
(1971) 07 RAJ CK 0015
In the Rajasthan High Court
Case No : Civil Revision No. 39 of 1971

Yar Mohammad

APPELLANT

Vs

Roshan Lal

RESPONDENT

Date of Decision : 07-07-1971

Acts Referred:

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

Citation : (1971) WLN 41

Hon'ble Judges : L.N. Chhangani, J

Bench : Single Bench

Judgement

L.N. Chhangani, J.—This is a plaintiff's revision against the order of the Munsiff Magistrate, Udaipur City, dated 15th December, 1970, and has arisen in the following circumstances.

2. The petitioner plaintiff filed a suit for the fixation of standard rent of a shop on 3-6-67 in the court of Munsiff Magistrate, Udaipur City, against the non petitioner defendant. On 4-7-67 the plaintiff petitioner filed an application for determination of the provisional rent u/s 7 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. The Munsif, vide his order dated 14-12-67, fixed the rent at Rs. 45/- p.m. and the plaintiff-petitioner started depositing provisional rent in the court regularly. On 3 9.70 the defendant non-petitioner filed an application u/s 7 Sub-section (4) of the Act alleging that the plaintiff had not paid the provisional rent by the 15th of every month and asserted his right to eject the petitioner plaintiff. The plaintiff petitioner opposed the application and denied the default attributed to him. It was also pleaded by the plaintiff that he could not be ejected in a suit which was only for the fixation of the standard rent. The Munsif observed that defendant non-petitioner's claim to get the plaintiff petitioner ejected could be " decided in context of the present suit. He, however, directed that the defendant non-petitioner's application be treated as a cross suit and be tried as such. The Munsiff also directed the recovery of the court fee. Aggrieved by this order, the plaintiff petitioner has filed the present revision application.

3. There could be no doubt that the defendant-non-petitioner can file a suit for ejectment on the basis of the alleged default in respect of the payment of the provisional rent and the trial court also proposes to try the defendant non-petitioner's claim as a suit. Substantially, therefore, there has been nothing illegal in the course adopted by the Munsif. It must, however, be mentioned that the application is not drafted as a plaint for ejectment. The counsel for the defendant non-petitioner agrees to file a proper plaint within one month from today, in order that the plaintiff petitioner as defendant may be in a position to file a proper written statement. On the defendant-non-petitioner filing a claim the suit shall be registered, if not registered so far. The plaintiff petitioner will be entitled to file written statement incorporating all defence which are legally available to him. The Munsif Magistrate shall frame proper issues in that suit and try it. As the plaintiff has already filed the court fee in connection with the application no fresh court fee will be payable by the defendant non-petitioner. The controversy regarding the defendant-non-petitioner's right to eject the petitioner shall be tried in the new suit and not in the present suit.

4. With these directions, the revision stands disposed of as above with no order as to costs.