
(2013) 02 RAJ CK 0093
In the Rajasthan High Court
Case No : Civil Writ Petition No. 958 of 2013

Sushil Kumar

APPELLANT

Vs

L.Rs. of Smt. Ranjana Ben and Others

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5
Constitution of India, 1950 — Article 227

Citation : (2013) 1 CDR 590

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Rajesh Joshi, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—This writ petition has been filed by the petitioner-tenant aggrieved by order dated 19.12.2012 passed by the learned appellate Court on his application filed under Order XLI, Rule 5 CPC, whereby, he was directed to pay amount of mesne profit @ Rs. 3,000/- per month during pendency of the appeal from the date of filing of the appeal. The facts of the case are that the petitioner is said to be in possession of the suit premises as tenant since 1972 at a rent of Rs. 150/- per month. A suit for eviction was filed by the landlord respondent in the year 1988 and a decree was passed on 21.09.2011 by the trial Court ordering for eviction of the petitioner.

2. Against the said judgment and decree dated 21.09.2011, the petitioner filed an appeal before the Court of Additional District Judge, Abu Road, District Sirohi alongwith an application under Order XLI, Rule 5 CPC seeking stay of the execution of the decree under appeal. It was stated in the application that the petitioner had prima facie case and if the execution is not stayed then he would suffer irreparable injury.

3. The application was opposed by the respondent-landlord, besides other

submissions, it was stated as under:--

4. The learned first appellate Court after hearing the parties was of the opinion that it is revealed from the record that the tenancy is from the year 1972 or from before it and the tenant has been paying rent @ Rs. 150/- per month only and if for a premises like a disputed premises in a place like Mount Abu, which is a tourist place, it cannot be disputed that the fair rent would be Rs. 3,000/- to Rs. 5,000/-.

5. In that view of the matter, the Court passed the order for payment of mesne profit @ Rs. 3,000/- per month from the date of filing of the appeal.

6. It was contended by learned counsel for the petitioner that the order impugned is ex facie without any basis as the learned trial Court without any material available before it, has enhanced the rent from Rs. 150/- per month to Rs. 3,000/- per month as mesne profit. In fact the amount is 20 times the amount of rent which is wholly unjustified and the same, therefore, deserves to be quashed and set, aside.

7. I have considered the submissions made by the learned counsel for the petitioner and perused the material placed on record.

8. In a case of present nature, it is well within the discretion of the first appellate Court to pass orders on application for stay of execution of decree and impose conditions which is deemed just and proper in the facts, circumstances and material available on record of each case. Admittedly, the petitioner is tenant in the premises in question for over four decades and is paying a meager rent of Rs. 150/- per month. From the averments of the reply filed by the landlord, it appears that the premises in question has two rooms, kitchen, two verandas and store room besides one room, one kitchen and bath room in the basement and for such accommodation mesne profit @ Rs. 3,000/- per month cannot be said to be unreasonable.

9. Therefore, in the facts and circumstances of the case, it cannot be said that the learned first appellate Court has committed any error in ordering payment of mesne profit @ Rs. 3,000/- per month. Even otherwise, looking to the facts and circumstances of the case, this Court is not inclined to interfere in exercise of its jurisdiction under Art. 227 of the Constitution of India. In the result, the writ petition has no substance and the same is, therefore, dismissed. No costs.