

RAJASTHAN HIGH COURT

Motilal

Vs.

Laxman

Civil Revision Petition No. 360 of 1998
(N.P. Gupta, J.)

29.05.2000

JUDGMENT

N.P. Gupta, J.

1. Heard learned counsel for the petitioner as nobody has appeared on behalf of non-petitioner on the last date of hearing being 17.5.2000 and even today.
2. By the impugned orders the learned trial court has made provisional determination of rent under Section 13(3) calculating the arrears of rent at the rate of Rs. 150/- per month as claimed by the plaintiff and the learned lower appellate court has affirmed the same.
3. Assailing these orders the learned counsel for the petitioner contends, firstly that there is no material on record on the basis of which the learned trial court could arrive at a conclusion about the monthly rent of the suit premises being Rs. 150/- per month, on the other hand according to the learned counsel the premises were taken or rent in the year 1963-64 at the rate of Rs. 17/- per month and therefore, the determination is bad. Secondly it has been contended that the petitioner had produced on record the receipt of the year 1965 showing the rent to have been paid at Rs. 17/- per month, that was required to be considered *prima-facie* document for arriving at a finding about the correctness of the monthly rate of rent claimed by the plaintiff. Thirdly, it has been contended that the petitioner had produced before the learned lower appellate court the House Tax Assessment Record invoking the provisions of Order 41 Rule 27 C.P.C. which clearly show that the annual rent of 5 shops was considered to be Rs. 2400/- and therefore, the claim of the plaintiff about the monthly rent of suit shop of being

Rs. 150/- is *ex-facie* wrong. Lastly it has been contended that in any case, in such circumstances some reasonable inquiry was required to be held whether by recording statements of the parties under Order 10 Rule 1 C.P.C. or by permitting the deponents of the affidavits to be cross-examined by the other party. For this proposition the learned counsel has placed reliance on two judgments of this Court being reported in *Bhagwani Devi v. Kamla Devi* ¹ and *(Rajasthan)(Jaipur Bench), Chhagan Lal v. Ram Babu.* ²

4. Having considered the submissions and having gone through the record, I am not inclined to agree with the learned counsel for the petitioner. So far as the first contention is concerned, the learned lower appellate court has considered the receipt and has recorded a positive finding that receipt has been given by Gyarsi Ram and there is nothing placed on record by the petitioner to show as to how Gyarsi Ram was connected with the plaintiff non- petitioner. According to the learned lower appellate court it cannot be said that receipt relates to the suit premises. That apart the learned lower appellate court has further found that what was the state of monthly rent at the time of filing of the suit has not been made clear, inasmuch as neither any receipt for subsequent period has at all been produced by the petitioner nor anything has been pleaded even in the written statement. It is submitted before me orally by the learned counsel that the rent was being paid but receipts were not given by the landlord. I am not inclined to accede to the submission, inasmuch as if the petitioner had obtained receipt in the year 1965, it does not stand to reason that he would not continue to obtain the receipt or in any case he would not obtain any receipt whatever for the entire period during which he continued in the tenancy. That apart the conduct of the petitioner further shows that he has not chosen to disclose as to what was the rate of rent last paid by him. Though in the written statement he has made the averment to have paid rent up to August, 1993 and has contended that when he went to pay rent for the subsequent period, the landlord demanded the rent at the rate of Rs. 150/- per month which being excessive he was not prepared to pay and the plaintiff did not accept the lesser amount, but even at this stage the petitioner has not disclosed as to what was the rate of rent at which he was paying till then.

5. So far as the House Tax Record is concerned, true it is that it could be considered for the purpose of making provisional determination of rent but then it was not produced by the petitioner before the learned trial court. The reason given by the petitioner in the application under Order 41 Rule 27 is that he could not come to know

of it earlier. Be that as it may, the fact does remain that the learned lower appellate court has not at all considered the application under Order 41 Rule 27. It is in these circumstances that I have looked into the application so also the assessment record and found that according to it the property has been shown to be a two-storied house having two rooms, verandah etc, on each floor and is said to be in tenancy of 5 persons and mentions the annual rent to be 2400/- rupees. It does not disclose as to what amount of rent is paid by each of the tenants, but then admittedly the petitioner is a tenant in three rooms in the building, it has therefore, necessarily to be assumed that the other remaining 4th room or the first floor must not be housing other four tenants, or may be that thereafter there may be change in tenants or building. It is not pleaded by the petitioner that he is having the same accommodation since beginning or that in any case the accommodation presently with him is the same as was with him during the period to which the house tax assessment record relates. In such circumstances, the House Tax Assessment Record, even if were to be considered does not substantiate the contention about the monthly rent of the premises even at that relevant time (82-83) to be Rs. 17/- per month.

6. So far as the question about recording the statements under Order 10 Rule 1 is concerned, firstly the provision is discretionary, secondly no such request was at all made in the trial court and thirdly which is more important is that the defendant has not come forward with any positive case about any specific amount being the monthly rent last paid. The plaintiff has come with a positive case about monthly rent being Rs. 150/- as against which the defendant has come forward with a case of monthly rent being Rs. 17/- in the year 1963-65 and this House Tax Assessment Record does also show that even in the year 1982-83 the monthly rent could not be Rs. 17/- per month. Under Order 10 Rule 1 the Court may examine the parties for the purpose of asking them as to whether they admit or deny the averments of the other party. Here the defendant had already denied the averments (claim) of the plaintiff made in the plaint. So far as calling upon the plaintiff is concerned, the defendant had not come forward with any specific case of the monthly rent being a particular amount above Rs. 17/- per month to be the amount of monthly rent last paid, which the plaintiff could be called upon to admit or deny. In this review of the matter, though it would have been better if the learned trial court would have recorded the statements under Order 10 Rule 1, but then if the determination has been made without recording such statements it cannot be said to be suffering from jurisdictional error. What is still more significant is that the defendant has not even filed any affidavit before the learned trial court, of

course no such affidavit has been filed by the plaintiff either. Consequently, the other course suggested of directing the dependents to be cross-examined by the adversaries was also not available. In this view of the matter I do not find any jurisdictional error in the impugned order. That apart according to Section 13(3) the determination made is only provisional and is subject to adjustment at the time of final decision of the suit.

7. However, I would like to make it clear here, that since difference in the rate of rent claimed by rival parties is so heavy that, according to the learned counsel for the petitioner it amounts to putting the petitioner at a ransom, and has been falsely claimed only with a view to see somehow that the petitioner is not able to pay the rent and he is made to vacate the premises by invoking Section 13(5) of the Act. Suffice it to say that Hon'ble Supreme Court has time and again safeguarded such situation, when it has held that suppression of material fact before the Court, or withholding important document, or deposing falsehood, not only may amount to fraud vitiating the entire proceedings but may also amount to contempt of court. In this view of the matter it is directed that the learned trial Court, while trying the suit, will keep in view that if ultimately it finds that the plaintiff has come with a false case by claiming such exaggerated amount of rent, it will take appropriate action against the plaintiff and will also adequately protect the petitioner.

8. The revision petition is accordingly dismissed with the above directions.

Revision dismissed.

Cases Referred.

1. 1997(1) RLR 763
2. 1992(2) WLC (Raj) 254: 1994(1) RCR (Rent) 633