
(1975) 08 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Second Appeal No. 152 of 1974

Mishri Lal Nagar

APPELLANT

Vs

Smt. Prem Kumars Bhatyani

RESPONDENT

Date of Decision : 04-08-1975

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1975) WLN 290

Hon'ble Judges : J.P. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.P. Jain, J.—This second appeal arises out of the following circumstances: Appellant Mishit Lal took the suit premises from the respondent, Smt Prem Kumari on rent under the rent note Ex. 1 dated 10-8-63. This was a monthly tenancy commencing from 11-8-63 Rs. 200/- per month were payable as rent in advance in addition to the house-tax. The tenancy was for a fixed period of 11 months. It was also stipulated that one month's notice will be required for seeking eviction of the tenant. One of the terms of the tenancy was that the suit premises will be used only for dwelling purpose not for any commercial purpose. It is admitted that the rent was paid upto 10-9-64 On 5-12-64 a notice determining tenancy was served on the tenant calling upon him to surrender vacant possession of the suit permises. It was alleged in the note that the tenant had started using the premises for commercial purposes in as much as he has been keeping machineries in the suit premises. The tenant received the notice but declined to hand over possession. In the result Smt. Premkumari instituted this suit under appeal on 3-6-1965. She sought eviction of the tenant inter alia on the ground that the tenant had started using the suit premises in contravention of the agreement and that he had not paid rent and damages for use and occupation of the premises for 8 1/2 months i. e. from 11-9-64 to 26-6-65. She prayed for a decree for Rs. 1806.25 inclusive of the house-tax and

recovery of possession of the suit property.

2. The tenant by his written statement dated 27-9-65 denied the plaintiff's claim. He admitted the execution of the rent note, the tenancy and the rate of rent payable to the landlord per month. He also admitted to have paid rent upto 10-9-64 but it was contended that the landlady was responsible for not having accepted the rent. He denied the plaintiff's plea that he was using the suit premises for any commercial purpose. According to him he has been using the suit property for the purpose it was let out to him.

3. These pleadings gave rise to seven issues which were framed by the learned trial Judge and the case was tried on those questions. The trial Judge decreed the suit by his judgment dated 18-12-1972. The tenant preferred an appeal unsuccessfully. The appellate decree of the Additional District Judge No. 3, Jaipur City dated 18-10-73 is subject matter of appeal in this Court.

4. It may as well be noticed here that the landlady during her examination admitted that the construction of the suit house was completed in the year 1963 and it was given on rent for the first time to the appellant Mishri Lal. This fact also finds mention in the rent note. On this premise it was argued on behalf of the tenant in the trial Court that in view of Section 2(2)(e) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 herein after referred to as "the Act") was not applicable. This position was conceded by the counsel for the landlady. The learned trial Judge however decided all the issues. He found issue No. 1 against the defendant. This issue contained the plea of the defendant that in spite of the rent note dated 10-8-63 it was agreed between the parties that the defendant will put his machines in addition to his residence therein. Under issue No. 2 it was held that the defendant had started keeping his machines in the disputed premises for his business. Issue No. 3 was answered in favour of the plaintiff and it was held that the plaintiff or her servants did not refuse to accept the rent ever tendered by the defendants. Issue No. 4 was found against the plaintiff, and the plea of the plaintiff that the tenant committed nuisance was negatived. Under issue No. 5 the learned Judge concluded that no new tenancy was created. Finally under issue No. 6 he held the notice determining tenancy to be valid.

5. In the appellate Court it was urged on behalf of the tenant appellant that seven years period expired sometime in the year 1970 and from that time onwards the Act came into force so far the suit property was concerned. Reliance was placed on a decision of the Single Bench in Narayan Chand v. Krishna Kumar. 1967 RLW 312. The learned appellate Judge accepted this contention. He addressed himself to the three questions raised before him; 1. whether the defendant had committed default in payment of rent; (2) whether the defendant had done any act which was inconsistent with the purpose for which he was admitted to the tenancy of the suit house and 3. whether the tenancy was validly terminated. He answered these questions against the tenant

6. In this appeal two contentions have been raised on behalf of the appellant: (i)- that the appellant was not a defaulter on the date the Act came into force relating to the suit property; (ii)- that the tenant did not do any act which was inconsistent with the purpose for which he was admitted to tenancy. In short the arguments canvassed in this appeal are that the tenant is not liable to eviction u/s 13(1)(a) or (d) of the Act,

7. Both the parties, as it appears from the pleadings (vide para 7 of the plaint and the written statement) were under the impression that the Act was applicable to the case. Ground falling u/s (13)(1)(a) and (d) were also alleged by the plaintiff and denied by the defendant. But I admitted facts. The legal position is that this Act did not apply to the facts of the case when the suit was instituted Section 2(2)(e) suspended the operation of the Act for a period of seven years. In this case the suit property was completed in the year 1963 and it must have been in the circumstances of the case by 31st July, 1963. The seven years expired on 31st July, 1970. The suit has not been decided before that date. In view of the decision of this Court in Narayan Chand's case 1967 RLW 312 which view was subsequently confirmed in Ramjilal Vs. Ramkishan, the Act started to govern the present case from 1st August, 1970. The observations in the Division Bench case may be aptly extracted below :

The plain reading of this clause clearly shows that the provisions of the Act were made in application to such buildings referred to in the clause for a period of seven years. It goes without saying that as soon as the period of seven years expires, the Act comes into operation and along with it Section 13 referred to above.

Thus it is clear that as soon as the Act came to govern to the suit building Section 13 will come into play and it must have its effect. u/s 13 there is clear mandate that no court shall make any decree or make any order in favour of a landlord so long the tenant is ready and willing to pay rent to the full extent allowable by this court unless the court is satisfied on one of the grounds mentioned in Clause (a) to (1) In the present case the plaintiff sought eviction inter alia on two grounds and which survives for consideration in this appeal : (1) tenant has neither paid nor tendered the amount of the rent due from him for six months and (2) that the tenant has done any act which is inconsistent with the purpose for which he was admitted to the tenancy of the premises. These grounds have been investigated and the courts below have found them in favour of the landlady.

8. Learned Counsel for the appellant argued that in August 1970 the rent for a period of six months was not due from the tenant. He based this argument on a receipt said to have been submitted by him in the lower appellate Court This receipt is dated 6-2-1970 and according to him all the rent due to the landlady was paid to the counsel for the period between 11-9-64 to 10-3-70. The total amount paid in this manner was Rs. 14,025/-. The argument is seemingly based on there receipt referred to above. The trial Court decided the case on

18-12-1972 yet this receipt was not produced in the trial Court. On being questioned as to in what circumstances this receipt on which the argument has been built, was produced in the lower appellate Court, the learned Counsel could not satisfy me that this document was legally produced and admitted as a legal evidence. On examination of the record of the lower appellate Court I find that the case was argued on 14-7-73 before the Additional District Judge No. 2, Jaipur city and the case was posted for orders on 20-7-73; An application dated 14-7-73 was submitted in that Court along with three documents. One is receipt dated 6-2-1970, the second is a receipt dated 26-10-71 and the third document is a fender showing some payment on 24-3-73. No notice of this application was given to the plaintiff-respondent in that case. It was simply placed on record. No application for leave to produce the said document was given under Order 41 Rule 17, Civil P C No order was obtained from the court concerned for admitting the said document. The opposite party had to occasion to admit or deny the document. It may again be noticed that on 20-7-73 an opportunity was asked for to make supplementary arguments. But before supplementary arguments could be heard this appeal was transferred to Additional District Judge No. 3, Jaipur City. The case was argued before that Court and the appeal was dismissed on 13-10-73, Even in this court no order was obtained by the appellant for admitting the documents produced on 14-7-73. In this, view of the matter it is difficult for me to accept any of these documents as evidence in the case. As a matter of fact these document are no legal evidence and cannot be taken notice of by him. On this ground alone the appellant's case that he rent for six months was not due from him falls to the ground. There is no legal evidence on record that the tenant paid or tendered the amount of rent due from him. In the plaint it was alleged that he did not pay rent from 10-9-64 Notice to quit was served on him and inspite of that the tenant did not care to pay the amount of rent or damages or I might call it as statutory rent from that day on wards. The plaintiff claimed Rs. 1700/- by way of rent and damages for 8 1/2 months and Rs. 109/25 paise as house tax. No. 1 legal evidence has been brought on record that in August, 1970 when the Act came to apply to suit building that the tenant had paid or tendered rent as stipulated.

9. The appeal Court referred to the receipts dated 6.2.1971 while discussing question No. 2 relating to the default. The discussion in this regard is in the following words :

The receipts dated 6-2-70 and 26-10-71 filed in the appeal show that Rs. 14026/ and Rs. 4250/ were paid by the defendant to the plaintiffs on these dates respectively towards the arrears of rent. If the defendant had been a good pay-master he would not have allowed to accumulate so much amount as arrears of rent. This fact alone gives, tatal blow to this case that he offered rent to the plaintiff.

This discussion does not disclose that these receipts were admitted in evidence and they were accepted by the opposite party as true. The appeal Court baa only

availed of them to show that the tenant, did not pay or tender rent for long time. This reference of the receipts does not help the tenant. I have bold here in before that these receipts cannot be utilised as legal evidence.

10. On behalf of the respondent it was argued that after the Act came into force in August, 1970, the first date on which the parties appeared, was 30-9-70 On that date the Judge was said to be on leave and the next date was 6-11-70. Mr. Kasliwal urged that the tenant could have deposited the amount of rent due from him at the latest on 6-11-70 within the meaning of Section 13(4) of the Act. Mr. Datt on the other hand, argued that the first date of hearing in Clause 13(4) as construed by this court, is the date fixed for the return of summons issued for the settlement of issues and it is not open to the respondents to suggest a new date of hearing in the present case. According to Mr. Datt. his client was deprived of the protection granted by Section 13(4) of the Act, as the Act did not apply when the suit was instituted. There are score of decisions of the Court in which the meaning of the expression "first date of hearing" came to be interpreted. Reference may be made to Suraj Bhan v. Chandra Prakesh 1959 RLW 315 Rampal v. Manager, Sasta Sahitva Press Ltd. 1973 RLW 615 and Mangal Ram and Ors. v. Smt. Chandravati Devi 1969 WLN 257, The view taken in these decisions has been confirmed by a full bench decision of this Court in Martin and Harris (Pvt.) Ltd. v. Prem chand 1974 RLW 115, There remains no manner of doubt as to the meaning of the expression "first date of hearing." In my opinion it cannot be interpreted in the manner suggested by Mr. Kasliwal. To accept his contention is to give the expression a flexible meaning. I cannot, therefore, construe it differently in the circumstances of the present case.

11. The contention that the tenant is deprived of the benefit of Section 13(4) is of no relevance in the present case. The Act started to govern the present case from August, 1970. Section 13(4) only gives an additional benefit to a defaulting tenant under certain circumstances. If the tenant has not been able to avail of it in view of the peculiar circumstances of the case it cannot be argued by the tenant that he could not be evicted if the court is satisfied on one of the grounds specified in in Clauses (a) to (1) of Section 13(1) of the Act. For the purposes of the present case the Court would only be under an obligation to satisfy itself as required by Section 13(1)(a) and (d). As discussed above, I m satisfied in the present case that the tenant is a defaulter and he had neither paid nor tendered rent due from him for six months.

12. In the alternative Mr. Kasliwal argued that the present suit was pending when Section 13 A of the Act was introduced & the tenant could deposit the amount of rent within one month from the date the Act came to govern the present case. I am unable to accept this submission. Under Secton 13A the tenant could pay to the landlord or deposit in court the aggregate amount of rent in arrears with interest and full costs of the suit, as will be directed by the Court. An application to this effect was to be given by the tenant within 30 days from the date of the commencement of the Amending Act which brought Section 13A in force. On the

date of the suit the Act was not in force. The application could not have been made within 30 days as required by Clause (b) of Section 13 A and I cannot stretch the meaning of the expression "within 30 days" from the date of the commencement of the Act, to the 30 days after the Act started governing the present case. Obviously the tenant case not have made an application u/s 13A. But this would not deter the court from deciding the case if it is satisfied on one of the grounds specified in Section 13(1) of the Act.

13. This brings me to the next submission raised on behalf of the of the appellant. According to the rent note the suit house was let out only for dwelling purpose. It was agreed by the tenant that he will not use the same for any commercial purpose. In this respect plaintiff examined herself. She deposed that Mishrilal started using the suit premises for keeping machineries. Even prospective purchasers used to come to the suit house for seeing the machines kept there for bargain. She also stated that at times she has to go to the cellar which she has kept for herself when the house was rented out. The passage for the same is from the Drawing room. She saw several machines big and small lying there. It is, however, admitted by her that the tenant is also living in the said house. Her statement finds support from the testimony of Gyan Chard P.W. 2 and Nandkishore P.W 3. Defendant Mishri Lal as DW 1 admitted that he keeps machineries in the house but according to him he keeps the stock in the garrage and not in the Drawing room. His statement to the effect that parties have agreed to keep the machines in the suit premises, cannot be accepted in view of specific term referred to above in the rent note, He admitted that he deals in the sale of machines and their parte. Natwarlal DW 2 is not a reliable witness in as much as he stated that no machines are kept in the suit premises. Again this witness and Sadhuram DW 3 are not of any assistance to the defendant as they are not the witnesses of the agreement. Thus from the evidence on record, it is established that the defendant started keeping machinery and their parts in the suit permises. The question which now falls for determination is whether this is an act inconsistent with the purpose for which the defndant was admitted to the tenancy. Mr. Datt placed reliance on Laxman Santu Sintre v. Balkrishna Kasha AIR 1925 Bom 393 and K. Krishna Nair v. Valliammal AIR 1940 Mad 785 Both these cases have no application to the facts of the case. The question involved in those cases was as to whether the house was rented out to the tenant for dwelling purpose or for business purpose. Their Lordships held the dominant purpose for which the premises were let out was for the purpose of residence. In the Bombay case the tenant was a tailor and he carried on his business in the dwelling house. Their Lord-ships held that the fact that a tenant carries on business or works in the same premises, which he uses for dwelling in, cannot thereby prevent those premises coming with the category of premises used as a dwelling house. In the Madras case the case of the landlord was that the tenant was using a portion of the premises for making APPALMS. The learned Judge observed that the primary purpose for which the building is let out or used should be the determining factor. On the facts he held that the dominant purpose

was the residential one and a mere use of a portion of the premises will not make it non residential purpose. In the present case it has not to be decided as to for what purpose the suit premises are let out. It is absolutely clear from the rentnote that it was rented out only for residential purpose. As a matter of act the terms of the agreement prohibited the tenant from using the suit premises for any commercial purpose. It is not the case of the defendant that keeping of the machineries in the house or in the garrage is a part of a residential purpose. It is clearly an act inconsistent with the purpose for which he was admitted to the tenancy. This has been held by both the Courts below and I confirm the same.

14. Reference may also made to AIR 1975 1297 (SC) which has been relied upon by learned Counsel for the appellant. The dispute related to a shop situate in Poona. The appellant before the Supreme Court was a tenant since 1949 paying Rs. 8,012/- as rent per month. The respondents purchased the building from the original landlord and they determined the tenancy of the appellant in respect of the shop. On appellant's failure to deliver possession of the shop the respondent filed a suit for recovery of possession. One of the grounds which survived before the Supreme Court was that the tenant had started using the shop for his residence contained in Clauses (a) and (k) of Sub-section (1) of Section 13 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The appellant tenant admitted to have used the rear portion of the shop for residential purpose temporarily, as he got his toe operated upon on account of gangrene and he found it difficult to walk upto the shop from his residence. He, however, contended that the business in the shop continued to be carried on by him. The trial Court granted a decree for eviction on the ground that the tenant used a portion of the shop for his residence as well. On appeal the decree was maintained. The appellant then approached the High Court of Bombay under Article 227 of the Constitution. The High Court framed two issues and remanded the case back to the trial Court for further inquiry. The trial Court after remand held the appellant liable for eviction. On appeal the District Court reversed the finding & held that the primary purpose for which the shop was used, was business" and the appellants residing in rear portion of the shop for sometime it was not possible to say that the appellant had changed the user of the shop as to attract the applicability of Clause (a) and (k) of Sub-section (1) of Section 13 of the Act. The High Court was again approached under Article 227 of the Constitution. The learned Judge of the High Court went through the entire evidence on record and set aside the finding of facts of the District Court. He confirmed the decree for eviction by the trial Court. In these circumstances the case reached the Supreme Court. Their Lordships in that context held that the High Court was not justified in interfering with the order of the appellate authority namely the District Judge in exercise of its jurisdiction under Article 227 of the Constitution. Their Lordships observed that the jurisdiction under Article 227 was limited only to see that the District Court functions within the limits of its authority, and did not extend to correction of mere errors. They found these orders of the High Court as erroneous inasmuch as according to

them the High Court over-stepped its jurisdiction in interfering with the finding of facts reached by the District Court. This decision is clearly distinguishable on facts and does not. lend any assistance to the question involved in this appeal.

15. No other point has been argued. The appeal is accordingly dismissed with costs.