
(2015) 04 RAJ CK 0169
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3457 of 2015

Radhaballabha and Others	Vs	APPELLANT
Mahendra Kumar		RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Citation : (2016) 1 WLN 267

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Sanjay Singhal, for the Appellant; Naseemuddin Quazi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.

1. This petition has been filed against the judgment dated 25.11.2014, passed by the Appellate Rent Tribunal, Kota directing the eviction of the petitioners-tenants (hereinafter "the tenants") from the tenanted premises and issuing a certificate of possession in favour of the respondent-landlord (hereinafter the landlord) while reversing the judgment dated 02.11.2011, passed by the Rent Tribunal, Kota whereby the landlord's eviction petition on the ground of default as provided for under Section 9(a) of the Rajasthan Rent Control Act, 2001 (hereinafter "the Act of 2001") had been dismissed.

2. Mr. Sanjay Singhal, appearing for the tenants has submitted that the ground of default under Section 9(a) of the Act of 2001 for eviction of the tenant was not made out in the instant case inasmuch as the purported arrears of rent payable to the landlord were sought to be related to revised rent payable by him under a judgment dated 12.05.2008 in eviction petition No. 361/2004, passed by the Rent Tribunal, Kota in proceedings earlier taken by the landlord under Section 6 of the Act of 2001 for revision of rent. It has been submitted that vide its judgment, the Rent Tribunal, Kota had held that albeit the contracted rent was

Rs. 910/- per month, yet in terms of Section 6 of the Act of 2001, the landlord was entitled to revised rent @ Rs. 1,470/- per month effective 01.04.2003. It has been submitted that consequent to the judgment dated 12.05.2008, passed by the Rent Tribunal in petition No. 361/2004, a sum of Rs. 38,745/- was due to the landlord as of 30.04.2008. It has been submitted that vide notice dated 16.06.2008 compliant with the two provisos of Section 9(a) of the Act of 2001, the landlord sought the payment of the amounts due not for default simplicitor but for reason of arrears payable under the judgment dated 12.05.2008, passed by the Rent Tribunal, Kota in eviction petition No. 361/2004. Counsel submitted that for a ground of default to be made out under Section 9(a) of the Act of 2001, the amounts of arrears of rent payable under the judgment dated 12.05.2008, passed by the Rent Tribunal on a petition for revision of rent were not reckonable as those amounts were constituted of arrears of rent due resulting from the revision of rent by the Rent Tribunal and not from the deliberate act of non-payment of rent due. Such amounts were recoverable by resort to Section 20 of the Act of 2001 in execution proceedings. It has been submitted that in respect of such amounts recoverable under Section 20 of the Act of 2001 following the judgment dated 12.05.2008, passed by the Rent Tribunal, the tenants could not be held to be in default. Counsel further submitted that even otherwise even prior to the receipt of the notice dated 16.06.2008, the tenants had deposited a sum of Rs. 5,000/- on 02.06.2008 and a further sum of Rs. 30,000/- on 18.06.2008 consequent to which they were, if at all, in default only of Rs. 1,870/- which was also deposited on 28.07.2008. It has been submitted that in this view of the matter, the Rent Tribunal had correctly appreciated the facts of the case and held the tenants not in default leading to the dismissal of the landlord's eviction petition. Counsel finally submitted that the Appellate Tribunal has erred in treating the amounts recoverable under the judgment dated 21.05.2008, passed by the Rent Tribunal, Kota in a petition No. 361/2004 for revision of rent, as arrears of rent due for a period of four months, nonpayment of the whole whereof would entail the tenants' eviction for default in payment of rent under Section 9(a) of the Act of 2001.

3. Per contra, Mr. Naseemuddin Quazi, appearing for the landlord, submits that Section 9(a) of the Act of 2001 provides that where the tenant neither pays, nor tenders the amount of rent due from him for a period of four months or more and despite notice indicating the bank account where the arrears are to be deposited, does not deposit the whole of the arrears of rent notified within 30 days of receipt of the notice, a ground of eviction for reason of default is made out. Counsel submits that merely because the amounts of arrears of rent due resulted from revision of rent pursuant to the judgment dated 12.05.2008, passed by the Rent Tribunal in eviction petition No. 361/2004, the said amounts would not be excluded from words "rent due" in Section 9(a) of the Act of 2001--no matter that the said amounts were also recoverable in execution proceedings by resort to Section 20 of the Act of 2001. Counsel submits that in this view of

the matter with the passing of the judgment dated 12.05.2008 in eviction petition No. 361/2004, the tenants were admittedly in arrears for a sum of Rs. 38,745/- for the period 01.04.2003 till 30.04.2008. Notice for payment of arrears of rent emanated from the landlord on 16.06.2008 detailing thereunder the demand for payment of arrears and the bank account where such arrears were to be deposited. This notice was admittedly receipted on 20.06.2008 by the tenants and in terms of second proviso of Section 9(a) of the Act of 2001, the entire amount of arrears of rent had to be deposited within a period of 30 days therefrom--i.e. by 19.07.2008. Counsel submitted that albeit a sum of Rs. 5,000/- was indeed deposited on 02.06.2008 and a further sum of Rs. 30,000/- deposited on 18.06.2008 in the bank account of the landlord, yet the tenants continued to remain in arrears of rent for the period notified in a sum of Rs. 1,870/- which was deposited in the landlord's bank account on 28.07.2008. This was after the 30 days period provided for from the receipt of notice to pay under second proviso to Section 9(a) of the Act of 2001 which expired on 19.07.2008. It has been submitted that in this view of the matter, the Appellate Tribunal has rectified the obvious error of the Rent Tribunal in dismissing the eviction petition holding that the tenants were not liable to be evicted from the tenanted premises on the ground of default as provided for under Section 9(a) of the Act of 2001.

4. Heard the counsel for the tenants and the landlord.

5. In my considered opinion, the fallacy in the arguments of the counsel for the tenants lies in submitting that the arrears of rent due consequent to revision of rent under the judgment dated 12.05.2008, passed by the Rent Tribunal in eviction petition No. 361/2004 could not constitute rent due under Section 9(a) of the Act of 2001. In my considered opinion, merely because the arrears of rent arose from revision of rent under the order dated 21.05.2008, passed by the Rent Tribunal and were also recoverable in execution by resort to Section 20 of the Act of 2001, they did not cease partaking the character of "rent due" under Section 9(a) of the Act of 2001. In these circumstances, the notice dated 16.06.2008 demanding payment of arrears of rent due to the landlord was in accordance with law and the notice having been receipted by the tenants on 20.06.2008, they were liable to deposit the arrears notified in the designated bank account of the landlord within 30 days from the receipt of the notice. From the facts on record, this was admittedly not done, as on 19.07.2008, the last date for the deposit of arrears due in the designated bank account of the landlord, the tenants admittedly were short on payment of rent for the period of 01.04.2003 to 30.04.2008 by a sum of Rs. 1,870/-. This was deposited in the bank account of the landlord by the tenants on 28.07.2008--9 days subsequent to 30 days expiring on 19.07.2008. In these circumstances, the Appellate Tribunal has rightly held that the landlord had been able to make out a ground for eviction of the tenants on the ground of default. I find no perversity or misdirection in law in the impugned judgment dated 25.11.2014, passed by the Appellate Rent Tribunal, Kota.

6. The writ petition is without force. Dismissed.
7. Stay application also stand dismissed.