

(2012) 10 RAJ CK 0029
In the Rajasthan High Court
Case No : Civil Writ Petition No. 10876 of 2008

Kailash Sain

APPELLANT

Vs

Civil Judge (SD) Srimadhapur and Another

RESPONDENT

Date of Decision : 01-10-2012

Acts Referred:

Citation : (2012) 10 RAJ CK 0029

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Ajay Gupta, for the Appellant; Sangeeta Vashishtha, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Miss Justice Bela M. Trivedi

1. The present petition has been filed by the petitioner original defendant challenging the order dated 28.8.2008 passed by the learned Civil Judge (SD) Srimadhapur (herein-after referred as "the trial court) in Civil Suit No. 26/2008, whereby the trial court has dismissed the application of the petitioner-defendant for taking on record the documents as prayed for in his application. It appears that during the pendency of this petition, original petitioner expired and therefore his legal representatives have been brought on record. The respondent No. 2 / plaintiff has filed the suit against the petitioner-defendant seeking eviction of the petitioner from the suit premises on the ground of non-payment of rent. It appears that the petitioner-defendant filed the application for taking on record certain documents i.e. the counter foils of the bank slips to show that the petitioner had deposited the rent upto 1999 in the bank account of the respondent/plaintiff. The said application has been dismissed by the trial court vide impugned order against which the present petition has been filed.

2. It has been submitted by the learned counsel for the petitioner that the petitioner had already stated in his written statement that he was depositing the

amount of rent in the account of the respondent-plaintiff, however, since the receipts/counter foils of the pay-in-slip by which the amount was deposited having been misplaced, the petitioner had sought to produce the same at a later stage. According to the learned counsel for the petitioners, the evidence of petitioner-defendant has still not started and hence the documents are required to be permitted to be produced on record in the interest of justice. However, the learned counsel Ms Sangeeta Vashishtha for the respondent plaintiff has submitted that the documents sought to be produced by the petitioners-defendants were very in possession of the petitioner, however, the same were not produced till the evidence of the plaintiff was over, and such a late production of the documents has rightly been dismissed by the trial court.

3. Having regard to the submissions made by the learned counsels for the parties and to the impugned order passed by the trial court, it appears that the petitioner/defendant had taken up the contention in the written statement that he was depositing the rent in the bank account of the plaintiff. It is true that the documents i.e. the counter foils in support of his contention should have been produced by the petitioner along with written statement. However, considering the nature of the documents, the same are required to be permitted to be produced, in the interest of justice, more particularly when the suit has been filed by the respondent plaintiff for eviction on the ground of non-payment of rent. In view of the above, the impugned order passed by the trial court deserves to be set aside and is accordingly set aside.

4. Having regard to the fact that the suit is very old, the trial court is directed to decide the same as expeditiously as possible. The petition stands allowed accordingly.