

(2013) 01 RAJ CK 0022
In the Rajasthan High Court
Case No : Civil Writ Petition No. 70 of 2013

Rajendra and Others

APPELLANT

Vs

M/s. Bansi Ram Kartar Chand Lal Kothi Keshar Ganj, Ajmer
and Another

RESPONDENT

Date of Decision : 30-01-2013

Acts Referred:

Citation : (2013) 01 RAJ CK 0022

Hon'ble Judges : Meena V. Gomber, J

Bench : Single Bench

Advocate : Archana Mantri, for the Appellant; Mahendra Goyal, for the Respondent

Final Decision : Disposed Off

Judgement

Dr. Meena V. Gomber, J.—Respondent No. 2 is a formal party, hence service is dispensed with. This writ petition has been filed against the order dated 14.12.2012 passed by the learned First Appellate Court in Appeal No. 20/2011. The appeal filed against the judgment and decree passed by the Trial Court in a suit for eviction filed by the respondent No. 1 inter alia on the ground of bona fide necessity, had been decreed by the Trial Court on 15.1.2011. Appeal against which is pending before the First Appellate Court. During the pendency of the appeal, the learned First Appellate Court vide its order dated 16.3.2011 directed the petitioner (defendant/appellant therein) to pay Rs. 500/- per month as mesne profit. The petitioner assailed the order by filing writ petition before this court and this court disposed off the petition and remanded the matter to the learned First Appellate Court to decide afresh the issue of mesne profit.

2. The First Appellate Court, in compliance thereof determined the mesne profit as Rs. 5,000/- per month vide its order dated 14.12.2012 which is subject matter of the present writ petition.

3. Learned counsel appearing for the petitioner submitted that tenancy

commenced in the year 1968 at a monthly rent of Rs. 5/- and learned trial court also while decreeing the suit came to the conclusion that rent was Rs. 5/- per month and not as claimed by the plaintiff. The learned counsel for the petitioner submits that the First Appellate Court has determined the mesne profit on the basis of valuation report submitted by the valuer hired by the plaintiff and that it is on the higher side. Learned counsel for the respondent, on the other hand, argued that the petitioner did not find any document in rebuttal before the 1st Appellate Court.

4. At this stage, learned counsel for the petitioner submits that her client is agreeable to pay a reasonable sum as mesne profit. The prayer appears just and reasonable. Shri Mahendra Goyal, Advocate, appearing for the respondent agreed that a time frame may be given to the First Appellate Court to decide the appeal on merits. The petitioner agreed to pay the arrears of mesne profit from 16.3.2011 till 16.1.2011 @ Rs. 2,000/- per month making it Rs. 44,000/-. Out of said amount of arrears, the petitioner's counsel, on advise from her client, undertakes to pay Rs. 11,000/- on 2.2.2013 which is the date before the First Appellate Court and further undertakes to get the remaining amount of Rs. 33,000/- paid by 18.2.2013 before the First Appellate Court, itself.

5. Accordingly, while disposing off this writ petition with the consent of both the parties learned First Appellate Court is directed to dispose off the appeal pending before it since March 2011 within a period of one month from today.

6. Both the parties will appear before the First Appellate Court on 2.2.2013 and the petitioner will pay Rs. 11,000/- on that day to the respondents. This writ petition as also stay application according stand disposed.