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LADU RAM
v
GANESH LAL

AUGUST 12, 1999

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[V.N. KHARE AND S.S. MOHAMMED QUADRI, JJ.]

Rent Control and Eviction :

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Rajasthan Premises (Control of Rent and Eviction) Act, 1950—Sections 13(1)(a), (3) & (4).

Suit for eviction—Default in payment of rent—Landlord not seeking any relief for recovery of arrears of rent—Held, absence of such relief does not preclude the court in determining provisional rent or decreeing the suit—Code of Civil Procedure—Order 2 Rule 2.

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Decree of eviction—Obtaining of—Landlord to plead and prove—Tenant in arrears of rent—Arrears of rent due for more than six months—Tenant failed to pay arrears of rent to the landlord.

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The appellant filed a suit for eviction under sections 13(1)(a), (3) and (4) of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 against the respondent on the ground of default in payment of rent. The appellant did not seek the relief of recovery of arrears of rent. It was stated in the plaint that rent was due since December, 1993. The trial court assessed the provisional rent under Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 which was to be paid to the appellant or deposited in court by the respondent. The respondent challenged the order before the appellate court but the same was dismissed. The respondent filed a revision petition before the High Court. The High Court allowing the petition held that as the appellant had not sought the relief of recovery of arrears of rent in the suit for eviction, the trial court was not right in determining provisional rent due from the respondent.

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In this appeal challenging the aforesaid order the appellant stated that the High Court erred in holding that since the averments of default in payment of rent was not substantiated by the appellant by asking relief of recovery of arrears of rent; and that the court could not determine the

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provisional rent to be deposited by the respondent under Section 13(3) of the Act. A

Allowing the appeal, this Court

HELD 1.1. A landlord is not required, in a suit for eviction based on default in payment of rent, to seek an additional relief for recovery of arrears of rent. Even without such a relief a decree for eviction against a tenant can be passed by the court. [394-F] B

1.2. In a suit for eviction based on the ground of Section 13 (1)(a) of the Rajasthan Rent Control Act, the landlord must allege and prove three requirements, namely, (i) the tenant is in arrears of rent, (ii) such arrears of rent were due for more than six months and (iii) the tenant has failed to pay such arrears of rent to the landlord. Excepting these requirements there is no other requirement of law which a landlord is to plead and prove for obtaining decree of eviction. [394-D-E] C

2.1. Under order 2 sub-rule (2) of Code of Civil Procedure, where a plaintiff omits to sue in respect of, or intentionally relinquishes any portion of his claim, he is debarred afterwards to sue in respect of the portion so omitted or relinquished. The only effect of absence of relief for recovery of arrears of rent in a suit is that the plaintiff cannot subsequently file a suit for recovery of arrears of rent for which he omits to sue in a suit for eviction based on default in payment of rent. Applying the said principle it does not stand to reason why a suit simplicitor for eviction on the ground set forth in Section 13(1)(a) of the Act is not maintainable in absence of relief for recovery of arrears of rent. [394-F-G-H] D E

2.2. A perusal of Sections 13 (3), (4), (5) and (6) shows that the relief for ejection on the ground of default can be granted if it is found by the court that the tenant was in arrears of rent under section 13(1) (a) of the Act and the tenant has further failed to comply with the provisions of Section 13 (3) & (4) of the Act. Thus in a suit for ejection of a tenant on the ground set forth in Section 13 (1) (a) of the Act, the court is required to provisionally determine the amount of rent which a tenant is required to deposit in order to escape from the decree of eviction even if no relief is prayed for, for recovery of arrears of rent. In case the rent is deposited, the landlord is entitled to get the arrears of rent as the tenant had relieved himself of the decree of eviction. [395-C-D] F G

A From the Judgment and Order dated 28.7.1997 of the Rajasthan High Court in S.B.C.R. No. 216 of 1997.

Sushil Kumar Jain, A.P. Dhamija and Ms. Anjali Doshi for the Appellant.

K. Rajeev, A.K. Mishra and Sanjay Parikh for the Respondent.

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The Judgment of the Court was delivered by

V.N. KHARE, J. The appellant herein is the landlord who brought a suit for ejection against the respondent-tenant on the ground of *bona fide* need and default in making payment of rent. It is not disputed that the appellant in the suit did not seek any relief in respect of recovery of arrears of rent. In the plaint it was alleged that the rent was due against the tenant since December, 1993. The trial court determined the provisional rent as required under sub-section (3) of Section 13 of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as 'the Act') which the respondent-tenant was required to deposit or pay the rent from December 1993 to January 1996 -amounting to Rs. 69,920 plus interest @ 6 per cent to the landlord. The respondent-tenant challenged the order passed by the trial court before the lower appellate court but the same was dismissed. Aggrieved, the tenant filed a revision petition before the High Court of Judicature of Rajasthan at Jaipur. The High Court took the view that, in the absence of relief in the suit for recovery of arrears of rent, the trial court could not have determined the provisional rent to be deposited by the tenant under Section 13(3) of the Act. Consequently, the revision was allowed and the order of the court below was set aside. Against this order of the High Court the landlord is in appeal before us.

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It is urged on behalf of the appellant's counsel that the view taken by the High Court that, as the averments of default was not substantiated by the landlord by asking the relief of recovery of arrears of rent in the plaint, the ground of default was not properly set forth in the suit, therefore, the court was not required to determine the amount of rent, is patently erroneous. After we heard the matter, we found merit in the submission. In order to appreciate the arguments it is necessary to set out the relevant provisions of the Act.

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"13 (a) that the tenant has neither paid nor tendered the amount of rent due from him for six months.

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(3) In a suit for eviction on the ground set forth in clause (a) of sub-

section (1); with or without any of the other grounds referred to in that sub-section, the court shall, on the first date of hearing or on any other date as the court may fix in this behalf which shall not be more than three months after filing of the written statement and shall be before the framing of the issue, after hearing the parties and on the basis of material on record provisionally determine the amount of rent to be deposited in court or paid to the landlord by the tenant. Such amount shall be calculated at this rate of rent at which it was last paid or was payable for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which such determination is made together with interest on such amount calculated at the rate of six per cent per annum from the date when any such amount was payable up to the date of determination;

Provided that while determining the amount under this sub-section, the court shall not take into account the amount of rent which was barred by limitation on the date of the filing of the suit.

(4) The tenant shall deposit in court or pay to the landlord the amount determined by the court under sub-section (3) within fifteen days from the date of such determination, or within such further time, not exceeding three months, as may be extended by the court. The tenant shall also continue to deposit in court or pay to the landlord, month by month, the monthly rent subsequent to the period up to which determination has been made, by the fifteenth of each succeeding month or within such further time not exceeding fifteen days, as may be extended by the court at the monthly rate at which the rent was determined by the court under sub-section (3).

(5) If a tenant fails to deposit or pay any amount referred to in sub-section (4), on the date or within the time specified therein, the court shall order the defence against eviction to be struck out and shall proceed with the hearing of the suit.

(6) If a tenant makes deposit or payment as required by sub-section (4), no decree for eviction on the ground specified in clause (a) of sub-section (1) shall be passed by the court against him;

Provided that a tenant shall not be entitled to any relief under this sub-section, if having obtained such benefit or benefit under section 13-A in respect of any such accommodation, if he again makes a

A default in the payment of rent of that accommodation for six months.”

The plaintiff of the suit filed by the appellant discloses that the suit was for ejection of the respondent tenant on the ground of default in payment of rent. According to the scheme of the Act, in such a suit the court is required to provisionally determine the amount of arrears of rent to be deposited in the court or paid to the landlord by the tenant along with interest. After the provisional determination of the arrears of rent by the trial court, the tenant is required to deposit the entire arrears of rent as determined by the trial court within a particular period of time, and further the tenant is required to deposit in the court or pay to the landlord monthly rent subsequent to the period upto which the determination has been made. In case the tenant fails to comply with the order of the court, his defence against the eviction is liable to be struck off and the court is to proceed with the hearing of the suit. If the tenant complies with the order, the tenant is relieved of the decree for eviction on the ground of default in payment of rent.

D. Now, the question that arises for consideration is, whether a court in absence of any relief for recovery of arrears of rent in a suit for eviction based on default in payment of rent is precluded to determine the provisional amount of rent which a tenant is required to deposit? If a suit for eviction is based on the ground set forth in clause (a) of sub-section (1) of Section 13 of the Act, the landlord must allege and prove three requirements, namely, (i) the tenant is in arrears of rent, (ii) such arrears of rent were due for more than six months and (iii) the tenant has failed to pay such arrears of rent to the landlord. Excepting these requirements there is no other requirement of law which a landlord is to plead and prove for obtaining decree of eviction. We, therefore, find that a landlord is not required in a suit for eviction based on default to seek an additional relief for recovery of arrears of rent. Even without such a relief a decree for eviction against a tenant can be passed by the court. This aspect can be examined from another angle. Under Order 2 sub-rule (2) C.P.C., where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he is debarred afterwards to sue in respect of the portion so omitted or relinquished. The only effect of absence of relief for recovery of arrears of rent in a suit is that the plaintiff cannot subsequently file a suit for recovery of arrears of rent for which he omits to sue in a suit for eviction based on default in payment of rent. Applying the said principles it does not stand to reason why a suit simpliciter for eviction on the ground set forth in clause (a) of sub-section (1) of Section 13 of the Act is not maintainable in absence of relief for recovery of arrears of rent. A

perusal of sub-sections (3), (4), (5) and (6) of Section 13 shows that the determination and payment of arrears of rent by a tenant have been provided for the benefit of tenant. The object behind the aforesaid provisions is that no decree of ejectment can be passed in favour of landlord where the eviction is sought on the ground of default in payment of arrears of rent if the tenant pays or deposits the arrears of rent within the time provided. If the tenant deposits the arrears of rent, not only that he can contest the suit filed by the landlord, but also can avoid decree for ejectment on the ground of default in payment of rent. Therefore, the tenant cannot complain that in absence of any relief for recovery of arrears of rent in a suit for eviction, the court is not competent to provisionally determine the arrears of rent which a tenant is required to deposit within a particular period of time. The relief for ejectment on the ground of default can be granted if it is found by the court that the tenant was in arrears of rent as contemplated under Section 13(1)(a) of the Act and the tenant has further failed to comply with the provisions of sub-sections (3) and (4) of Section 13 of the Act. We are, therefore, of the view that in a suit for ejectment of a tenant on the ground set forth in Section 13(1)(a) of the Act, the court is required to provisionally determine the amount of rent which a tenant is required to deposit in order to escape from the decree of eviction even if no relief is prayed for, for recovery of arrears of rent. In case the rent is deposited, the landlord is entitled to get the arrears of rent as the tenant has relieved himself of the decree of eviction.

For all these reasons we find that the judgment of the High Court suffers from serious legal infirmity and deserves to be set aside. We, accordingly, set aside the order of the High Court under appeal. The appeal is allowed with costs, which we assess at Rs. 1,000.

N.J.

Appeal allowed.