
(2013) 02 RAJ CK 0144

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 1025 and 1026 of 2013

Purshottam and Another

APPELLANT

Vs

The Appellate Rent Tribunal and Others

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5
Constitution of India, 1950 — Article 226, 227

Citation : (2013) 2 CDR 1064 : (2013) 2 RCR(Rent) 375

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : G.P. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—First of these writ petitions filed under Articles 226 & 227 of the Constitution of India seeks to challenge the judgment of the Appellate Rent Tribunal, Sikar dated 2/11/2012 and Rent Tribunal dated 18/5/2011 by which, both the Tribunals concurrently allowed the eviction petition filed by the respondent-landlord for eviction of the petitioners-tenant from the suit premises on the ground of personal bonafide necessity. Admittedly, petitioners have been evicted from the suit premises and possession of suit premises has been handed over to the respondent-landlord pursuant to the aforesaid judgment passed by the Rent Tribunal and affirmed by the Appellate Rent Tribunal. Petitioners have filed second of these writ petitions seeking a direction for restoration of possession to them on the ground that as per sub-sec. (8) of Sec. 15 of the Rajasthan Rent Control Act, 2001 (for short, the "Act of 2001"), judgment of the Appellate Rent Tribunal ought not to have been executed for a period of three months from the date of judgment and the petitioners ought not to have been evicted pursuant to the execution of aforesaid judgment.

2. Shri G.P. Sharma, learned counsel referring to sub-sec. (8) of Sec. 15 of the Act of 2001 has argued that by virtue of doctrine of merger, word "decision" used

in sub-sec. (8) of Sec. 15 should be construed to mean final decision by the Appellate Rent Tribunal and therefore the restriction on execution of the judgment of eviction should extend even to the judgment rendered by the Appellate Rent Tribunal. In support of his argument, learned counsel for the petitioners has relied on the judgment of this Court in Zaffar Hussain and Others Vs. Gurcharan Lal Bhatia and Another, Learned counsel for the petitioners has also argued that Nazir could not have on his own re-questioned the police help to seek eviction of the petitioners from the shop in their absence. Locks of the shops were broken open with the police help in absence of petitioners and goods/belongings of the petitioners lying there have not been returned to the petitioners.

3. In so far as merits of the case is concerned, Rent Tribunal as well as the Appellate Rent Tribunal have concurrently decided the issue against petitioners-tenant upholding entitlement of the respondent-landlord to seek eviction of the petitioners on the ground of their personal bonafide necessity.

4. Upon hearing learned counsel for the petitioners, perusing the impugned judgments and examination of the matters shows that findings so recorded therein do not in the opinion of this Court suffer from any infirmity, illegality or perversity so as to justify interference. This Court is therefore not inclined to make any interference in either of the judgments.

5. Adverting now to second writ petition, it is to be noted that Sec. 15 of the Act of 2001 inter-alia provides for procedure to be applied in a petition filed by the landlord for eviction of the tenant. Sub-Section (8) of Sec. 15 provides that the certificate of recovery of possession issued under sub-sec. (7) shall not be executable for a period of three months from the date of decision. The certificate of recovery referred to in sub-sec. (7) would mean the one issued after decision of the Rent Tribunal. Restriction on execution of certificate of recovery under sub-sec. (8) of Sec. 15 has been created in the context of Sec. 17, which inter-alia provides that Rent Tribunal while finally deciding a petition in which it is not proceeding ex-parte against any party, shall fix a date, beyond one month but not beyond two months of its decision, for the appearance of the parties to the petition before the Appellate Rent Tribunal to which appeal lies. It is therefore that the restriction of three months for in-executability of the recovery certificate issued by the Rent Tribunal has been placed so that in the meantime the tenant may persuade the appellate Court into pressing of interim order. However, there is no warrant to interpret sub-sec. (8) of Sec. 15 in a manner so as to apply the same restriction to continue till decision of appeal by the Appellate Rent Tribunal and even with regard to execution of judgment of even the Appellate Rent Tribunal.

6. Cited judgment in Zaffar Hussain supra has interpreted the provisions of Sec. 13(9) of the Rajasthan Premises (Control of rent and Eviction) Act, 1950, which provided that where any decree for eviction of a tenant is passed by the trial Court or lower appellate Court on the grounds specified in sub-sec. (1) of Sec. 13

of the Act, execution of the same shall remain stayed for a period of two months and would become executable immediately thereafter, unless a stay order is obtained from the appellate Court within the meaning of Order 41 Rule 5 CPC. In that context, an argument was raised that the word "decree" used in sub-sec. (9) of Sec. 13 of the Act of 1950 has nexus with the decree for eviction of a tenant passed by trial Court only. Rejecting that argument, it was held by this Court that since the doctrine of merger is applicable to such decrees, whenever an appeal is preferred for eviction of tenant passed by the trial Court to the High Court, such decrees are always subject to modification, variation and reversal by such higher Court in hierarchical order. Therefore period of two months should be computed from the date of dismissal of second appeal by the High Court. It was also observed by this Court that word "decree" means a decree by a Court, which disposes of the suit finally, whether the trial Court or appellate Court because appeal is continuation of the suit and therefore limitation of two months contained in sub-sec. (9) of Sec. 13 of the Act of 1950 is to be computed from the date when such decree by the trial Court attained finality and become executable. At the same time, it was also held in the aforesaid judgment that mere filing of appeal would not put a bar on the executability of decree, decree would remain executable unless appellate Court for sufficient cause orders stay of its execution as contemplated by Order 41 Rule 5 CPC.

7. Those observations in the judgement of this Court in Zaffar Hussain supra shall have to be understood in the light of the facts of that case as observed by the learned Single Judge in the aforesaid judgment in the beginning of para 9 that "indisputably, the provisions of CPC are made applicable to a decree for eviction of a tenant passed on the ground specified in sub-sec. (1) of Sec. 13 of the Act of 1950". Ratio of the aforesaid judgment cannot be applied to the facts of the present case because in the first place, Sec. 15 contains the procedure applicable to the petition for eviction sought on the ground contained in Sec. 9(1) and not to an appeal preferred against the final judgment passed by the Rent Tribunal. Moreover, sub-sec. (7) of Sec. 15 refers to recovery certificate issued by the Rent Tribunal consequent upon acceptance of the petition for eviction, which cannot be raised to the level of a decree. Thirdly, Rent Tribunal is not a civil Court, it is a Tribunal where summary procedure has been made applicable for expeditious disposal of petition for eviction. Fourthly, provisions of the CPC have deliberately been excluded in proceedings under the said Act as would be evident from Sec. 21, except for certain specified purposes however with a rider that in the conduct of its proceedings, the Rent Tribunal/Appellate Rent Tribunal would be guided by the principles of natural justice. For all these reasons therefore, even if judgment of the Rent Tribunal is accepted to have merged with that of the Appellate Rent Tribunal for limited purpose of deciding finality of the first judgment, restriction created for inexecutability of the recovery certificate by sub-sec. (8) of Sec. 15 cannot continue to be extended for three months after the date of decision of the Appellate Rent Tribunal on the analogy of doctrine of merger. This is because if the legislature intended to

extend such restriction to continue until three months after decision of the appeal, it would have certainly indicated so in the provision dealing with the procedure of disposal of appeal, which has been separately provided in Sec. 19 or in Sec. 20, which deal with the provisions relating to execution of the orders passed by the Rent Tribunal. In view of aforesaid discussion, I do not find any merit in any of these two writ petitions, which are both dismissed however, with the direction to the Rent Tribunal to handover any goods/belongings of the petitioners recovered/seized from the suit premises.