
(2014) 11 RAJ CK 0070
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5648 of 2013

Kailash Malpani

APPELLANT

Vs

Rent Tribunal, Jodhpur and Others

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Citation : (2015) 1 RCR(Rent) 651

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : M.S. Rajpurohit, Advocate, for the Appellant; J.K. Gehlot, for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—This writ petition is directed against the order dated 12.04.2013 passed by the Rent Tribunal, Jodhpur (for short "the Tribunal"), whereby, the applications filed by the petitioner seeking directions to the respondent for repair of the premises and for appointment of Surveyor for bringing on record the status of the suit property have been rejected. After hearing the parties, the Tribunal came to the conclusion that the petition seeking repair of the premises could be filed under Section 24 of the Rent Control Act, 2001 (for short "the Act") and the same was not maintainable under the pending proceedings under Section 9 of the Act. Regarding the appointment of the Surveyor as Commissioner, the Tribunal came to the conclusion that the Commissioner cannot be appointed for the collection of evidence and, consequently, dismissed both the applications.

2. Learned counsel for the petitioner submitted that the application seeking repair of the premises was not made under any specific provision, only permission was sought in the pending proceedings and, therefore, it cannot be said that the application was not maintainable. It was also submitted that the appointment of the Commissioner was sought so that the correct status of the building may come before the Tribunal, however, the Tribunal by taking a very

cursory view of the matter has rejected both the applications.

3. Learned counsel for the respondents duly supported the order passed by the Tribunal.

4. I have considered the submissions made by learned counsel for the parties.

5. A bare look at the application filed by the petitioner reveals that the application has been filed seeking repair of the premises. Section 24 of the Act envisage that where the landlord neglects to undertake essential repairs despite notice by the tenant, the tenant has a liberty to move before the Tribunal for permission to undertake the repairs. Sub-section (2) of Section 24 of the Act provides that provisions of Sub-sections (2), (3) and (4) of Section 23 of the Act apply to the proceedings under Section 24. Sub-section (2), (3) and (4) of Section 23 of the Act envisage filing of an independent application before the Tribunal, issues of notice, power of Tribunal to pass interim orders and conduct of proceedings in a summary nature.

6. In view of the fact that the Act envisage independent proceedings under Section 24 of the Act read with Section 23 of the Act, the Tribunal was justified in coming to the conclusion that the nature of application for repair of the premises filed by the petitioner was not maintainable in proceedings under Section 9 of the Act.

7. So far as the order passed by the Tribunal refusing appointment of Local Commissioner is concerned, it is apparent that the appointment was being sought by the petitioner based on the allegations regarding the status of the suit property, which apparently is required to be proved by the petitioner before the Tribunal by way of leading evidence and the Tribunal in the said respect also was justified in coming to the conclusion that the appointment of Commissioner cannot be made for the purpose of collection of evidence. In that view of the matter, the order impugned passed by the Rent Tribunal, Jodhpur does not call for any interference. Consequently, the writ petition is dismissed. The stay petition is also dismissed.