

RAJASTHAN HIGH COURT

Chaitanya Swaroop

Vs.

Rajeev Kumar Jain

Civil W.P. No. 1178 of 2004

(K.S. Rathore, J.)

13.09.2004

ORDER

K.S. Rathore, J.

1. This writ petition is directed against the order dated 10-8-2000 passed by the Additional District Judge No. 2, *Jaipur City, Jaipur* in civil first appeal No. 48/96. The appellate Court vide its order dated 10-8-2000 remanded back the matter to the trial Court for deciding the issue whether the disputed suit premises was given for residential purposes and the tenant is using the premises for commercial use or not i.e. other than the purpose for which the suit premises was given on rent by the plaintiff respondent.

2. Learned counsel for the petitioner-defendant submits that the matter was fixed for pronouncement of judgment and placed the order sheets for perusal of this Court. Despite pronouncing the judgment, the appellate Court has passed the impugned order remanding the matter back to the trial Court for fresh adjudication on the issue raised by the plaintiff-respondent through its application dated 9-8-2000.

3. The petitioner earlier assailed the impugned order before this Court in revision petition No. 1086/2000, which was decided by this Court vide judgment dated 20-1-2004 and observed as under :-

"The defendant tenant petitioner filed the regular appeal against the said judgment and decree of the learned trial Court. On 10th of August, 2000 the learned Additional District Judge No. 2, *Jaipur City, Jaipur* in the appeal passed the impugned judgment. The appeal was kept pending and additional issue has been framed which has been remitted to the learned trial Court with

the direction to record the evidence thereon of the parties and its finding and return the same to the first appellate Court. Thus, the regular appeal has not been finally decided and it is pending. It is only an interlocutory order which can be challenged in the regular appeal to be filed against the final judgment and decree in the appeal. In view of these facts no interference in this revision petition can be made.

Accordingly this revision petition fails and the same is dismissed."

4. The petitioner preferred this writ petition assailing the same impugned order dated 10-8-2000 on the ground that the appellate Court has seriously erred in remanding the matter back to the trial Court for fresh adjudication for the issue which was not dealt with at the initial stage. In support of his submission, he placed reliance on the judgment rendered in case of *Arjun Singh v. Mohindra Kumar reported in*, 'wherein the Hon'ble Supreme Court has held as under :-

"When once the hearing starts, the Code contemplates only two stages in the trial of the suit : (1) where the hearing is adjourned or (2) where the hearing is completed. Where hearing is completed the parties have no further rights or privileges in the matter and it is only for the convenience of the Court that Order 20, Rule 1 permits judgment to be delivered after an interval after the hearing is completed. It would, therefore, follow that after the stage contemplated by Order 9, Rule 7 is passed the next stage is only the passing of a decree which on the terms of Order 9, Rule 6 the Court is competent to pass. And then follows the remedy of the party to have that decree set aside by application under Order 9, Rule 13. There is thus no hiatus between the two stages of reservation of judgment and pronouncing the judgment so as to make it necessary for the Court to afford to the party the remedy of getting orders passed on the lines of Order 9, Rule 7. As provision has been made for every contingency, there is no scope for the invocation of the inherent powers of the Court to make an order necessary for the ends of justice."

5. Learned counsel for the petitioner also placed the photocopy of the order sheets and submits that on 5-8-2000, the matter was fixed for hearing the final argument. On 9-8-2000, after 4 days, the Court has entertained the application filed by the petitioner and the matter was remanded back to the trial Court vide impugned order dated 10-8-2000 on the new issue as indicated in the order. Learned counsel for the petitioner placed reliance on the judgments rendered by this Court in cases of *Maya Devi v. Hari Singh*

reported in ² and *Raj Kumar Rajmani v. Union Bank of India reported in* ³ wherein this Court observed that by fixing the case for pronouncement of judgment, no proceedings are pending, the trial Court is prohibited from taking on record the supplementary power of attorney or for deciding the subsequent application. It was further made clear that it would be open to the plaintiff to seek permission of the appellate Court to produce the documents by way of additional documents at the appellate stage.

6. While placing reliance on the aforesaid judgments, learned counsel for the petitioner has given much emphasis that matter was finally heard and it was fixed for pronouncement of judgment on 9-8-2000 meaning thereby the judgment was reserved on 5-8-2000 and the appellate Court only have to pronounce the judgment on 9-8-2000. Despite pronouncing the judgment finally in the appeal, the appellate Court has passed the impugned order by which the matter was remanded to the trial Court for adjudication on the issue which was newly proposed in the appeal.

7. The question crop up as to whether when the matter was finally heard on 5-8-2000 and fixed on 9-8-2000 for pronouncement of judgment, in between, any application filed by the plaintiff respondent can be entertained or not.

8. Per contra, learned counsel for the respondents submits that this writ petition is not maintainable as the revision petition filed by the petitioner against the impugned order has been dismissed by this Court to merit. Learned counsel for the respondents read over the judgment dated 20-1-2004 wherein it was observed by this Court that the impugned order is an interlocutory order which can be challenged in the regular appeal to be filed against the final judgment and decree in the appeal. In view of these facts no interference in this revision petition can be made. Learned counsel further submits that since the revision petition was dismissed on merit, this writ petition against the same impugned order is not maintainable and the writ petition has been filed with the purpose to delay the proceedings.

9. To this effect, learned counsel for the petitioner referred Order 41, Rule 26 and Rule 33 which are reproduced hereunder :-

26. Findings and evidence to be put on record - Objections to finding .- (1) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding.

(2) Determination of appeal.- After the expiration of the period so fixed for

presenting such memorandum the Appellate Court shall proceed to determine the appeal.

33. Power of Court of Appeal - The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees.

10. Having considered the rival submissions of the respective parties and having gone through the judgments as well as relevant provisions of law and material available on record, it reveals that the question which was crop up that the suit premises which was given on rent for residential purposes can be used for commercial purposes, has not been decided by the trial Court.

11. Since in the revision petition this Court observed that it is an interlocutory order which can be challenged in the regular appeal to be filed against the final judgment and decree in the appeal, I do not think proper to entertain this writ petition while exercising power under Article 227 of the Constitution. I am not convinced with the submission that once the matter was heard and it is fixed for pronouncement of judgment, subsequent event can be taken on record. Here in the instant case, the appellate Court while keeping the appeal pending sought observation/opinion on the newly proposed issue, therefore, for the limited purpose, the matter was remanded back to the trial Court. In such eventuality, when the matter was fixed for pronouncement of judgment, it is not necessary for the Court to pass the final decree. In view of the facts and circumstances of the case, the judgments referred by the learned counsel for the petitioner are not applicable to the instant case. Consequently, the writ petition fails and is hereby dismissed with no order as to costs. The interim order dated 3-3-2004 stands rejected.

Petition dismissed.

Cases Referred.

1. AIR 1964 SC 993
2. 2002 (5) WLC (Raj) 336: (2002 AIHC 26)
3. 1995 (2) Raj LW 289: (1995 AIHC 4884)