
(1983) 02 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 45 of 1983

Rajasthan State Agricultural Marketing Board, Jaipur

APPELLANT

Vs

Smt. Gurdeep Kaur

RESPONDENT

Date of Decision : 21-02-1983

Acts Referred:

Rajasthan Premises (Control of Rent and Eviction) Act, 1950 — Section 13(1), 13(3), 13(4), 13(5), 13(6)

Citation : AIR 1984 Raj 67 : (1983) RLW 209 : (1983) WLN 214

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Advocate : Calla, for the Appellant;

Final Decision : Dismissed

Judgement

Dwarka Prasad, J.—The argument of the learned Government Advocate is that in a composite suit where the eviction of the tenant is sought on other grounds contained in Section 13 (1) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as "the Act"), besides the ground of non-payment of rent for a period of more than 6 months, the provisions of Sub-sections (3), (4) and (5) of Section 13 should not be strictly construed. Learned counsel placed reliance on the observations of a learned single Judge of this Court in Siya Saran v. Sagar Mal Modi, 1982 Rajasthan LR 304 in support of his submission. Sub-section (3) of Section 13 begins with the clause.

"In a suit for eviction on the ground set forth in Clause (a) of Sub-section (1), within or without any of the other ground referred to in that sub-section".

(Emphasis mine) The aforesaid provision clearly establishes that Sub-sections (3), (4) and (5) are applicable not only to suits for eviction based solely on the ground of defaults in payment of rent but also to composite suits in which one of the grounds on which the eviction is sought is that of defaults in payment of rent besides one or more other grounds contained in Sub-section (1) of Section 13 of

the Act.

2. It may also be pointed out that Sub-section (5) of Section 13 provides that the court is empowered to order that the defence of the tenant against eviction to be struck out, in case the tenant fails to deposit in court or pay to the landlord any amount referred to in Sub-section (4) of Section 13, on the date or within the time specified therein.

Sub-section (4) of Section 13 runs as under:--

"(4) The tenant shall deposit in court or pay to the landlord the amount determined by the court under Sub-section (3) within fifteen days from the date of such determination, or within such further time, not exceeding three months, as may be extended by the court. The tenant shall also continue to deposit in court or pay to the landlord, month by month the monthly rent subsequent to the period up to which determination has been made, by the fifteenth of each succeeding month or within such further time, not exceeding fifteen days, as may be extended by the court, at the monthly rate at which the rent was determined by the court under Sub-section (3)."

It is apparent from a perusal of the aforesaid provision that Sub-section (4) requires the tenant to deposit in court or to pay to the landlord the following amounts:--

(a) the amount determined by the court under Sub-section (3) of Section 13. Such amount has to be deposited within 15 days from the date of determination or within such further time as may be extended by the court, but which cannot exceed 3 months;

(b) the monthly rent, month by month, subsequent to the period up to which determination has been made under Sub-section (3) of Section 13, at the monthly rate at which the rent is determined by the court. This amount has to be deposited by the 15th of such succeeding month or within such further time as may be extended by the court, but such period shall not exceed 15 days.

3. Thus, Sub-section (4) requires the tenant to deposit both the amounts referred to above viz., the amount determined u/s 13 (3) as also the monthly rent, month by month. If the tenant fails to make payment of either amounts referred to in Sub-section (4), then his defence against eviction is liable to be struck out under Sub-section (5).

4. In the present case, it is not disputed that the amount of arrears of rent and interest thereon was determined by the trial court under Sub-section (3) of Section 13 on Mar. 4, 1982 and the said amount was paid on Mar. 18, 1982. Even if it be held that no default was committed by the appellant-tenant in depositing the amount determined under Sub-section (3) of Section 13, yet it is undisputed that rent for the months of April and May, 1982 were deposited in Aug. 1982; while the rent for the months of June and July 1982 were deposited on Sept. 16, 1982. The maximum period which the court can extend, in its discretion, the

period for payment of monthly rent, month by month, is 15 days after the 15th day of next succeeding month. As specific time limit has been prescribed in Sub-section (4), the court cannot ignore the same. Thus rent for the month of April, 1982 could ordinarily have to be paid up to May 15, 1982 and after adding the period of 15 days, which the court has the discretion to allow, the rent for the month of Apr. 1982 could have been paid by the appellant-tenant up to 30th of May 1982. Similarly, rent for the month of May, 1982 could have been paid at the latest by 30th June 1982 and rent for the months of June and July 1982 could have been paid by the 30th July and 30th Aug. 1982 respectively, if benefit is allowed to the defendant-tenant of the maximum period permissible under the provisions of Sub-section (4) of Section 13. Howsoever favourable a view the court may like to take, for the benefit of the tenant, it has no right to override the express provisions of law. There can be no doubt that striking out of the defence of the defendant is an extreme step, which is drastic in nature and should be used in grossly recalcitrant situations where tenant is guilty of disregarding the law relating to payment of rent. Howsoever beneficial construction we may like to place on the provisions of Sub-sections (3), (4), (5) and (6) of Section 13, yet in my humble view, it is not open to the courts to utterly disregard the legislative mandate and hold in favour of a tenant ignoring the mandatory language employed by the legislature in Sub-section (4) of Section 13 of the Act. So far as Siya Saran's case is concerned, it may be pointed out that it was held in that case that on account of the application of Section 13A, the effect of Section 13 (1) (a) disappears and becomes non-existent for all intents and purposes. That is so because Clause (b) of Section 13-A provides that once the amount in respect of arrears of rent, interest thereon and costs of the suit allowable to the landlord, as determined by the court, is deposited by the tenant within the time fixed by the court, then the proceedings "shall be disposed of as if the tenant had not committed any default". It may be pointed out that in Section 13-A there is no provision for making payment of rent month by month during the pendency of the suit and once the amount determined by the court u/s 13-B is deposited, the tenant is completely relieved of the ground of default contained in Section 13 (1) (a) of the Act. Section 13-A is not applicable to the case before me and as such Siya Saran's case has no application.

5. In view of the mandatory provisions contained in Section 13 (4) of the Act, I have no alternative but to uphold the order passed by the trial court, striking of the defence of the defendant-tenant under Sub-section (5) of Section 13 of the Act, on account of the failure of the defendant-tenant to deposit monthly rent for the months of April, May, June and July 1982 within the stipulated period provided u/s 13 (4) or even within the period for which extension could have been granted to the maximum extent, under the aforesaid provisions.

6. In the result, the appeal has no force and is dismissed. The parties are left to bear their own costs of this appeal.