bona fide requirement of the suit premises; and of the tenant having available with him suitable other premises. On 06.08.2004, the appellant filed a reply contesting the averments taken in the petition for eviction. After filing of the affidavits but before any further proceedings, it was suggested before the Tribunal, on 20.04.2005, that the matter had been compromised and the parties,

present-in-person with their respective Counsel, presented a deed of compromise (Annex.3) carrying the stipulations that the appellant-tenant shall continue to occupy the premises as tenant until 30.12.2009; that he would make payment of rent @ 800/- per month from the month of January 2005 and @ 1,000/- per month from the month of January 2008; and that he shall deposit an amount of Rs. 75,000/- with the plaintiff-landlord that would remain in deposit without interest but shall be refunded on 30.12.2009 or while seeking execution. On the very day of presentation of the compromise deed, the learned Tribunal proceeded to pass the final order in terms thereof and issued the certificate for recovery of possession (Annex.4) accordingly.

3. On 08.12.2009, the plaintiff-landlord moved an application (Annex.5) before the Tribunal stating its willingness to deposit the said amount of Rs. 75,000/-; and sought the necessary orders for recovery of possession of the demised premises. The appellant-tenant came out with the reply-cum-objections to the said application stating, inter alia, that the order in terms of the compromise had been obtained by way of fraud; that enhancement of rent by upward revision amounted to creation of a new tenancy; that per Clause (v) of Section 3 of the Act of 2001, its Chapters II and III were not applicable to the premises in question for the landlord being a body corporate and hence, order for eviction could not have been passed by the Tribunal in terms of Section 9 *ibid*; and that the provisions contained in Section 9 *ibid* setting out the grounds for eviction of the tenant have an overriding effect and, in the absence of satisfaction of the Tribunal on any of the grounds of eviction, the certificate for recovery of possession was a nullity in the eye of law.

4. The learned Tribunal proceeded to reject the objections so raised by the appellant by the impugned order dated 17.02.2010 with the observations that for being a society registered under the Act of 1958, the landlord could not be treated to be a body corporate constituted by a Central or State enactment so as to exclude the applicability of Chapters II and III of the Act of 2001 to the tenancy in question; that it were not a case of creation of new tenancy merely for revision of rent; that the compromise was presented by the parties with their Counsel and the same was duly verified and the allegations of fraud or misrepresentation were totally baseless and were raised after five years only when it came to the question of the compliance by the tenant; that the compromise was made the rule of the Tribunal keeping in view the material on record; that the affidavits of the witnesses filed by the parties were available on record and before the matter could be proceeded for cross examination, the compromise arrived at between the parties was filed and, therefore, it could be presumed that the Tribunal was satisfied with regard to the existence of the ground for eviction. However, and even while rejecting the objections filed by the appellant, the Tribunal directed the respondent-landlord to deposit the security amount of Rs. 75,000/-, if not already deposited.

5. Seeking to question the order so passed by the Tribunal, the appellant-tenant

preferred the writ petition wherefrom has arisen this intra-court appeal. It was contended before the learned Single Judge that Chapters II and III of the Act of 2001 were not applicable because the landlord was a society registered under the Act of 1958 and hence, a body corporate constituted under an enactment of the State of Rajasthan. It was further submitted that for Section 9 of the Act of 2001 having an overriding effect, the Tribunal was not competent to pass an order for eviction even with the consent of the parties in the absence of the ground for eviction specified therein; and that for want of any such ground and the satisfaction of the Tribunal in that regard in the order impugned, the certificate issued by the Tribunal was a nullity in the eye of law.

6. The learned Single Judge found the first contention urged on behalf of the petitioner-appellant totally baseless while observing that the landlord was not a body constituted by the Central Act or the Rajasthan Act; and merely for having been registered under the Act of 1958, it could not be treated to be a body corporate constituted by the Rajasthan Act. The learned Single Judge examined the other issue raised by the appellant regarding want of satisfaction of the Tribunal on the grounds of eviction and, with reference to the relevant decisions dealing with the issue, found the position of law settled thus:

16. Thus, the settled position of law which emerges from the various decisions of the Hon''ble Apex Court and this Court is that the satisfaction of the court regarding the existence of any of the ground for eviction set out in the relevant statute for the order of eviction based on compromise need not borne out by a judicial finding and it can even be presumed on the basis of the material on record that the court was satisfied about the existence of the ground on which the order of eviction based on compromise arrived at between the parties was passed.

7. The learned Single Judge, thereafter, referred to the facts of the case and observed that the petition for eviction had been filed on the ground of reasonable and bona fide requirement; and though the petitioner-appellant had denied the claim of the respondent and both the parties had filed the affidavits but then, the appellant never asked for cross-examination of the witnesses and in the meantime, entered into the compromise agreeing that he shall vacate the premises on the stipulated date unconditionally and that the certificate for recovery of possession would be executable. While taking all the facts and circumstances into account, the learned Single Judge held,-

Thus, on the facts and in the circumstances of the case, noticed above, it can be safely presumed that the Tribunal has passed the order on the basis of the implied admission of the petitioner regarding reasonable and bona fide necessity of the respondent/landlord of the premises in question. Thus, the contention of the petitioner that the order in terms of the compromise was passed by the Tribunal without its satisfaction regarding the existence of any of the grounds enumerated in Section 9 of the Act is also devoid of any merit.

8. In view of the above, the learned Single Judge found no case of interference in the supervisory jurisdiction; and accordingly, dismissed the writ petition in limine.

10. Seeking to assail the order passed by the learned Single Judge, the learned Counsel for the petitioner-appellant has argued with reference to the decision of this Court in *Prem Lal v. Jadav Chand and Anr.* 1977 WLN (Raj.) 332 that for eviction of a tenant, existence of ground of eviction and satisfaction of the Court/Tribunal concerned on such a ground is a condition precedent; and for no such ground having been incorporated in the so-called compromise and in the order passed by the Tribunal thereupon, the certificate remains a nullity and cannot be executed. The learned Counsel submitted that the learned Single Judge has erred in assuming the so-called "implied admission" of the appellant as regards reasonable and bona fide requirement of the landlord, although no such ground could come into existence by implication. In the second limb of submissions, the learned Counsel for the appellant contended that the respondent being a body corporate covered by Clause (v) of Section 3 of the Act of 2001, the provisions contained in Chapters II and III do not apply to the tenancy in question; and hence, according to the learned Counsel, entire of the proceedings in this case before the Tribunal were wholly without jurisdiction.

11. Having heard the learned Counsel for the appellant and having examined the material placed on record with reference to the law applicable, while totally agreeing with what has been observed by the learned Tribunal and by the learned Single Judge, we are satisfied that this appeal remains bereft of substance and deserves to be dismissed.

12. It is contended on behalf of the appellant that existence of ground of eviction and satisfaction of the Court/Tribunal on such a ground being a condition precedent and no such ground having been incorporated in the compromise and in the order passed by the Tribunal, the certificate remains a nullity; and the decision of this Court in *Prem Lal* (supra) is relied upon. The submission has no merit.

13. The decision in *Prem Lal* (supra) was rendered by a Division Bench of this Court on a reference having been made essentially on the question if the plaintiff in a suit for eviction could seek amendment of the plaint so as to introduce a new ground of eviction. The observation as relied upon by the learned Counsel for the appellant that "the Court is not competent to pass a decree for possession either in invitum or with consent of the parties or on a ground which is de hors the Act" and that "existence of one or more of the grounds mentioned in Section 13(1) is sine qua non to the exercise of jurisdiction" were made in the said decision on the general scheme of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 ["the Act of 1950"]. However, so far the question of validity of decree passed in such matters on compromise or settlement between the parties is concerned, the Hon"ble Apex Court has specifically pointed out the principles in the case of *Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others*, as follows:

From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction apparently passed on the basis of a compromise, would be valid.

14. Further, in the case of Hiralal Moolchand Doshi Vs. Barot Raman Lal Ranchhoddas (Dead) by L.Rs., the Hon''ble Supreme Court, while pointing out the binding nature of the admission, express or implied, as made by the tenant in the course of proceedings said,-

An admission by the tenant about the existence of a statutory ground, expressly or impliedly, will be sufficient and there need not be any evidence before the Court on the merits of the grounds before the compromise order is passed. If there is an admission of the tenant it will not be open to him to challenge its correctness as the admissions made in judicial proceedings are absolutely binding on the parties. At any rate decree cannot be called a nullity to enable the executing court to go behind it.

15. In the said decision in Heerlal Moolchand Doshi, the Hon''ble Supreme Court reproduced the terms of compromise between the parties wherein though the grounds of eviction were not stated as such but on the facts and in the circumstances were held to be impliedly admitted by the tenant. It is, thus, not correct to contend that there cannot be read implied admission by the tenant of the grounds of eviction.

16. It is also not correct to contend that while passing the order in terms of compromise the Tribunal is obliged to record invariably in every case in so many words and specific terms the ground of eviction and unless done so, the consequential certificate for recovery of possession would be a nullity. Contrary to what has been argued on behalf of the appellant, the principles are, as propounded by the Hon''ble Apex Court, that there could be express or even implied admission of the tenant on the existence of the ground of eviction; that if there be some material on record on the ground of eviction at the time of passing the order, it will be presumed that the Court/Tribunal was so satisfied and the consequential order for eviction apparently passed on the basis of a compromise, would be valid; and, at any rate, the certificate issued on compromise cannot be called a nullity in the execution proceeding.

17. Moreover, the fundamental change in the scheme of the rent control legislation with enactment of the Act of 2001 and repeal of the Act of 1950 cannot be ignored. Noticeable it is that per Sub-section (6) of Section 15 of the Act of 2001, the Tribunal is supposed to hold such summary inquiry, as it would deem necessary; and the Tribunal "may also make efforts for conciliation or settlement of dispute between the parties". When the effort for settlement between the parties is an integral part of the procedure of the Tribunal while

holding summary inquiry in a petition for eviction, the certificate as issued by the Tribunal on the basis of the compromise between the parties deserves to be upheld and cannot be lightly interfered with on the hyper-technical suggestions made on behalf of the tenant at the execution stage.

18. In the present case, the petition for eviction was filed by the respondent-landlord on the grounds of reasonable and bonafide requirement and of the tenant having suitable alternative premises. The appellant-tenant, though by filing a reply denied the claim of the respondent and both the parties filed the affidavits of their witnesses in terms of the provisions of Section 15 of the Act of 2001 but then, the appellant did not ask for cross examination of the witnesses whose affidavits had been filed on behalf of the respondent-landlord and, instead, entered into a compromise with the landlord on 20.04.2005 whereby he agreed to vacate the premises in question on the stipulated date viz., 30.12.2009, more than 4 1/2 years from the date of compromise! It was also specifically agreed that the certificate for recovery of possession would be executable. Another stipulation of the compromise was that the appellant-tenant shall deposit an amount of Rs. 75,000/-with the landlord that shall be repaid at the time of the appellant vacating the premises. On the given set of facts and in the surrounding circumstances, the Tribunal and the learned Single Judge were perfectly justified in drawing inference that the order in terms of the compromise, for eviction of the petitioner from the demised premises after the stipulated date, came to be passed by the Tribunal after being satisfied about existence of the grounds for eviction u/s 9 of the Act of 2001. Looking to the nature of claim made by the landlord, it was always open for the appellant-tenant to accept the position that indeed the landlord was in need of the premises in question and to agree that he would vacate the premises given some time. The inference of admission of the appellant-tenant about existence of grounds of eviction is directly and undoubtedly available from the deed of compromise as also the attending circumstances. The baseless contention as urged on behalf of the appellant in opposition to the execution of the certificate for recovery of possession issued on such compromise was required to be, and has rightly been, rejected.

19. It may also be noticed that the under the scheme of the Act of 2001, the Tribunal is supposed to proceed with and decide the petition for eviction after holding a summary inquiry and with expedition; rather a time frame is given in Section 15 of the Act of 2001 whereby the petition is required to be decided within 240 days from the date of service of notice on the tenant. If the Tribunal decides in favour of the landlord, it would issue the certificate for recovery of possession, to be executable after a period of 3 months. Taking all the factors in account, including the time frame as envisaged by the statute and the respective position of the parties, the appellant-tenant in the present case could only be said to have gained rather excessive time to vacate when the parties agreed that the certificate would be executable after more than 4 ? years. It would have been a travesty of justice had the Tribunal shown any interference in this matter at the

instance of the appellant. The certificate for recovery of possession as issued in this case on the basis of the compromise between the parties was perfectly valid; and called for immediate execution when the appellant-tenant attempted to over-reach and avoided handing over possession after expiry of the period allowed to him.

20. Taking now the other limb of submissions that per Clause (v) of Section 3 of the Act of 2001, the provisions of Chapters II and III do not apply for the respondent-landlord being a body corporate under the Act of 1958, we find that this contention does not carry even a technical value what to say of the substance. As per Clause (v) of Section 3, nothing contained in Chapter II and III of the Act *ibid* shall apply "to any premises belonging to or let out by any body corporate constituted by a Central Act or a Rajasthan Act". The respondent-landlord is not a body corporate constituted by any Central or State enactment but is said to be a society registered under the Rajasthan Societies Registration Act, 1958. It remains rather fundamental that "to be constituted by an enactment" is materially, and from all angles, different than "to be registered under an enactment". Merely for having been registered under the Act of 1958, respondent-landlord cannot be termed to be a body corporate constituted by a Rajasthan Act; and Clause (v) of Section 3 *ibid* does not have even a remote application to the premises in question. The baseless contention as urged in this regard has rightly been rejected by the learned Tribunal and the learned Single Judge.

21. The argument regarding inapplicability of Chapters II and III of the Act of 2001 is not only ill-conceived but is self-defeating too. It could be noticed that if at all the argument of the appellant regarding inapplicability of Chapters II and III is to be accepted, the resultant position would be that the other argument regarding want of ground of eviction in the certificate for recovery of possession would itself fall to be ground. Section 9, carrying the grounds of eviction and bar on order of eviction except on existence of such grounds, occurs in Chapter III of the Act of 2001. If Chapters II and III were not to apply to the tenancy in question, there would not be any the requirement on the Tribunal to consider the grounds of eviction as enumerated in Section 9 *ibid*!

22. The objection that the Chapters II and III do not apply to the tenancy in question was not taken in the reply as submitted to the original petition for eviction. Therein, the appellant stated that the society was registered only in the year 2004 and he was not aware of the constitution of the society. Apparent it is that such an objection was put forward in the execution proceedings just for the sake of it; and only in order to delay the execution of the certificate of recovery of possession. The Tribunal, we have no hesitation in saying so, ought to have rejected such baseless and rather self-defeating objection petition with heavy costs; and without waste of time.

23. We feel constrained to observe further and to emphasize on the need to curb the baseless litigation like the present one, intended by a party at wriggling out

of the promise made to the other party in the course of judicial proceeding only after having obtained an order from the Tribunal on the basis of such a promise. The Tribunal would be justified in rejecting such baseless objection petition with utmost expedition while saddling the objector with heavy costs.

24. The present appeal remains totally bereft of substance; and stands dismissed summarily.