
(1982) 09 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Revision Petition No. 114 of 1981

Shyamlal and Another

APPELLANT

Vs

Upbhokta Sahakari Samiti, Jodhpur

RESPONDENT

Date of Decision : 07-09-1982

Acts Referred:

Rajasthan Premises (Control of Rent and Eviction) Act, 1950 — Section 13, 13(1), 13(4), 13(7)

Citation : AIR 1983 Raj 133 : (1982) WLN 467

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Advocate : J.R. Tatia, for the Appellant; K.N. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, J.—This revision is directed against the order dated 17-2-1981, passed by the Civil Judge, Jodhpur, whereby he allowed the application u/s 13(7) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as "the Act"), reversing the order of the Munsif and Judicial Magistrate, Jodhpur City, dated 23-10-1980, whereby the learned Munsif rejected the defendant's application u/s 13 (7) of the Act. The learned Civil Judge further directed that the suit shall proceed only relating to costs.

2. I may briefly narrate the facts and circumstances leading to the present revision petition. The petitioners instituted a suit for eviction of the defendant from the shops on the ground of default. The suit was instituted on 14-4-1975. Summons were issued to the defendant. Thereupon the defendant appeared on 4-8-1975 and submitted an application u/s 13 (4) of the Act. The case was then adjourned to 11-8-1975. On 11-8-1975 the defendant submitted an application u/s 13 (7) of the Act. On 19-8-1975 the plaintiffs submitted reply to the application. The court considered that the only controversy between the parties relates to costs and interest so an issue to that effect was framed. However, the case was posted for filing of the written statement and evidence on that issue, to

26-8-1975. On 26-8-1975. counsel for the defendant, expressed that the defendant wants to proceed with the suit after framing all issues on filing of the written statement. Thereupon, the counsel for the plaintiffs expressed that the plaintiffs have no objection. The case was then posted for filing of the written statement. The written statement was filed on 16-9-1975. The Court thereafter proceeded to try the suit. After trial, the learned Munsif decreed the plaintiff's suit on 25-9-1976. The defendant preferred an appeal against the judgment and decree of the learned Munsif, which was allowed on 2-1-1977 and the decree passed by the trial court, was set aside and the plaintiff's suit for eviction was dismissed. However, the plaintiffs were allowed to withdraw the amount deposited by the defendant from the court. The plaintiffs then preferred second appeal, which was allowed on 11-8-1980 and the judgment and decree of the first appellate court were set aside and the case was remanded to the trial court with a direction to proceed with the suit in the light of the observations made in the judgment in accordance with law. After the remand of the case, on behalf of the defendant, a prayer was made that the defendant's application u/s 13 (7) of the Act may be first heard and decided and attention was invited to the observations made by this Court at page 15. However, the court framed an issue to the effect as to whether the defendant is a defaulter and then posted the case for hearing the arguments on the defendant's application u/s 13 (7) of the Act. The application u/s 13 (7) of the Act was to the effect that the defendant has , paid the amount of rent and interest thereon on the first date of hearing, so the plaintiffs' suit is liable to be dismissed and as such the same may be dismissed. The learned Munsif. after hearing the arguments on the application, dismissed the application. The defendant went in appeal against the order dated 11-8-1975 and the learned Additional Civil Judge allowed the appeal, as stated above. Hence, this revision petition.

3. I have heard Shri J. R. Tafia learned counsel for the plaintiff-petitioners and Shri R. N. Joshi, learned counsel for the defendant-non-petitioner.

4. In this revision petition an important question of law arises for consideration. The question that arises for consideration is as to whether the plaintiffs can proceed with the trial of the suit for eviction despite the fact that the defendant deposited the amount of rent together with interest thereon on the first date of hearing u/s 13 (4) of the Act, even when it is disputed by the defendant that it is the defaulter and that it is not liable for payment of rents? In the present case it is not in dispute that on the first date of hearing, the defendant deposited the amount of rent and interest, and after having done so, he moved an application u/s 13 (7) of the Act with the prayer that the suit may be dismissed.

5. Mr. J. R. Tafia, learned counsel for the petition, strenuously contended that there was an obligation of the defendant to deposit or make payment of rent u/s 13 (4), month by month, by the fifteenth of each succeeding month, after depositing the amount of rent and interest calculated at the rate of six per cent per annum from the date of the payability of the amount, up to the date of

deposit. Thus, there was non-compliance of this provision of Sub-Section (4) of Section 13. As such, the defendant is not entitled to take any benefit under Sub-section (7) of Section 13. On the contrary, if there is non-compliance in depositing or payment of amount referred to in Sub-section (4), on the date or within the time specified in Sub-section (4), the defence against eviction is liable to be struck out and the court is required to proceed with the hearing of the suit after striking out the defence.

6. Mr. K. N. Joshi, learned counsel for the defendant-non-petitioner, on the other hand urged that the suit for eviction is solely based on the ground of default. The defendant wanted to take the benefit of Sub-section (4) and so he deposited the amount of rent together with interest thereon and it is on that basis that he submitted an application for dismissal of the suit for eviction u/s 13 (7) of the Act. He submitted that it is true that the defendant wanted to get the remaining controversy decided in the suit, but so far as the question of eviction is concerned, the plaintiff's suit was to be dismissed in view of the fact that the defendant complied with the provision of Sub-section (4) of Section 13 inasmuch as he deposited the arrears of rent together with interest thereon within the time fixed by the Court.

7. For proper appreciation and adjudication of the controversy it would be proper to reproduce the relevant provisions of Section 23 as they stood at the relevant time:--

"Section 13. Eviction of tenants-- (1) Notwithstanding anything contained in any law or contract, no Court shall pass any decree, or make any order, in favour of a landlord, whether in execution of a decree or otherwise, evicting the tenant so long as he is ready and willing to pay rent therefore to the full extent allowable by this Act, unless it is satisfied:--

(a) that the tenant has neither paid nor tendered the amount of rent due from him for six months;

(4) In a suit for eviction on the ground set forth in Clause (a) of Sub-section (1), with or without any of the other grounds referred to in that sub-section, the tenant shall, on the first day of hearing or on or before such date as the court may, on an application made to it, fix in this behalf, or within such time, not exceeding two months as may be extended by the court, deposit in court or pay to the landlord an amount calculated at the rate of rent at which it was last paid, for the period for which the tenant may have made default, including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made together with interest on such amount calculated at the rate of six per cent per annum from the date when any such amount, was payable up to the date of deposit and shall thereafter continue to deposit or pay, month by month, by the fifteenth of each succeeding month a sum equivalent to the rent at the rate.

(5) If in any suit referred to in sub-sec. (4), there is any dispute as to the

amount of rent payable by the tenant, the court shall determine, having regard to the provisions of this Act, the amount to be deposited or paid to the landlord by the tenant, within fifteen days from the date of such order, in accordance with the provision of Sub-section (4).

(6) If a tenant fails to deposit or pay any amount referred to in Sub-section (4) or Sub-section (5), on the date or within the time specified therein, the court shall order the defence against eviction to be struck out and shall proceed with the hearing of the suit.

(7) If a tenant makes deposit or payment as required by Sub-section (4) or Sub-section (5), no decree for eviction on the ground specified in Clause (a), of Sub-section (1) shall be passed by the court but the court may allow such costs as it may deem fit to the landlord

Provided that a tenant shall not be entitled to any relief under this subsection if having obtained such benefit or benefit u/s 13-A in respect of any such accommodation, if he again makes a default in the payment of rent of that accommodation for six months.

8. A perusal of the above provisions of Section 13 of the Act will make it clear that one of the grounds for eviction is that the tenant has defaulted in payment of rent for a period of six months, that is, a suit for eviction would lie against the tenant, if the tenant has neither paid, nor tendered the amount of rent due from him for six months. However, Sub-section (4) of Section 13 is enacted for the benefit of the tenants and it is provided under Sub-section (4) that in a suit for eviction on the ground set forth in Clause (a) of Sub-section (1) of Section 13 of the Act, with or without any other grounds referred to in that sub-section, the tenant is required to deposit the arrears of rent together with interest thereon at the rate of six per cent per annum on the first date of hearing or within the time allowed by the court. Sub-section (4) of Section 13 of the Act further provides that the tenant shall continue to deposit or pay, month by month, by the fifteenth of each succeeding month a sum equivalent to the rent at that rate. Sub-section (7) of Section 13 of the Act provides that if a tenant makes deposit or payment as required by Sub-section (4) or Sub-section (5), no decree for eviction on the ground specified in Clause (a), of Sub-section (1) shall be passed by the court, but the court may allow such costs as it may deem fit to the landlord. The proviso to Sub-section (7) lays down that the tenant would not be entitled to the protection of Section 13, in case such benefit has once been obtained by the tenant, that is, if the tenant makes a second default in the payment of rent for six months, then the benefit of the provision contained in Section 13 is not available to the tenant.

9. The emphasis of Shri Tatia is that the suit did not come to an end and was not dismissed by the trial court on the defendant's application u/s 13 (7). Rather, the defendant asked the court to proceed with the suit. When such was the stand taken by the defendant, it was obligatory for him to have continued to deposit or

make payment of rent by the fifteenth of each succeeding month, which he admittedly failed to do, so it should be taken that, the defendant in fact has not taken the benefit of Sub-section (4) of Section 13 and in case it is found that the defendant was a defaulter in payment of rent, the plaintiffs' suit would deserve to be decreed on the ground specified in Clause (a), of Sub-section (1), of Section 13, Shri Tatia placed reliance in support of his contention on the Division Bench decisions of this Court in *Shambhooram and Another Vs. Mangalsingh and Another*, and *Moti Ram v Parma Nand* ILR (1960) 10 Raj 625) and single *Gorulal and Another Vs. Gopichand*, and *Pyare Lal v. Halka Singh* 1964 R LW 489.

10. It may be stated that so far as the aforesaid decisions of this Court are concerned, these decisions have taken into consideration the provisions of Section 13 (4), (5), as were then existing. It is pertinent to note that under Sub-section (5) of Section 13, as it stood then, it was open to the tenant to express his intention to contest the suit on the first date fixed for hearing of the suit. Section 13, Sub-section (4) and (5) underwent amendments and it is the above amended provisions, which need to be construed in relation to the controversy raised in the present revision petition. In the decisions relied on by Mr, Tatia what has been laid down is that where and in so far as a suit for eviction is based on Section 13 (1) (a) and a defendant expresses his intention to contest the same on the first day of hearing, he renders himself disentitled to the benefit of Sub-section (4) of Section 13. It was also observed that the defendant must be deemed to have contested the suit if he disputes his liability to pay rent, which is claimed from him. or contests that he is a defaulter or raises any other dispute in that connection and this result would be avoidable only where the dispute may happen to be as to mere arithmetical error in the calculation of the rent due or a similar error in the calculation of interest or costs. These authorities, in my opinion, thus, do not in any way help the petitioner. It is true that the defendant did express that the suit may be proceeded with after framing of all issues on filing of the written statement, but from this it cannot be taken that the defendant in any way expressed that he does not want to avail the benefit of Sub-section (4) of Section 13. The defendant wanted to avail the benefit of Sub-section (4) of Section 13 is manifest from his conduct of depositing the rent together with interest thereon and it is further evident from the application submitted by him u/s 13 (7) on 11-8-1975. The defendant categorically stated in this application that the plaintiffs have filed the suit for eviction on the basis of default and this is first suit. The amounts of rent and interest have been deposited, so the defendant prayed that the plaintiffs' suit be dismissed with costs. If the defendant did not want to avail the benefit of Sub-section (4) of Section 13, he would not have deposited the amount of rent and interest. The controversy regarding interest ceased the very moment when interest was deposited by the defendant. I may here reproduce some of the observations made by this Court in its judgment of the second appeal. This Court observed as under:--

"It was also stated that the defendant submitted an application u/s 13 (4) of the

Act and deposited the rent inclusive of interest up to Aug. 13, 1975 within time. The fact that the defendant has committed default in payment of rent was denied. It is not in dispute before me that the suit for eviction was based u/s 13 (1) (a) of the Act. It is also not in dispute that the rent up to Aug. 13, 1975 and the interest @ 6% per annum were deposited. The contention of the learned counsel for the respondent is that in view of Section 13 (7) when the defendant had deposited the rent u/s 13 (4) of the Act, decree for eviction on the ground mentioned in Clause (a) of Sub-section (1) of Section 13 cannot be passed and the only alternative for the court was to allow such costs which it might have deemed fit to award to the plaintiffs. He urged that it was on account of this fact that issue No. 1 was framed on Aug. 15, 1975 to the effect whether the plaintiff is entitled to get the costs and interest from the defendant. The defendant had already deposited the amount of interest @ 6% per annum as required by Section 13 (4) of the Act. Thus, there was no controversy whether the plaintiff was entitled to interest. Mr. J. R. Tatia, learned counsel for the appellant does not dispute that the claim of interest was wrongly included in issue No. 1. The submission of the learned counsel for the appellant is that the defendant failed to comply with the other condition of Section 13 (4) of the Act, namely, that he did not continue to deposit or pay the rent month by month by the 15th of the each succeeding month, a sum equivalent to the rent at the rate it was last paid and for his failure to comply with the other condition of Section 13 (4), he is liable to be evicted. This was strongly refuted by Mr. K. N. Joshi, learned counsel for the respondent, on the ground that when the defendant had deposited the rent with interest as required by Section 13 (4) of the Act after making the application, it was incumbent on the trial court to have dismissed the suit as besides the ground specified in Clause (a) of Section 13 (1) of the Act, there were no other grounds taken by the plaintiffs for the purpose of ejectment. He further contends that even assuming without admitting that the defendant had failed to deposit or pay the amount as required by Section 13 (4) of the Act on the date or within the time specified, it was open to the trial court to strike out, its defence and to proceed with the hearing of the suit and this course was not adopted by the trial court. It may be recalled here that the learned Munsif has mentioned in the order that as the suit proceeded and the defendant had not taken advantage of Section 13 (4) of the Act, the plaintiff is not entitled to interest but will get costs of the suit, I have already stated that the claim of interest is not in controversy. The appellate court decided both the points for determination framed by him against the defendant whereby holding that it was not necessary for the trial court to have dismissed the suit for ejectment on the filing of the application u/s 13 (7) of the Act after depositing the rent u/s 13 (4) of the Act. I am afraid on the facts and in the circumstances of the case the prayer that in view of the jforesaid findings of the learned Addl. Civil Judge, decree for eviction against the defendant and in favour of the plaintiffs cannot be passed."

11. The above observations do throw light to some extent as to how the matter has to be viewed when the tenant has deposited the amount of rent and interest

thereon u/s 13 (4). By this conduct of the defendant that he requested the court to proceed with the suit after framing of issues and after entertaining his written statement, it cannot be taken that the defendant waived this benefit, then of course the question of default could have been gone into and in case the finding is recorded that the defendant has been a defaulter, suit for eviction based on the ground of default could be decreed. If the scheme of Sub-section (4), (5), (6) and (7) is examined, it would appear that the ground of default ceases to exist when the amount of rent and interest is deposited by the tenant, as provided under the first part of Sub-section (4). No trial on the ground of default thereafter is contemplated. Whether the tenant has committed any default or not, need not be gone into in case the tenant conducts himself in the manner, as provided in the first part of Sub-section (4) by depositing the amount of rent and interest within the time allowed by the court. The proviso to Sub-section (7) would show that it is in the nature of the benefit, which has been given to the tenant and no such benefit can be claimed second time by the tenant, even if he has not committed any default, that is, even if he has been tendering the amount of rent regularly, but has not been accepted by the landlord, and, thus, as a matter of fact he may not be a defaulter, as he has been offering rent, but this controversy need not be tried by the court, if the tenant deposited the amount, of rent and interest on the first date of hearing or within the time allowed by the Court. It is true that if the suit is based on some other ground along with the ground of default and if the tenant does not deposit or pay rent by the fifteenth of each succeeding month, then his defence is liable to be struck out. In the present case striking out the defence would be of no consequence, because the ground of eviction ceases to exist on depositing the amount of rent and interest. I may here refer to a decision of this Court cited by Mr. Joshi. In *Kedar Nath Gupta v. Bishan Das* 1979 RLW 458 the Court was examining the question in the light of the provision contained in Section 13-A. In that case the tenant moved an application u/s 13-A of the Act and after determination of the amount of rent, the same was deposited by the tenant. It was observed that the proceedings have to be disposed of as if the tenant had not committed any default. It was further observed that when the ground of eviction on the basis of default u/s 13 (1) (a) of the Act falls through there is no question of complying Section 13 (4) or 13 (5) of the Act. This case is not directly on the point, which has emerged for consideration in the present revision petition, but the question has to be viewed in the light of the scheme of the provisions and in the light of the scheme of the provision, as considered above. I am clearly of the opinion that the ground of Section 13 (1) (a) falls through the moment the tenant deposit the amount of rent and interest on the first day of hearing or within the time allowed by the court. There would have been a different position had the defendant, waived the benefit under Sub-section (4) of Section 13. Merely by stating to the Court that the suit may be proceeded after framing all issues, does not mean that the tenant waived this benefit conferred on him u/s 13 (4) of the Act As a matter of fact the trial court should have expressly asked the "defendant as to whether the defendant wants to waive the benefit u/s 13 (4) and if the

defendant had expressed to waive the benefit, the question of default would be determined in the case and the ground of default in that situation would continue to exist and on merits of the question of default, the decision of the suit would be based, but such is not the position in the present case. If the defendant did not want to avail the benefit of Section 13 (4), there was no need for him to deposit, the amount of rent and interest and there was no need for him to move the application u/s 13 (7). The application u/s 13 (7) was not disposed of by the Court. Had it been disposed of earlier, the present situation would not have arisen.

12. In the above view of the matter in my opinion, this revision petition is devoid of any force, so it is hereby dismissed. The counsel for the defendant-petitioner does not want to contest the suit for costs. In view of this the plaintiff's suit for eviction is dismissed. The parties however, shall bear their own costs throughout.