
(2005) 01 RAJ CK 0038
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7629 of 2004

Rashid Khan

APPELLANT

Vs

The Appellate Rent Tribunal (District and Sessions Judge) and
Another

RESPONDENT

Date of Decision : 11-01-2005

Acts Referred:

Rajasthan Rent Control Act, 2001 — Section 9

Citation : (2005) 1 RLW 519

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : R.K. Gaur, for the Appellant; Jagdish Rastogi, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Rathore, J.—This writ petition is directed against the judgment dated 27.9.2004 passed by the Appellate Rent Tribunal, Dholpur in Civil Appeal No. 43/2004. The aforesaid order is mainly challenged by the petitioner on the ground that the Tribunal has not properly considered the case and passed the impugned judgment dated 27.9.2004, which is per se in contravention of Section 9 of the Rajasthan Rent Control Act, 2001.

2. Learned counsel for the petitioner referred Section 9, which deals with eviction of tenants and is reproduced as under:

"Notwithstanding anything contained in any law or contract by subject to other provisions of this Act, the Rent tribunal shall order eviction of tenant unless unless it is satisfied that, -

"(a) the tenant has neither paid nor tendered the amount of rent due from him for four months:

Provided that the ground under this clause shall not be available to the landlord if he has not disclosed to the tenant his bank account number and name of the

bank in the same municipal area, in the rent agreement or by a notice sent to him by registered post acknowledgment due:

Provided further that no petition on the ground under this clause shall be filed unless the landlord has given a notice to the tenant by registered post, acknowledgment due, demanding arrears of rent and the tenant has not make payment of arrears of rent within thirty days from the date of service of notice:

Explanation:-For the purpose of this clause, the rent shall be deemed to have been tendered when the same is remitted through money order to the landlord by properly addressing the same."

3. More particularly he submits that notice u/s 9 demanding, arrears of the rent due should be issued to the petitioner well within time and also have to disclose the bank account and the name of the bank in the same municipal area.

4. He further submits that undisputedly Rs. 200/- per month rent was agreed between the landlord and the tenant and in the notice, which was served upon the petitioner by the respondent- landlord was not on the arrears counting the rent Rs. 200/- per month but has suo motu enhanced the rate and given Rs. 461.66 per month w.e.f. 1.4.2003 by increasing the rent from Rs. 200/- per month unilaterally.

5. Without filing any application u/s 6 of Rajasthan Rent Control Act 2001 and since no decision for enhancement has been passed by the competent court, the landlord cannot issue notice for depositing the outstanding loan at the enhanced rate unilaterally.

6. Learned counsel for the petitioner further submits that the Rent Tribunal has seriously erred not to consider the fact that the petitioner has tendered the arrears of amount through money order well within time. In such case the petitioner cannot said to be defaulted in view of Section 9 of the Rent Control Act 2001.

7. Per contra learned counsel appearing on behalf of respondent No. 2 Mr. Rastogi submits that the petitioner has defaulted in making the payment of rent within the period of 4 months as prescribed u/s 9.

8. He further submits that the notice, which is required to be served upon the petitioner u/s 9 has been sent by the respondent No. 2 on 13.10.2003, which was received by the petitioner on 16.10.2003. From taking the date of service effective upon the petitioner the last date for depositing the outstanding rent amount i.e. within a period of one month came to an end on 15th November whereas the petitioner sent the money order tendering the outstanding amount at the rate of Rs. 200/- on 18th November i.e. admittedly beyond 30 days as stipulated in Section 9 of the Rent Control Act, 2001.

9. Mr. Rastogi further submits that it is no doubt that the respondent No. 2 served a notice of enhanced rate unilaterally but in any case since the number of

bank account has been furnished by the respondent No. 2, the petitioner could have deposited the rent amount calculating the rent at the rate of Rs. 200/- per month with the bank or could have sent money order well within time after receipt of notice. Since the petitioner has not availed the opportunity to deposit the amount within the period of 30 days from the date of receipt of the notice, the executing court has not erred in passing the execution decree against the petitioner.

10. It is further given out that the executing court has not considered the enhanced rent and only passed the decree considering the rent at the rate of Rs. 200/- per month. In view of this fact also no illegality has been committed by the executing court.

11. Having heard rival submissions of the respective parties and upon perusal of the relevant provisions of Rent Control Act 2001 and the impugned order, first of all I like to deal with the provisions of Section 9 of the Rent Control Act 2001, which is relevant in the instant case as the application has been moved on behalf of the respondent No. 2 before the Tribunal for eviction of petitioner-tenant on account of default in making the rent.

12. As per the provisions of Section 9, the Rent Tribunal can pass the order for eviction of tenant if the Tribunal is satisfied that the tenant has neither paid nor tendered the amount of rent due since four months. Now as per the provisions the present matter has to be decided.

13. It clearly reveals from the fact that before moving application before the Tribunal for eviction the respondent No. 2 has not sent a notice, which is essentially required in view of the Section 9 of the Rent Control Act. As per the proviso u/s 9 Sub-section (a) no petition on the ground under this clause shall be filed unless the landlord has given a notice to the tenant by registered post, acknowledgment due, demanding arrears of rent and the tenant has not make payment of arrears of rent within a period of thirty days from the date of service of notice.

14. The notice was served upon the petitioner on 16.10.2003 and from 16th October to 15th November the petition has got opportunity to deposit the arrears and it is also not deposited with the arrears, which was tendered through money order on 18.11.2003 i.e. beyond the period of 30 days.

15. The respondent also does not dispute that in the notice the respondent has referred to enhanced rent, which is enhanced unilaterally and without seeking due permission from any competent authority u/s 6.

16. In my considered opinion only option which was available to the petitioner to show his bonafides to get rid it from the the mandatory provisions of Section 9, should have deposited the arrears of rent at the rate of Rs. 200/- per month. It appears that he has tendered the rent by money-order calculating arrears at the rate of Rs. 200/- per month but same was tendered after expiry of time.

17. Therefore, in the circumstances as indicated above, this Court does not want to interfere in the judgment dated 27.9.2004 and no illegality, error apparent on the face of the record is committed by the Tribunal.

18. Consequently, the writ petition fails and is herewith dismissed. The ex-parte interim order granted by this Court on 1.11.2004 also stands vacated.