

Ram Niwas and others

Vs

Malik Mahboob Ali and another

Civil Appeals Nos.2380-81 of 1989

(T.K. Thommen, R.M. Sahai JJ)

13.03.1991

ORDER

1. These appeals arise from the judgment dated 1-12-1988 of the High Court of Rajasthan in S. B. Civil Second Appeal No. 200 of 1983 and its order in S. B. Civil Revision Petition No. 414 of 1984. The High Court held that the tenant having committed default of payment of rent subsequent to the deposits which he had earlier made, the proviso to sub-section (6) of S. 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, as amended in 1965, was attracted. The High Court noticed that a suit for eviction on the ground of default and other grounds had been instituted by the respondent-landlord in 1964; that suit was dismissed for non-prosecution by the landlord; the present suit was filed by the respondent-landlord in 1968 on the ground of default; and, the tenant committed default of payment after making certain deposits towards rent. The High Court concluded that the tenant was, therefore, liable to be evicted by reason of the proviso to sub-s. (6) of S. 13 of the Act.

2. Mr. Krishnamoorthy Iyer, appearing for the appellants, submits that the deposits were made in the course of proceedings in the second suit and the full amount which had become due had been paid. An application had been filed seeking direction as to whether any further amounts remained unpaid. The proviso to sub-s. (6) of S. 13 of the Act, Mr. Iyer says, has no application on the facts of this case because the earlier suit was dismissed for non-prosecution by the landlord.

3. Mr. C. M. Lodha, appearing for the respondent-landlord, submits that the earlier suit was for eviction of the tenant on the ground of default amongst other grounds. The tenant can seek the protection of the Act only if he deposits all amounts due and payable by him and continues regularly to make the requisite deposits in the future. Any default on the part of the tenant deprives him of the protection of the Act by reason of the proviso to sub-s. (6) of S. 13. Mr. Lodha further states that there is no evidence to show that the tenant has deposited all the rents payable by him in full and that he continues to deposit the rent. He further states that the application filed by the tenant for the determination of the rent has already been disposed of by the appellate court by a specific order.

4. The order of the appellate Court referred to by Mr. Lodha appears at page 79 of the paper book which says-

"The learned counsel for respondent has contended that the appellant has not deposited the decretal amount of rent and mesne profits so far. The lower Court be intimated that the stay order will be operative only when the appellant deposits the decretal amount of arrears of rent and mesne profits up to 18-12-74."

5. Two questions arise - (1) whether the proviso to sub-s. (6) of S. 13 is attracted on the facts of the case and (2) whether the tenant has in terms of S. 13A of the Act, as amended in 1975, made an application for determination of the amounts due and if so, whether the tenant has made the deposits, as directed.

6. It cannot be gainsaid that the earlier suit had been dismissed for non-prosecution. That suit was, therefore, no longer relevant to the subsequent suit seeking eviction of the tenant on the ground of default. In our view, the High Court wrongly relied on the earlier suit.

7. Mr. Iyer submits that the tenant cannot be a defaulter in terms of sub-s. (6) of S. 13 of the Act so as to attract eviction on the ground of default. The actual amounts due from the tenant have been paid in full, although the application of the tenant for determination of the balance, if any, due from him has not been so far disposed of on the merits. Mr. Iyer says that although that application was made for the purpose of obtaining a stay of eviction, the real object of that application was to obtain a judicial determination of the amounts payable so as to avoid any default being committed by the tenant. That application in any view qualifies as substantial compliance with the provisions of S. 13A(b). The evidence on record, Mr. Iyer contends, would indicate full payment of all amounts due and payable, and the tenant is, therefore, not in arrears at all so as to attract the provisions of the Act.

8. Mr. Lodha refutes these contentions and submits that on the facts of this case the tenant has been in arrears. He further submits that the application filed in the course of proceedings for interim orders cannot be treated as an application which is required to be filed in terms of S. 13A(b) of the Act.

9. These are questions which could not have been examined by the High Court. The judgment under appeal turned on the question of relevance of the earlier suit so as to attract S. 13(6) of the Act. That suit, as we have already stated, was of no relevance, and the High Court was wrong in relying upon that suit.

10. Mr. Lodha has referred to us various decisions of the High Court of Rajasthan where earlier suits had been relied upon for the purpose of considering the applicability of the proviso to sub-s. (6) of S.

13 of the Act. But those are cases where the earlier suits had been disposed of not for non-prosecution, but on the ground of payment of arrears. Subsequent defaults naturally attracted the proviso to sub-s. (6) of S. 13 of the Act. Mr. Lodha's argument on the point, therefore, is of no help on the facts of this case.

11. Mr. Lodha's contentions regarding the existing arrears of rent are matters which must be investigated. He says that the tenant has been in arrears and remains in arrears. These are matters which have to be considered, but they cannot be considered in the present proceedings, partly because they are questions of fact on which there is no evidence before us and partly because we do not have the advantage of the judgment of the High Court on these aspects.

12. Accordingly, we set aside the impugned judgment and remand this case to the High Court for fresh consideration after affording the parties a reasonable opportunity of producing whatever documents which they may wish to produce. We do not, however, express any view on the merits of the relative contentions of the parties as regards the question of arrears.

13. For the reasons stated by us, we set aside the order of the High Court dated 1-12-1988 in S. B. Civil Revision Petition No. 414 of 1984.

14. The tenant shall not be evicted pending proceedings in the High Court, subject to the condition that he continues to pay the rent fixed by this Court as per the Order dated 10-4-1989.

15. The appeals are disposed of as above. The parties shall bear their respective costs.

16. In view of the long period which has elapsed since the institution of the proceedings, commencing with the earlier suit, we trust that all steps will be taken by the High Court to expedite the present proceedings.

Order accordingly.

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