

RAJASTHAN HIGH COURT

Kishanlal Sharma

Vs.

Prem Kishore

Civil Revn. Petn. No. 590 of 1981
(N.M. Kasliwal and K.S. Sidhu, JJ.)

28.01.1983

JUDGEMENT

Sidhu, J.

1. This petition of revision under Section 115 C.P.C. is directed against the appellate order, dated, July 23, 1981; by the Additional District Judge, Jaipur City whereby that learned Judge affirmed the order, dated, December 12, 1980, by the trial court dismissing the petitioner's application, dated, April 11, 1980, for provisional determination of arrears of rent payable by the petitioner-tenant to the respondent-landlord, in accordance with the provisions of Section 13(3), Rajasthan Premises (Control of Rent and Eviction) Act, 1950, as amended to date.

2. The facts which may be helpful in appreciating the controversy may be briefly recapitulated here. Prem Kishore, who is the respondent in this petition and who will hereinafter be referred to as the plaintiff, filed a suit against Kishanlal Sharma, the present petitioner, who will hereinafter be referred to as the defendant, for eviction from certain residential premises on the averments that the defendant is in occupation of the premises as a tenant since June, 1971, that the original landlord, Mukat Beharilal, sold the premises to the plaintiff, vide sale deed, dated, May 20, 1974, registered on June 17, 1974, that the vendor duly notified the defendant asking him to attorn to the plaintiff and pay rent to him from May 20, 1974 onwards and that the defendant had rendered himself liable to be evicted from these premises by reason of non-payment of rent due from him from September 1, 1974 to June 30, 1975. The plaintiff mentioned in this context that earlier he had filed a suit for eviction against the defendant in respect of the same premises on the ground of personal *bonafide* necessity and for recovery of arrears of rent for the period from May 20, 1974 to

August 31, 1974, and that the same was still pending on July 2, 1975, when the present suit was filed.

3. The defendant filed his written statement on March 13, 1976, admitting that he had been inducted into the premises by Mukat Behari Lal on a rental of Rs. 50/- per mensem which was increased to Rs. 58/- per mensem with effect from February 1, 1972. He also admitted that Mukat Behari Lal had executed the sale deed, dated, May 20, 1974, in respect of these premises in favor of the plaintiff as vendee. He however described the sale as fictitious and benami which had been brought about by Mukat Beharilal so that he could obtain a decree for eviction in the name of the plaintiff on the ground of the latter's personal necessity.

4. As already stated, the suit out of which this petition of revision has arisen, was filed on July 2, 1975. Section 13(4) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950; as it then stood at the time of institution of the suit (hereinafter called the old Act) required, that 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 the default. It is a matter of record, and it is indeed admitted by the defendant, that the first day of hearing in the suit was on September 26, 1975, when the defendant entered appearance and made an application under Section 10 C.P.C. for stay of proceedings in the suit by reason of the pendency of a previously instituted suit in respect of the same subject matter. In other words, the defendant did not comply with the provisions of Section 13(4) of the old Act on the first day of hearing inasmuch as he did not deposit in court or pay to the plaintiff the arrears of rent for the period from September 1, 1974, to September 26, 1975 at the admitted rate of Rs. 58/-per mensem or for that matter at any other rate. Instead, he made an application nearly five years later, i.e., on April 11, 1980, for provisional determination of arrears of rent under Section 13(3), Rajasthan Premises (Control of Rent and Eviction) Act.1950, as amended by the Rajasthan Premises (Control of Rent and Eviction) Amendment Ordinance 1975, since replaced by the Rajasthan Amending Act No. 14 of 1976 (the old Act, thus amended with effect from September 29, 1975, will hereinafter be referred to as the amended Act). Before the defendant made the said application, the plaintiff had already made his application dated, September 21, 1979, for an order directing the defense against eviction to be

struck out on the ground that the defendant had failed to deposit or pay any amount referred to in sub-section (4) of Section 13 of the old Act, and that he, did not even avail of the special provisions of Section 13-A of the amended Act inasmuch as he did not make any application for determination of arrears of rent within the prescribed period of one month from September 29, 1975 when the 'amended Act came into force. The plaintiff filed a reply, dated, May 13, 1980, to the defendant's application dated, April 11, 1980. He repeated therein that since the suit was already pending on September 29, 1975, when the amended Act came into force, it will of governed by the provisions of the old Act, and therefore the defendant had already incurred the liability of his defense being struck out by reason of his failure to deposit or pay the amount referred to in sub- section (4) of Section 13 of the old Act. On the other hand, the defendant took the stand that the suit is governed by Section 13(3) of the amended Act, and therefore a duty is cast on the court to make a provisional determination of arrears of rent to be deposited or paid by the defendant. Without such determination, it is further contended by the defendant, there is no question of deposit or payment by the defendant, and, for that matter, there is no question of his defense being struck out for non-deposit or non-payment.

5. The only question which fell for decision by the trial court in the matter of the defendant's application dated April 11, 1980, was whether the rights and liabilities of the plaintiff and the defendant in this suit which was instituted under the old Act and which was still pending when the amended Act came into force on September 20, 1975, would be governed by the old Act or by the amended Act. Relying on a judgment of this court reported in *Hazarilal v. Radha Kishan*,¹ the trial court held that the suit which was already pending when the amended Act came into force is governed by the provisions of the old Act, and that it the defendant wanted to save himself from the consequences of his failure to deposit or pay the arrears of rent in accordance with the provisions of Section 13(4) of the old Act, his only escape was by recourse to the special provisions of Section 13-A of the amended Act which deal with pending suits in a limited way. Since the defendant did not avail of the provisions of Section 13-A within the prescribed period of limitation his application, dated April 11, 1980, cannot be allowed. Consequently, the trial court dismissed the said application by its order dated December 12, 1980.

6. The defendant challenged the said dismissal by an appeal before the District Court. As already stated, his appeal was also dismissed by the Additional District Judge on

July 23, 1981. Undeterred by these two dismissals, the defendant filed the present petition of revision which came up for hearing before G.M. Lodha J. on December 11, 1981. Lodha J. felt some difficulty in deciding the matter by reason of what he described as a "seemingly serious conflict of opinion" expressed in certain single Bench decision of this Court. He therefore referred the revision petition for decision by a larger Bench. That is how a revision is before us for hearing and final disposal.

7. After hearing both sides, we are quite clearly of opinion that this matter is covered four-square by a number of decisions of this Court. We may start with the judgment reported in *Carona Sahu Co. Ltd. v. Vinod Kumar Goyal*,² which applies on all fours to the facts of this case. One of us (Kasliwal J.) who decided the cited case dealt with this point as under (at p. 4) :-

"In my view the above provisions apply in a suit filed on or after coming into force of the amending Ordinance. However, the legislature was fully aware to deal with the pending suits and other proceedings by way of appeals, application for revisions etc., pending on the day of the commencement of the amending Ordinance and for which special provisions have been laid down by enacting Section 13A. It is a well settled proposition of law that where there are both special as well as general provisions with regard to a matter special provisions prevail over the general provisions."

8. Reference may also be made to *Jagdish Prasad v. Firozi Bai*,³ in which this Court discussed the effect of Section 6, Rajasthan General Clauses Act, 1955, on the repeal of some provisions of the old Act by their substitution by corresponding provisions of the amended Act, and concluded that a suit which was already pending at the time of such repeal was required to be continued as if the amended Act had not been passed.

9. Similarly, another single Bench of this Court has had occasion to deal with this point in *Kishanlal v. Kamla Devi Sharma*,⁴ The headnote in the report reads as under :-The provisions of Sub-Section(3) of Section 13 as amended can only be made applicable to a case in which no order was passed under the earlier provisions of Sub-Section(3) or Sub-Section(4) of Section 13 of the Act. If at the time of the first hearing of the suit, the amended provisions of the Act were applicable as they existed before the amendment was introduced therein and if an order was passed by the court under the provisions of sub- section (3) or Sub-Section(4) of Section 13 of the Act, as they

existed at that time then there is no further requirement under the amended provisions of sub-section (3) of Section 13 of the Act that the trial court should still proceed to pass a fresh order under the said provisions.

10. *Hazarilal v. Radha Kishan*⁵ decided by Kasliwal, J. on November 20, 1978, is a ruling relied on by the two Courts below in support of their decision that the suit giving rise to this revision petition will have to be decided in accordance with the provisions of the old Act by reason of the fact that it had already been instituted before the amended Act came into force. The cited case clearly supports the view taken by the Courts below. We may reproduce here from the cited judgment some observations which fully apply to the facts of this case. The relevant observations read as under :-

The provisions of Section 13A of the Amending Act, 1976, make it clear that provisions of Section 13(3) of the Amending Act 1976, do not apply in case of pending suits and actions. If a tenant in pending suit or action at the time of coming into force of the Rajasthan Amending Act, 1976 wanted to save himself from the default he should have resorted to Section 13A. The provisions of Section 13(3) of the Act number No. 14 of 1976 can only apply to suits filed after 29th September 1975. The present suit having been filed prior to this dated and the defendant having not moved any application under Section 13A of the Act No. 14 of 1976, will be governed by the provisions of Section 13(4) of the Act of 1950. The lower Courts have thus committed no error in passing an order striking out the defence of the defendant against eviction.

11. Reference may also be made to *Banwari Lal v. Balkishan*,⁶ The learned single Judge (Jagat Narayan C. J.) held in the cited case that though Section 13(1) of the Act is retrospective but the provisions of sub- secs.(4) to (7) of Section 13 are prospective and do not apply to pending suits. This ruling also supports the view taken by the two Courts below.

12. We may now refer to *Jai Narain v. Meena Devi*,⁷ in which a learned single Judge of this Court (D.P. Gupta J.) made certain observations which seem to support the defendant's contention that the amended Act will govern all suits which were pending at the time the amendments came into force. The learned Judge came to this conclusion on the view that provisions of sub-section (3) of Section 13 of the amended Act are procedural in nature and that therefore they would be applicable to all pending

suits in which a written statement had not been filed before the amended Act came into force. We regret we cannot endorse the view that provisions of Sub-Section(3) of Section 13 of the amended Act are procedural in nature. If we read the provisions of sub-section (3) along with the provisions of sub-sections (4) and (5) of Section 13 of the amended Act, which in fact have to be read together because they form integral links of the same chain, it will be seen that they create substantive rights and obligations which can be ignored by a party only at his peril. For example, if it is held that sub-section (4) of section 13 of the old Act applies to a particular suit to the exclusion of sub-section (3) of Section 13 of the amended Act an obligation is immediately cast on the tenant to deposit or pay on the first date of hearing in the suit the arrears of rent due from him regardless of determination by the court and if he fails to do so, he runs the risk of his defence being struck out. That being so, a provision of law which creates rights and obligations of this nature cannot by any stretch of reasoning be described as procedural in nature.

13. In view of the foregoing discussion of case-law, we hold that a suit for eviction which was already pending at the commencement of the amended Act will have to be tried in accordance with the provisions of the old Act as if the amended Act had not been passed and that therefore the rights and liabilities of the parties arising out of the tenant's failure to deposit or pay the arrears of rent in accordance with the provisions of sub-sections (4) and (6) of the old Act must be determined on the basis of the old Act and the special provisions of Section 13A of the amended Act. Consequently, we find on force in this revision petition and dismiss it as such leaving the parties to bear their own costs.

Revision dismissed.

Cases Referred.

1. Civil Revn. No. 307 of 1977, decided on November 20, 1978
2. AIR 1979 Raj 1
3. 1981, WLN 497: (AIR 1982 NOC 94)
4. 1979 Raj LW 369
5. Civil Revn. No. 307 of 1977
6. 1972 Raj LW 635
7. 1978 WLN (UC) 473

