

(2005) 02 RAJ CK 0067

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8264 of 2004

Jai Clinic and Nursing Home

APPELLANT

Vs

Smt. Beena Agrawal and Others

RESPONDENT

Date of Decision : 01-02-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151
Rajasthan Premises (Control of Rent and Eviction) Act, 1950 — Section 6, 6(1)
Rajasthan Rent Control Act, 2001 — Section 1(2), 32, 32(3), 6

Citation : (2005) 3 RLW 1585 : (2005) 2 WLC 505

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : Bipin Gupta, J.P. Gupta and Sunil Jain, for the Appellant; A.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

K.S. Rathore, J.—This writ petition is directed against the order dated 1.11.2004 passed by the Trial Court on the application moved on behalf of the plaintiff respondents under Order 6 Rule 17 CPC read with Section 151 CPC by which the amendment has been allowed.

2. The case of the petitioners is that since the plaintiff respondent No. 1 and 2 filed a civil suit for eviction of property under the provisions of Rajasthan Premises (Control of Rent and Eviction) Act 1950 stating therein that the petitioners are tenant in their premises and the premises was let-out to them in the year 1985 on the agreed rent of Rs. 6000/- p.m. and in the rent note there was the condition that after expiry of every two years the 10% of the rent will be increased. As per this clause at the time of filing of suit the agreed rent was Rs. 9663/- and in the year 1997 it was further enhanced at the rate of 10% the tune of Rs. 10,630/- pursuant to the agreement dated 11.6.85.

3. The petitioners defendant have filed written statement to the plaint and denied the averments made by the plaintiff. After framing the issues on

28.5.2001 the plaintiff respondents filed an application under order 6 Rule 17 read with Section 151 CPC for amendment and addition in para No. 10 of the plaint stating therein that since last some time the great trade development has been taken place in the area where the premises is situated therefore the market value of the premises has been enhanced. In these circumstances the rent of the premises should be Rs. 60,000/- in the interest of justice and house tax also should be Rs. 4,500/-. The plaintiff sought amendment also in the relief Clause A.

4. Since the aforesaid application is allowed by the Trial Court and being aggrieved and dissatisfied by the order dated 1.11.2004 the petitioners defendant submit that allowing the amendment will change the nature of the suit. The plaintiff respondents by way of amendment tried to make out a new case, which is not permissible under the law particularly in the circumstances when the relief, which has been sought under the provisions of Section 6 of Rent Control Act 1950, which has been repealed w.e.f. 1.4.2003 and admittedly the application for amendment was filed on 19.7.2004, therefore, Section 6 of Rent Control Act 1950 was not in force when the application has been filed. It is further submitted that the Trial Court wrongly interpreted Section 32 of the Rent Control Act, 2001.

5. Learned counsel for the petitioners defendant submits that as there is agreed rent and as per the agreement 10% of the rent is enhanced after completion of two years. Even otherwise if the plaintiff respondents wish to file any application for enhancement of rent, as this is being a separate cause of action, they may file separate suit for the same purpose.

6. Since this present suit is for the eviction and in the eviction suit the plaintiff respondents have made the following prayers:

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fdjk;s dh jkf"k ,oa@vFkok vUrjHkwr ykHk dh jkf"k fnyk;h tkosaA

7. By seeking aforesaid prayer the plaintiff has asked for mens profit and as the amendment is allowed by the Trial Court for fixing the standard rent, will be contrary to the prayer sought in the suit for mens profit i.e. with regard to the mens profit. In view of this also the amendment, which has been allowed is contrary to the provisions.

8. Learned counsel for the petitioners referred Order 6 Rule 17, which deals with the amendment of pleadings. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. After referring the Order 6 Rule 17 learned counsel for the

petitioners submits that since the controversy in the suit is with regard to the eviction, the relief is claimed in the suit for eviction not for the standard rent determination.

9. Learned counsel for the petitioners also referred Section 6(1) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, which is reproduced as under:-

"Fixation of standard rent - Where no rent has been agreed upon or where for any reason the rent agreed upon is claimed to be low or excessive, the landlord or the tenant may institute a suit in the lowest court or competent jurisdiction for fixation of standard rent for any premises."

10. After referring aforesaid section he demonstrated before this Court that where no rent has been agreed upon or where for any reason the rent agreed upon is claimed to be low or excessive, the landlord or the tenant may institute a suit in the lowest court. The Legislature has used the word "institute a suit", which reveals that for the purpose of fixation of standard rent the plaintiff ought to have instituted a separate suit. The relief for fixation the standard rent cannot be incorporated asking for amendment in the plaint.

11. Learned counsel for the petitioners also referred the judgment rendered by this court in the case of Anand Prakash v. Raghuveer Sharan Pareek reported in RLR 1992 (1) 752 wherein the Court has indicated that the petitioner-defendant is always well within his rights to file proceedings for fixation of standard rent, which he should or could have done, even earlier. Therefore, by rejecting the application for amendment, the doors of seeking remedy will not be closed at the face of the petitioner.

12. The same view has been taken by this Court in the case of Kanhiya Lal v. Smt. Kakeshi Devi reported in RLW 1999 (1) Raj. 200 wherein this Court has held that a plea in appeal which he can get decided separately by a separate suit for filing a suit of standard rent cannot be allowed.

13. Learned counsel for the petitioners also referred that the amendment, which is asked for has drastically changed the nature of the suit and such change cannot be permitted under the provisions of law. The Trial Court has allowed the application under Order 6 Rule 17 read with Section 151 filed by the plaintiff whereas in the case of Mohan Lilani v. Smt. Pevi Bai and Ors. reported in RLW 1993(2) 656 this Court has held that the amendment sought for by the plaintiff will drastically change the nature of suit filed by him, there is no jurisdiction in allowing the amendment.

14. The same view has been taken in the case, of Tejsingh and Anr. v. Ratansingh and Anr. reported in 1950 RLW 103 wherein it is held that the amendment raised a new and wholly different cause of action and as such could not be allowed.

15. The similar view is also taken in the case of Ashok Kumar v. Suresh Chand and Anr. reported in RLW 1996 (1) Raj. 380.

16. Per contra learned counsel for the respondents plaintiff Mr. Sharma emphatically controverted the submissions made on behalf of the petitioners defendant. To demolish the submissions made on behalf of the petitioners he referred Sub-section (2) of Section 1 of the Rajasthan Rent Control Act, 2001, which is reproduced hereunder:-

"It shall extend in first instance to such of the municipal areas which are comprising the District Headquarters in the State and later on to such of the other municipal areas having a population exceeding fifty thousand as per 1991 Census as the State Government may, by notification in the Official Gazette, specify from time to time."

17. After referring Sub-section 2 Mr. Sharma Submits that the application of this Rent. Control Act, 2001 is in phases in first instance only to District Headquarters of the State. As at the time of filing the suit Beawar was not included, the provisions of the Act are not applicable in Beawar as it is not notified in the official gazette.

18. He further referred Sub-section 3(a) of Section 32 of Rent Control Act, 2001, which is reproduced as under:-

"All applications, suits or other proceedings under the repealed Act pending on the date of commencement of this Act before and court shall be continued and disposed of, in accordance with the provisions of the repealed Act, as if the repealed Act had continued in force and his Act had not been enacted. However, the plaintiff within a period of one hundred and eight days of coming into force of this Act shall be entitled to withdraw any suit or appeal or any other proceedings pending under the repealed Act with liberty to file fresh petition in respect of the subject matter of such suit or appeal or any other proceedings under and in accordance with the provisions of this Act and for the purposes of limitation such petition shall, if it is filed within a period of two hundred and seventy days, from the commencement of this Act, be deemed to have been filed on the date of filing of the suit which was so withdrawn and in case of withdrawal of appeal or other proceeding, on the date on which the suit, out of which such appeal or proceedings originated, was filed."

19. It is not disputed that the earlier act was repealed on 1.4.2003 and the application, which was made for amendment is of 19.7.2004, but since the suit was pending, therefore, the application is maintainable as in Sub-section (3)(a) of Section 32 all applications, suits or other proceedings under the repealed Act pending on the date of commencement of this Act and admittedly the suit was pending, therefore, they are legally entitled to move the application for seeking amendment in the suit.

20. He further submits that he cannot be precluded to incorporate the amendment as the rent has been drastically gone up and the suit may take long time, for that purpose only the respondents cannot be deprived to fix the standard rent at the enhanced rate. Therefore, the amendment was asked for to

avoid the multiplicity of the suit. The amendment application is moved in the present suit and the same was rightly allowed by the Trial Court.

21. Mr. Sharma also placed reliance on the judgment rendered by this Court in the case of Central Bank of India v. Govind Narain reported in 1971 RLW 213 wherein Division Bench of this Court has held that tenant may plead, in a suit brought by landlord for arrears of rent as agreed, that rent as agreed was in excess of standard rent.

22. Heard rival submissions of the learned counsel for the respective parties and carefully perused the material available on the record as well as the relevant provisions of law and the judgments referred by the parties.

23. The question, which is to be determined by the Court whether the amendment for fixing the standard rent in view of Section 6 of Rent Control Act 2001 is permissible or not.

24. In view of this fact, first of all I like to deal with Section 6 of Rent Control Act 2001. Chapter II as the Section 6 of the Rent Control Act, 2001 deals with the revision of rent in respect of existing tenancies. As per Sub-section (1) of Section 6 any agreement, where the premises have been let out before the commencement of this Act, the rent thereof shall be liable to the revised according to the formula indicated below meaning thereby one can apply u/s 6 for revision of rent.

25. Now the question arises whether the respondents plaintiff can move the application for amendment in the present suit for the purposes of fixing the standard rent, for that purpose the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 is to be examined.

26. As per Section 6 of the Act 1950 where no rent has been agreed upon or where for any reason the rent agreed upon is claimed to be low or excessive, the landlord or the tenant may institute a suit in the lowest court or competent jurisdiction for fixation of standard rent for any premises meaning thereby the landlord as well as the tenant are entitled to file a suit for determination of standard rent.

27. In the case of Anand Prakash v. Raghuveer Sharan Pareek (supra, the ratio has been decided by this Court that the petitioner defendant is always well within his rights to file proceedings for fixation of standard rent and only because rejection of the application for amendment does not shut the doors for seeking remedy for fixation of standard rent.

28. I am not impressed with the submissions made on behalf of the respondents plaintiff that just to avoid the multiplicity of the suit he has only filed amendment application in the present suit and which has rightly been allowed by the Trial Court.

29. Even otherwise upon perusal of the prayer of the suit in question reveals that

along with the agreed rent, which is enhanced from time to time at the rate of 10% after completion of two years, he also asked monthly rent along with means profit. In case the amendment is allowed, in my considered opinion the nature of the suit itself will be drastically changed as held by the judgment rendered by this Court in the case of *Tejsingh and Anr. v. Ratansingh and Anr.* (supra).

30. I also carefully examined the order impugned. It appears that the court has not properly appreciate the provisions of law and allowed the amendment.

31. In view of the observations made herein above, I herewith allow the writ petition and quash and set aside the order dated 01.11.2004. If the respondents are at all desirous to fix the standard rent, he may file separate suit, which is permissible in accordance with the law before the competent court.