

(1989) 05 RAJ CK 0021
In the Rajasthan High Court
Case No : Civil Revision No. 354/82

Kishan Lal	Vs	APPELLANT
Shyam Lal represented by Kedar and Others		RESPONDENT

Date of Decision : 02-05-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Rajasthan Premises (Control of Rent and Eviction) Act, 1950 — Section 13, 2(2), 26, 27

Citation : AIR 1990 Raj 46 : (1989) 2 RLW 294

Hon'ble Judges : M.B. Sharma, J; I.S. Israni, J

Bench : Division Bench

Advocate : K.K. Sharma, for the Appellant; B.P. Agarwal, for the Respondent

Judgement

Israni, J.—This revision petition has been referred by learned single Judge for decision to larger Bench and has formulated following two questions:

1. Whether a decree for eviction passed prior to the applicability of the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as "the Act") for a particular area can be executed by the executing Court and if so in what circumstances?

2. In case it is found that it is permissible for the executing Court to proceed with the execution of such a decree and to hold an inquiry about the satisfaction of the grounds contained in Section 13 of the Act, what is scope of such an inquiry?

2. The brief facts out of which the present revision petition has arisen are that Shyam Lal owner of a shop situated in village Chhipa-Badod let out his shop on rent to the petitioner Kishan Lal. Shyam Lal filed a suit for eviction of the petitioner on January 4, 1972 under the provisions of the Act which were not applicable to Chhipa-Barod. This suit was dismissed by the Munsiff Chhabra on December 12, 1974. Shyam Lal filed an appeal in the court of Additional District Judge, Baran who decreed the suit vide his judgment dated November 27, 1975. The petitioner, therefore, preferred Second Appeal in this Court during pendency

of which Shyam Lal died. Since the legal representatives of deceased Shyam Lal were not on record the appeal of the petitioner abated on May 15, 1981. In the meanwhile Shyam Lal had also filed an application on Feb. 3, 1976 for execution of the decree of eviction in the court of Munsiff and Judicial Magistrate, Chhabra, However, further proceedings in the execution petition were stayed by this Court in the Second Appeal. Shyam Lal died on May 14, 1980 during the pendency of the execution petition. Thereafter the legal representatives of Shyam Lal who are also non-petitioners in this revision petition, filed another execution petition No. 4/81. Both these execution petitions were dismissed on the ground that the legal representatives had not obtained succession certificate. After obtaining succession certificate the legal representatives filed fresh execution petition No. 1/1982, In the meanwhile the provisions of the Act became applicable to Chhipa-Badod. The warrant for possession and attachment was issued in the said execution petition. On May 15, 1982 objections were filed on behalf of the petitioner that the decree for eviction was inexecutable in view of the provisions contained in Ss. 13 and 26 of the Act. Learned Munsiff and Judicial Magistrate. Chhabra vide his order dated July 29, 1982 rejected the objections holding that the provisions of Sections 13 and 26 of the Act were not applicable to the decree as they can be applicable only to such decrees which were passed before coming into force of the operation of the Act in the year, 1950. Aggrieved by this order the present revision petition has been filed by the petitioner.

3. The contention of Shri K.K. Sharma, learned Counsel for the petitioner is that in view of Section 13 of the Act the decree for eviction passed in favour of non-petitioners cannot be executed and that executing Court cannot go beyond the decree-holder can it amend the same (sic). It is, therefore, urged that the decree-holders should file a fresh suit for eviction on any of the grounds mentioned in Section 13 of the Act to obtain any decree for eviction against the petitioner. It is pointed out that Section 26 of the Act clearly provides that no decree for eviction of a tenant from any premises in an area to which this Act extends for the time being, passed before the date of commencement of this Act shall insofar as it relates to the eviction of such tenant be executed against him, except on any of the grounds mentioned in Section 13 and under the circumstances specified in the Act. It is, therefore, contended by the learned Counsel that since at the time when the decree for eviction of the petitioner was passed the Act was not in force in Chhipa-Badod, none of the grounds mentioned in Section 13 were considered and, therefore, the decree is inexecutable and invalid. Reliance has been placed on decision of this Court in *State of Rajasthan Vs. Suraj Bhan*, It is also urged by the learned Counsel that the above decision of this Court is in consonance with the law laid down by other High Courts and is referred to the decision of the Madras High Court in *Chand Basha v. Pyari Bi*, 1978 (2) RCJ 359 and of Patna High Court in *Mohammad Ismail v. Suraj Narain Pd.*, AIR 1951 Pat 635. It is also contended that "satisfaction of the Court", does not mean satisfaction of the executing Court but of a Court where the inquiry in details regarding except on any of the grounds mentioned in Section 13 of the

Act is made. It is also submitted that if the interpretation is given that it is the satisfaction of executing Court required then the petitioner shall have no right of appeal against the same. It is further submitted that Section 14 of the Act regarding comparative hardship shall have also to be considered and evidence has to be recorded on this aspect of the matter also as no such material is evidently in existence on the case file since the proceedings were filed while the Act was not in force in Chhipa-Badod. The learned Counsel has also referred to decision in 1987 SC 248, 1975 (Raj) 162, 1972 WLN(UC) 873 and 1954 (Raj) 43. It is further urged by the learned Counsel that Act has been enacted for the benefit of tenants and should be interpreted in such a way that the benefit is extended to the tenants.

4. Shri B.P. Agarwal, learned Counsel for the non-petitioners contends that provisions of Sections 13 and 26 of the Act could not be made applicable to the execution of decrees. It is submitted that the decree of eviction came into existence before provisions of Section 13 became applicable in the area where the shop in suit is situated. It is further submitted by the learned Counsel that Section 27 shall not be applicable since the decree of eviction had already been passed before the Act was extended. It is also pointed out that in Section 26 the word "commencement" used does not mean "extension". The learned Counsel points out that in Section 2 of the Act words "commencement" and "extension" have been used to have different meanings. According to the learned Counsel what is required is satisfaction of the executing Court on the basis of the material on record and the landlord is not required to file fresh proceedings as contended by the petitioner. Reliance has been placed on 1988 (4) SCC 248, 1987 (4) SCC 382, AIR 1966 SC