
(2020) 07 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4742 Of 2020

Kailash Chand Gupta

APPELLANT

Vs

Kishore Suchdeva

RESPONDENT

Date of Decision : 06-07-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Section 47
Rajasthan Rent Control Act, 2001 — Section 3, 9, 22
Transfer Of Property Act, 1882 — Section 106

Citation : (2020) 07 RAJ CK 0010

Hon'ble Judges : Mahendar Kumar Goyal, J

Bench : Single Bench

Advocate : L.L. Gupta, Vikram Jonwal

Final Decision : Dismissed

Judgement

Mahendar Kumar Goyal, J

1. This writ petition has been filed by the petitioner-tenant (for brevity- 'the petitioner') assailing the order dated 27.02.2020 passed by the learned

Executing Court (Rent Tribunal, Jaipur) whereby, his application under Section 47 CPC raising objection as to executability of the compromise

certificate has been dismissed.

2. The facts in brief are that the respondent-landlord (for brevity - 'the respondent') filed an application under Section 22 of the Rajasthan Rent Control

Act, 2001 (for short 'the Act of 2001') seeking eviction of the petitioner from the suit premises comprising of Shop No. 37 Part-A, Lower Shopping

Centre, Ganpati Plaza, M.I. Road, Jaipur on the premise that in spite of termination of lease vide notice dated

4. 10.2017 served under Section 106 of the Transfer of Property Act, 1882 (for

short 'the Act of 1882'), the petitioner has failed to handover vacant possession of the suit shop alongwith balance mesne profit.

3. The petitioner in his reply to the application inter alia submitted that the respondent-landlord has not served upon him any notice terminating his lease even after expiry of the lease period.

4. During pendency of the application, the parties entered into compromise vide deed dated 18.09.2018 wherein the parties agreed upon the following terms:

5. Learned Rent Tribunal vide its order dated 18.09.2018, recording its satisfaction as to the dispute having been compromised by the parties out of their free will and consent, attested the compromise and issued certificate of eviction dated 18.09.2018 in terms of the compromise.

6. The petitioner preferred an appeal against the certificate dated 18.09.2018 relying upon the certificate issued by the SMS hospital stating therein

that he could not comprehend the terms of the compromise as he was not in a fit mental state, his nervous system being damaged. It was further

contended that there were contradictions in the typed out compromise prepared outside the Court and the compromise submitted before the Court and

hence no certificate of eviction could have been issued on the basis of such compromise. The learned Appellate Rent Tribunal has, vide its judgment

dated 20.07.2019, dismissed the appeal preferred by the petitioner on merits as well as on account of not being maintainable in view of certificate

having been issued on the basis of compromise.

7. When the petitioner did not vacate the suit premises in terms of compromise certificate, the respondent filed an execution petition wherein the

petitioner raised objection vide Section 47 CPC. The objection raised by the petitioner has been dismissed by the learned Executing Court vide its

order dated 27.02.2020 which is impugned herein.

8. Assailing the order, it is contended by learned counsel for the petitioner that no certificate of eviction could not have been issued by the learned

Rent Tribunal on the basis of compromise without recording its satisfaction as to existence of any ground for eviction under Section 9 of the Act of

2001. He contended that nowhere in the compromise dated 18.09.2018, eviction of the petitioner from the suit premises was stipulated; rather, relying

on Annexure-7, the compromise dated nil, he submitted that the stipulation in the compromise as to issuance of certificate of eviction on 09.09.2019, was struck off. He contended that only agreement between the parties vide compromise dated 18.09.2018 was to pay the respondent arrears of rent/mesne profit in the event of non-vacation of the suit shop on 09.09.2019. He further contended that the learned Rent Tribunal has framed issues as to default in payment of rent; whereas, there was no material on record to show that the petitioner ever committed any default in payment of rent nor, there was any admission on his part as to him being defaulter in payment of rent. He canvassed that in absence of his admission as to the default in payment of rent, no certificate for eviction could have been issued relying upon the compromise between the parties. He submitted that by amendment carried out in Section 3 of the Act of 2001 vide Gazette Notification dated 18.10.2017, Clauses (i) to (iii) were deleted and hence, no application seeking eviction under the provisions of the Act of 1882 was maintainable before the learned Rent Tribunal.

9. Learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Apex Court in case of M/s. Alagu Pharmacy & Ors. Vs.

N. Magudeswari: 2018 (2) WLC (SC) Civil 375 to buttress his submissions.

10. Heard the learned counsel for the petitioner and perused the record.

11. So far as contention of the learned counsel for the petitioner that in absence of any stipulation in the compromise deed dated 18.09.2018 with

regard to vacation of the suit premises on 09.09.2019, it could not have been held by the learned Rent Tribunal that compromise certificate

represented certificate of eviction also, is concerned, terms of the compromise reveal that the petitioner has categorically agreed therein to handover

physical and actual possession of the suit premises to the respondent on 09.09.2019. The relevant terms of the compromise are being reproduced

hereinunder:-

12. Thus, the terms of the compromise contained in Clauses 2, 3 and 4 leave no room for doubt that the parties intended eviction of the petitioner from

the suit shop on 09.09.2019.

13. Contention by the learned counsel for the petitioner that the only eventuality agreed upon in the compromise in the event of non-vacation of the suit

premises on 09.09.2019, was the payment of arrears of rent/mesne profit and

his eviction was nowhere agreed upon, cannot be countenanced in view of the terms of compromise.

14. Clause (4) provided for payment of arrears of rent/mesne profit in the eventuality of the premise not being vacated on 09.09.2019 since, vide Clause 3, the respondent has agreed to waive arrears of rent which of course was in the eventuality when the petitioner has agreed to vacate the premises on 09.09.2019.

15. Even otherwise also, when the application for eviction was based on termination of lease vide notice under Section 106 of the Act of 1882, this is beyond comprehension that the respondent-landlord would agree for disposal of the application by way of compromise containing unilateral terms and conditions favouring the petitioner only to the effect that he would not only forgo his right to seek eviction; but, would also waive arrears of rent. The contention by the learned counsel for the petitioner in this regard is not only against the letter and spirit of the compromise; but, against the natural human conduct also. If the petitioner is permitted to retain the premises in the teeth of terms of the compromise, it would not only be against the public policy; but, would also be subversive to the cause of justice.

16. Now, this Court deals with submission of the learned counsel that in absence of satisfaction as to existence of any ground of eviction as enumerated in Section 9 of the Act of 2001, certificate of eviction could not have been issued even on the basis of compromise.

17. A perusal of the contents of the application filed by the respondent under Section 22 of the Act of 2001 leaves no room for doubt that he has sought eviction of the petitioner under Section 106 of the Act of 1882 and has not relied upon any of the grounds mentioned under Section 9 of the Act of 2001. As per Section 18 of the Act of 2001, an application seeking eviction even under the provisions of the Act of 1882 is maintainable before the learned Rent Tribunal only and not before the Civil Court in areas where Rent Tribunals have been constituted. Although, the petitioner has stated in his reply that the provisions of Section 106 were inapplicable; but, in reply to the contents of para 9(8) and para 9(9) of the application, he has specifically stated that the applicant has not served upon him any notice terminating his lease even after expiry of the period of lease agreement. A perusal of the objection raised by the petitioner by way of his application under

Section 47 CPC reveals that he has not taken any such objection in it nor, any such objection was raised before the learned Executing Court as is apparent from the order dated 27.02.2020; rather, in para 3 of the memo of writ petition, the petitioner specifically averred that ""even in eviction petition there was no reference or existence of any of eviction available under Section 9 of the Rent Control Act, 2001 was referred and mentioned"". A further perusal of the memo of writ petition reveals that the order impugned has not been assailed by the petitioner on the ground that since his eviction was not sought under the provisions of Act of 1882 and the application being under the provisions of Section 9 of the Act of 2001, the certificate for eviction was in executable for want of satisfaction of the learned Rent Tribunal as to existence of any of the grounds of eviction. I have also gone through the judgment dated 20.07.2019 whereby, the learned Appellate Rent Tribunal has dismissed the appeal preferred by the petitioner against the compromise certificate dated 18.09.2018 and I find that the grounds raised therein were two fold only i.e. the petitioner was not in a fit mental state to comprehend the terms of the compromise and there were discrepancies in the typed compromise prepared outside the Court and the compromise filed in the Court.

18. In the aforesaid circumstances, the contention of the learned counsel for the petitioner is devoid of merit and deserves to be rejected. Since, the eviction of the petitioner was sought under the Act of 1882 and not under any of the grounds mentioned in Section 9 of the Act of 2001, the judgment of the Hon'ble Apex Court in 2018 (2) WLC (SC) Civil 375 has no applicability in the present case.

19. Lastly, contention of the learned counsel for the petitioner, relying upon the Notification dated 18.10.2017 deleting the Clauses (i) to (iii) of Section 3 of the Act of 2001 that the application under the provisions of Act of 1882 was not maintainable, cannot be accepted in absence of factual foundation or objection in this regard at any stage of the proceedings. No such objection was raised by the petitioner either in the reply or, before the Rent Tribunal or, before the Executing Court. Even in the memo of writ petition, the petitioner has taken no such objection.

20. From the conspectus of the proceedings having taken place at various stages at behest of the petitioner, it is apparent that he has been trying to

wriggle out of the compromise taking resort to dishonest pleas. Faced with probable eviction under the provisions of the Act of 1882, he entered into compromise with the respondent agreeing for his eviction from the suit shop on the condition of waiver of arrears of rent. He unsuccessfully challenged the compromise certificate by way of appeal on the ground mainly that being not in a fit mental state, he could not comprehend the fallout of the terms of the compromise. The learned Appellate Rent Tribunal, while rejecting the appeal, has recorded a categorical finding that reliance placed by the petitioner on the medical certificate to show his unfit mental state, was dated 15. 07.2015 whereas he entered into compromise on 18.09.2018. It may also be pertinent to observe that at no stage of the proceedings including the appeal before the Appellate Rent Tribunal, objection before the Executing Court or even the instant writ petition, the petitioner has instituted the cause through next friend/guardian; rather, has made the pleadings supported by duly verified affidavit. He filed objection under Section 47 CPC misinterpreting the terms of the compromise which stands rejected vide order impugned herein. Taking entirely new plea, not taken at any of the stages below, the petitioner has assailed the order dated 27.02.2020 by way of this writ petition. This Court is not persuaded to interfere in the well-reasoned order passed by the learned Executing Court in exercise of its judicious jurisdiction based on cogent material on record under its limited supervisory jurisdiction. The order dated 27.02.2020 does not suffer from any such perversity or illegality warranting exercise of jurisdiction of this Court under Article 227 of the Constitution of India. I find no merit in challenge to the order dated 27.02.2020.

21. The writ petition is dismissed accordingly.