

(2000) 02 RAJ CK 0040

In the Rajasthan High Court

Case No : Civil Revision Petition No. 1355 of 1999

Mangilal

APPELLANT

Vs

Maresh Chand Purohit

RESPONDENT

Date of Decision : 08-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35B

Citation : AIR 2000 Raj 199 : (2000) 3 RLW 1493 : (2000) 4 WLC 731

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : B.K. Sharma, for the Appellant; Suresh Pareek, for the Respondent

Judgement

Arun Madan, J.—This civil revision petition has been filed against order dated 7-5-99, whereby the learned Additional District Judge, No. 4, Jaipur City dismissed the petitioner's First Appeal No. 34/98 for the reasons of having not deposited costs of Rs. 200/- as directed by appellate Court on 26-3-99 when appeal was adjourned to 19-4-99 for final disposal.

2. The facts relevant for disposal of this petition briefly stated are that the plaintiff (respondent) filed a suit of eviction (No. 739/ 93, 122/81) on the ground of default in payment of rent, under the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 which was decreed by the Civil Judge (JD), Jaipur City (West) under Judgment dated 3-4-98, which was challenged by the defendant (petitioner) in aforesaid First Appeal. The said first appeal was listed for final disposal on 26-3-99 when adjournment was sought on behalf of the counsel for the petitioner (appellant) on the ground of the arguing counsel having been out of station. The appellate Court adjourned the appeal to 19-4-99 for final disposal subject to the payment of costs of Rs. 200/-. It is the case of the petitioner that the cost could not be deposited on 19-4-99 because on that date there was Advocates' strike on the call by the Bar Council of Rajasthan for protesting imposition of professional tax and the aforesaid appeal was adjourned to 7-5-99. On 7-5-99 the appellate Court dismissed the petitioner's first appeal as the costs

of Rs. 200/- was not deposited.

3. During the course of arguments, Mr. B. K. Sharma, the learned counsel for the petitioner contended that on 7-5-99 the Advocate for the petitioner moved an application under Order 41, Rule 7, CPC for amendment in appeal and while the said application was being submitted, it was prayed before the appellate Court that costs would be deposited as soon as the petitioner appellant comes on that very date, but the appellate Court refused to accept the aforesaid prayer and it dismissed the appeal itself forward of costs being deposited. The learned counsel also contended that soon thereafter the petitioner (appellant) himself appeared on 7-5-99 before the Court and submitted an application expressing willingness to deposit cost of Rs. 200/- but no orders were passed by the Court on that application. According to the learned counsel, the impugned order being without jurisdiction is not sustainable and liable to be quashed because grave injustice has been caused to the petitioner for the circumstances beyond his control viz. that since there was Advocates' strike, referred to above, he was prevented by sufficient cause from appearing before the appellate Court for depositing costs, which was neither deliberate nor intentional,

4. Shrt Suresh Pareek learned counsel for the plaintiff/respondent while controverting aforesaid contentions of petitioner's counsel contended that suit for eviction was filed against the petitioner (defendant) in the year 1979 and since then the petitioner has been indulging in delay-dallying tactics either by seeking adjournment or by moving applications for one reason or the other with an oblique intention to delay the proceedings for eviction in the suit as well as in the appeal.

5. I have heard the learned counsel for the parties at length and perused the impugned order besides the decisions of this Court cited by Shri B. K. Sharma, learned counsel for the petitioner in Gulab Singh v. Dhanraj 1983 RLW 173 and Indian Bank v. M/s. Shree Chemical Industries 1996 (1) WLC 630.

6. Prima facie. I am of the view that if the learned counsel for the petitioner/appellant was unable to appear before the appellate Court, due to some unavoidable circumstances, what prevented the petitioner from appearing himself or what prevented the learned counsel from instructing his client to appear before the concerned Court by paying or tendering the costs to the opposite party after 26-3-99 or before 19-4-99 or 7-5-99, remains unexplained on the record. As a matter of fact it was the duty of the petitioner to appear in person and pay the costs as he was expected to do nothing more than to do so in compliance with the orders of the Court, which he failed to do so. Thus, the plea advanced on behalf of the petitioner by the learned counsel that he was unable to appear due to Advocates' strike or for some other unexplained reasons does not stand to reason at all the stand taken is wholly unjustifiable besides being sham and illusory and thus not sustainable.

7. Without disputing the ratio of decisions relied by the learned counsel for the

petitioner, however, I am of the opinion that no injustice would be caused to the respondent and rather ends of Justice would be adequately served if the petitioner is saddled with costs of Rs. 2000/- instead of Rs. 200/- u/s 35B, CPC, (special compensatory costs) which in fact he should pay or deposit in the Court to compensate for the loss caused on account of delay to the respondent. This Court cannot lightly ignore the fact that the proceedings for eviction have been pending since 1979. This has resulted in delay of eviction proceedings before the trial Court and consequently in hearing of the first appeal before the appellate Court,

8. With the above observations, this revision petition is partly allowed and the impugned order of the appellate Court consigning first appeal No. 34/78 to the record is set aside and the appellate Court is directed to hear aforesaid first appeal and expedite its disposal on merits. In accordance with law provided the petitioner deposits costs of Rs. 2000/- (Rupees two thousand only) instead of Rs. 200/- (Rupees two hundred) only or before 28-2-2000, on which date learned counsel for both the parties would appear and argue the matter, failing which and in the event of default in payment of afore imposed costs the appellate order dated 7-5-99 whereby the decree of eviction dated 3-4-98 stood confirmed, shall stand executable forthwith.