

(2019) 01 RAJ CK 0009
In the Rajasthan High Court
Case No : Civil Writ No. 15629 Of 2018

Umashankar

APPELLANT

Vs

Seth Suganchand Chitlangiya Charitable Trust And Ors

RESPONDENT

Date of Decision : 02-01-2019

Acts Referred:

Rajasthan Rent Control Act, 2001 — Section 18, 32
Transfer Of Property Act, 1882 — Section 106
Code Of Civil Procedure, 1908 — Order 7 Rule 11

Citation : (2019) 01 RAJ CK 0009

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : Rajesh Choudhary, Surendra Thanvi, Sanjeet Purohit

Final Decision : Dismissed

Judgement

1. This petition is directed against judgment dated 7.9.18 passed by the Appellate Rent Tribunal, Sriganganagar, affirming the judgment dated 29.5.14 passed by the Rent Tribunal, Sriganganagar, allowing the petition preferred by the respondent-landlord seeking eviction of the petitioner from a commercial premises.

2. The facts relevant are that the respondent-Seth Suganchand Chitlangiya Charitable Trust ('the Trust') was exempted from applicability of the provisions of Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (for short "the Act of 1950") by the State Government vide notification dated 6.3.97. The respondent-Trust filed a suit being No.59/05, for possession and mesne profit against the petitioner before the District Judge, Sriganganagar, which was later transferred for trial to Additional District Judge No.2, Sriganganagar. The Act of 1950 stood repealed by virtue of provisions of Section 32 of Rajasthan Rent Control Act, 2001 (for short "the Act of 2001"). Keeping in view the provisions of Section 18 of the Act of 2001, the suit preferred by the respondent-Trust as aforesaid, was dismissed by the learned trial court vide judgment and decree dated 8.5.09 for

want of jurisdiction. The State Government issued yet another notification dated 23.6.09 whereby the respondent-Trust was exempted from applicability of the provisions contained in Chapter II and III of the Act of 2001. The respondent-Trust preferred yet another suit being No.151/09 before the District Judge, Sriganaganagar for eviction of the petitioner-tenant from the suit premises. The petitioner-tenant preferred an application under Order VII Rule 11 CPC seeking rejection of the plaint on the ground that by virtue of provisions of Section 18 of the Act of 2001, the suit preferred by the respondent-Trust before the civil Court is not maintainable. The application was rejected by the District Judge, Sriganaganagar vide order dated 27.1.11. Aggrieved thereby, the petitioner preferred a revision petition being No.35/11 before this Court. The revision petition was allowed by this court vide order dated 26.8.11 holding that the suit preferred by the respondent-Trust before the civil court was not maintainable and accordingly, the suit was dismissed as not maintainable. However, the respondent-Trust was given a liberty to prefer petition seeking eviction before the Rent Tribunal.

3. After dismissal of the suit as aforesaid, the respondent-Trust preferred a petition under Section 18 of the Act of 2001 seeking eviction of the petitioner from the suit premises . The petition was allowed by the Rent Tribunal, Sriganaganagar vide judgment dated 29.5.14. Aggrieved thereby, the appeal preferred by the petitioner before the Appellate Rent Tribunal stands dismissed by the impugned judgment. Hence, this petition.

4. Learned counsel appearing for the petitioner contended that the respondent-Trust did not serve a notice to the petitioner under Section 106 of the Transfer of Property Act, 1882 and therefore, the petition preferred was liable to be dismissed on this count alone. Learned counsel submitted that the notifications dated 14.3.97 and 23.6.09 issued by the State Government granting exemption to the respondent-Trust from applicability of the provisions of Act of 1950 and the Act of 2001 respectively, are erroneous, however, the contention raised in this regard has not been taken into consideration by the Rent Tribunal. Learned counsel submitted that the suits earlier preferred by the respondent-Trust having been dismissed, the fresh petition filed before the Rent Tribunal, Sriganaganagar was barred by principle of res judicata and thus, the Appellate Rent Tribunal has seriously erred in affirming the finding arrived at by the Rent Tribunal on issue no.4.

5. On the other hand, learned counsel appearing for the respondent submitted that the suits earlier filed by the respondent-Trust were dismissed for want of jurisdiction and the petitioner was given liberty to approach the Rent Tribunal for the relief claimed and thus, the principle of res judicata is not attracted in the instant case. Learned counsel submitted that the tenancy of the petitioner was terminated by service of notice dated 3.8.09 and thus, the contention sought to be raised that before filing the petition, no notice was served upon the petitioner under Section 106 of the Act of 1882, is contrary to record.

6. I have considered the submissions of the learned counsels for the parties and perused the material on record.

7. Indisputably, the first suit preferred by the respondent-Trust was dismissed by the Additional District Judge No.2, Sriganagar vide judgment dated 8.5.09 for want of jurisdiction keeping in view the provisions of the Act of 2001. The second suit preferred by the respondent was also dismissed by this court vide order dated 26.8.11, while allowing the revision petition preferred by the petitioner assailing the legality of the order dated 27.11.11 passed by the District Judge, Sriganagar rejecting an application preferred by the petitioner under Order VII Rule 11 CPC inasmuch as, by virtue of provisions of Section 18 of the Act of 2001, the suit seeking eviction of the petitioner-tenant preferred by the respondent-Trust before civil court was not maintainable. Suffice it to say that the suits earlier filed by the respondent-Trust were dismissed as not maintainable for want of jurisdiction and thus, the question of the fresh petition filed by the respondent-Trust under the provisions of the Act of 2001 was in no manner barred by principle of res judicata. Thus, the Appellate Rent Tribunal has committed no error in affirming the finding of the Rent Tribunal on issue no.4.

8. It is the matter of record that before filing the petition before the Rent Tribunal under Section 18 of the Act of 2001 seeking eviction of the petitioner from the suit premises, the respondent-Trust had served notice dated 3.8.09 terminating the tenancy in terms of provisions of Section 106 of the Act of 1882 and thus, the Rent Tribunal has committed no error in deciding the issue no.1 in favour of the respondent-Trust and against the petitioner.

9. Coming to the notifications issued by the State Government granting exemption to the respondent-Trust from applicability of the provisions of the Act of 1950 and Act of 2001, suffice it to say that the legality of the said notifications was never challenged by the petitioner by availing appropriate remedy at any point of time. The said notifications are not impugned in the present petition either and thus, the contention sought to be raised by the petitioner at this stage in the present petition preferred assailing the judgment passed by the Appellate Rent Tribunal, cannot be entertained.

10. For the aforementioned reasons, the writ petition preferred is absolutely devoid of any merit, it is hereby dismissed. No order as to costs.