
(1996) 08 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Revision Petition No. 1035 of 1996

Rajeev

APPELLANT

Vs

Devi Narain Mathur

RESPONDENT

Date of Decision : 08-08-1996

Acts Referred:

Rajasthan Premises (Control of Rent and Eviction) Act, 1950 — Section 3(7)(b)

Citation : (1997) 3 CivCC 222 : (1997) 3 RCR(Civil) 97 : (1997) 1 RLW 669

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : J.P. Goyal, for the Appellant; V.L. Mathur, for the Respondent

Final Decision : Allowed

Judgement

Arun Madan, J.—I have heard the learned counsel for the parties at length and also perused the impugned order dated 2.7.1996 passed by the learned ADJ No. 5, Jaipur City. Jaipur in Civil Suit No.62/89. whereby the request of the petitioner for filing additional written statement has been rejected by the trial Court. The grievance of the petitioner is that on 22.12 1986 suit for eviction of the plaintiff-respondent No. 1 was filed on the ground of default in payment of rent and reasonable and the bona fide personal necessity of the disputed shop for its use by the plaintiff and his son. The-petitioner's father expired on 22.6.1987. during the pendency of the suit and thereafter the legal representatives of the petitioner namely his widow non-petitioner No.2. his son non-petitioner No.3 and the main petitioner were substituted and arrayed as parties to the proceedings. After the substitution, written statement was filed by Smt. Raj Devi non-petitioner No.2. At the time of institution of the suit, the petitioner was a minor and, therefore, a guardian was appointed by the Court who filed written statement on his behalf on 12.12.1988. After the petitioner attained the age of majority on 28.5.1994, he discovered on inspection of the pleadings that certain material issues had been omitted from the written statement which was filed on his behalf by his guardian and as a result of this he immediately moved to the trial Court through

his counsel on 20.11.1994 and filed an application for permission to file additional/amended written statement since certain vital pleas have been omitted to be urged in the original written statement. The said application came to be rejected vide order dated 2.7.1996 against which the present revision has been preferred to this Court.

2. During the course of hearing it has been contended by the learned counsel for the petitioner that the petitioner whose interest was being looked after earlier by his father when he was a minor and after attaining the age of majority and after the demise of his father, he was entitled to raise an appropriate defence befitting his character as a tenant since he had become the tenant by operation law u/s 3(7)(b) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. Hence the trial Court should have granted permission to the petitioner to raise such pleas which were available to him under law by filing the amended written statement in view of the change in the circumstances. It has been further contended by the learned counsel for the petitioner that on account of the inadvertence of the counsel the party cannot be penalised for the factual omission has been made on this behalf.

3. It will be appropriate to refer to the statutory provisions as envisaged under Order 8 Rule 9 with Order 22 rule 4(2) CPC which reads as under:

Order 8 Rule 9 - Subsequent pleadings - No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

4. In support of his contentions advanced at the bar. learned counsel for the petitioner has placed reliance upon the judgment of this Court in the matter of Nasiruddin and Others v. Smt. Noor Jahan and Others, 1990(2) RLR 234 and on the Full Bench Judgment of the Delhi high Court in the matter of Kedar Nath and Another Vs. Mohani Devi and Others,

5. In the matter of Nasiruddin and other Smt. Noor Jahan and others (supra), the question which had arisen in a revision petition before this Court arising out of a partition suit was as to where a legal representative who is impleaded as a party to the suit on attaining the majority, whether his individual character as well as the character as legal representative merges and a new consolidated character is created and whether it is open to him to take all possible pleas in his written statement which he could not earlier advance before the trial Court on account of his being a minor? While distinguishing the judgment of the Apex Court in the matter of Jagdish Chander Chatterjee and Others Vs. Shri Kishan and Another, . it was held by this Court that legal representatives may have different character when they were not a party. Once a legal representative becomes a party all characters merge and a new consolidated character is

created. For the passing of the effective decree also it is necessary that the party to the litigation must take all pleas which are available to him so that the doctrine of res judicata may not apply against him in subsequent proceedings. It was further observed that, however, it was not necessary to decide this point at that stage since the question of amalgamation was not before the Court.

6. It was further observed that the present petitioners are now having only one consolidated character for the purpose of protection of their rights in the property in question and the rights may be because of inheritance, succession or gift or otherwise and they will have to raise all possible pleas in their written statements as all different characters have been merged in the one character. After merger of all different characters the decision on this point is necessary and also it is in the interest of justice.

7. In the matter of Kedar Nath and Another v. Smt. Mohini Devi and Others (supra) the similar question had arisen before the Full Bench of Delhi High Court in a SAO arising out of the order passed by the Rent Control Tribunal, Delhi. It was held by the learned Full Bench as under:-

Where after the contractual tenancy was terminated by service of notice to quit, the landlord applied for the eviction of the tenant on the grounds mentioned in the clauses to Section 14(1) Proviso, pending which the tenant died and his legal representatives were brought on record, the proceedings can continue and eviction order can be passed against the legal representatives, In such a case the right to sue, which is nothing but the right to relief, survives in favour of the landlord against the legal representatives Also the jurisdiction of the Rent Controller to deal with the application after the tenant's death remains unaffected. The legal representatives may put forward contentions as are appropriate to their representative character but not the contentions which were personal to the deceased tenant.

8. In support of his contention advanced at the bar, learned counsel for the respondents has placed reliance upon the judgment of the Madras High Court in the matter of Venkataswami Naidu and Others Vs. The Uppilipalayam Vamana Vilasa Nidhi, Limited, Secretary, T. Krishnaswami Naidu, and in the matter of Ramkhelawan Singh Vs. Ganga Prasad, and the judgment of this Court in the matter of Malkiyat Singh and Another v. Om Prakash and others, 1995(1) WLC Raj. 191. I have gone through the ratio of the above judgments and in my opinion the ratio of the Patna High Court as well as of the Madras High Court in the aforesaid judgments are distinguishable and not applicable to this case. I am further of the opinion that the ratio of the decision of this Court in Malkiyat Singh and Another v. Om Prakash and Others (supra) is applicable to this case and it helps in advancing the case of the petitioner rather than that of the respondent. In the said judgment, learned Single Judge of this Court has observed with respect as to what safeguards should be adopted by the trial Court while allowing permission to file additional written statement when the minor attains the age of majority. It was held by the learned Single Judge that where a minor defendant

is represented by a guardian ad-item. on attaining the majority pending litigation thee is no prohibition or bar to his filing additional written statement by advancing such pleas which earlier could not be raised on his behalf by his guardian. What the (sic) has to safeguard is that, the application for leave of the Court to file a fresh whiten statement should not be ordinarily declined but the Court has to see that the implication has been moved bona fide and has not been moved with ulterior motives.

9. In view of the above observations. I am of the opinion that (his is a fit case where the circumstances of the case so warrant and justify the filing of the amended written statement since at the time when the original written statement was filed, the petitioner was a minor and had neither acquired the age of discretion nor the statutory right of inheritance of tenancy, as referred to above, which he has now acquired after attaining the age of majority and hence his interest deserves to be safeguarded by giving him necessary permission to file the additional/amended written statement.

10. As a result of the above discussion, the revision petition is allowed and the impugned order dated 2.7.1996 passed by the learned ADJ No. 5, Jaipur City, Jaipur is quashed and set aside. The petitioner is allowed to file the additional written statement before the learned trial Court. The parties are directed to appear before the trial Court on the date already fixed. No order as to costs.