



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Second Appeal No. 596/2005

1. Mangal Das son of late Shri Asandas, through Mangal Das and Brothers, Outside Barfkhana Street, Prithviraj Marg, Ajmer deceased through his legal heirs:-

1/1. Ashok Kumar S/o Shri Mangal Das

1/2. Kanhaiyalal S/o Shri Mangal Das

1/3. Nirmal Kumar S/o Shri Mangal Das

All residents of 4/56 old = 10/56 new= 16/69, behind G.P.O, Purani Mandi, Ajmer.

1/4. Smt. Shanti Bai W/o Shri Daulatram, D/o Shri Mangal Das, presently residing at Gandhi Dham, Gujrat.

1/5. Kanchan alias Gunwanti Bai W/o Shri Rajkumar d/o Shri Mangal Das, presently residing at Gandhi Dham, Gujrat

----Appellants-Defendants

Versus

1. Amar Singh Son of Shri Moolchand Chauhan, deceased through his legal heirs:-

1/1. Shri Inder Singh S/o Shri Amar singh Chauhan aged about 56 years resident of 11/12, Chauhan Building, Opposite Khailand Market, Barfkhana, Hathi Bhata, Prithviraj Marg, Ajmer.

1/2. Smt. Vidhya Devi D/o Late Shri Amar Singh.

1/3. Smt. Madhu Devi D/o Late Shri Amar Singh

Shri Inder Singh S/o Shri Amar Singh Chauhar, resident of 11/12, Chauhan Building, Opposite Khailand Market, Barfkhana, Hathi Bhata, Prithviraj Marg, Ajmer.

----Respondents-Plaintiffs

For Appellant(s) : Mr. Ajay Singh with
Ms. Deepa Choudhary

For Respondent(s) : Mr. Aditya Jain with
Ms. Bhavya Golecha

HON'BLE MR. JUSTICE SUDESH BANSAL

Judgment

20/05/2022



1. Appellant-defendant-tenant (hereinafter referred as "tenant") has preferred this second appeal under Section 100 CPC assailing the judgment and decree dated 02.09.2005 passed in Civil Regular Appeal No.158/2002 by the Additional District Judge No.3, Ajmer affirming the judgment and decree for rent and eviction dated 29.08.2002 passed in Civil Suit No.767/1983 by the Civil Judge (Junior Division), North, Ajmer.

2. The facts succinctly stated, which are relevant to decide the issue involved in the present second appeal, are that the rented premise comprising two shops bearing AMC No.11/12 situated at Imperial Road, Ajmer were in tenancy of the tenant-Mangal Das since 1948 @ Rs.150/- per month. The respondent-plaintiff-landlord (hereinafter referred as "landlord") instituted a civil suit for eviction on 26.11.1983 invoking the provisions of Section 13 of the Rajasthan Premise (Control of Rent and Eviction) Act, 1950 (hereinafter referred as "the Act of 1950") on the various grounds of default, nuisance, substantial damages and subletting. In relation to the default, the landlord pleaded that the tenant has committed default in payment of rent for the period from 01.01.1983 to 30.09.1983 i.e more than six months. The landlord vide registered notice dated 19.08.1983 asked the tenant to pay the due rent and to vacate the rented shop, however, since tenant did not respond the notice, the present suit was filed. The tenant submitted written statement admitting his tenancy in the rented shops since 1948, however, denied all the grounds of eviction. In relation to the default, the tenant took a defence that the rent was tendered through money order which was refused by the landlord and thereafter the due rent has been deposited in the court. It has contended that the landlord had knowledge about deposition of



due rent in the court, however, thereafter he initiated the present eviction suit. Thus, it was contended that tenant has not committed any default in payment of rent.

3. The trial court, on the basis of rival pleadings of both parties, settled the issues and recorded evidence of both the parties.

4. It may be noticed that since the eviction suit is based on the ground of default, as per provisions of Section 13(3) of the Act of 1950, the provisional rent was determined vide order dated 14.12.1988 from 01.01.1983 to 30.11.1988 @ Rs.150/- per month. As per order dated 14.12.1988, arrears of rent deposited by the tenant in the court was adjusted. The trial court, after hearing arguments of both parties and on appreciation of pleadings and evidence decided the suit vide judgment dated 29.08.2002 whereby and whereunder, though the grounds of subletting, nuisance and substantial damages were not found proved, however, the tenant was found defaulter in payment of rent. The issue No.1, pertains to the issue of default and while deciding this issue, the trial court, on the basis of evidence on record, recorded findings that tenant has neither paid the rent nor tendered from 01.01.1983 and hence has committed default in payment of rent for more than six months. The defence, taken by the tenant that the due rent from 01.01.1983 has been deposited in the court under the provisions of Section 19(A) of the Act of 1950 was taken into consideration by the trial court and it was observed that such deposition of rent in court is not lawful and valid. As per provision of Section 19A of the Act of 1950, if landlord refuses to accept the rent, the tenant is required to remit the due rent to landlord either by way of postal money order or by sending notices in writing, requiring the landlord to provide his



bank account details in order to deposit the due rent in his bank account. Such proposition of law as expounded in the case of **Fakir Mohd. vs Sita Ram reported in [(2002) 1 SCC 741]** was taken into consideration. The trial court noticed that the tenant has not produced any evidence to show that before deposition of the due rent in court under Section 19(A) of the Act of 1950, he

tendered the rent either through money order or sent written notices asking to the landlord to provide his bank account details.

Though, the application filed under Order 19(A) of the Act of 1950 was produced on record as Exhibit-2, however, the required documents of money order and written notices were not produced by the tenant. Mere avertments of remitting the due rent through money order and sending written notices asking from landlord to provide bank account details as mentioned in the application under Section 19(A) of the Act of 1950, were not found sufficient to prove the essential pre-conditions, mandated under Section 19(A) of the Act of 1950. The trial court observed that the plaintiff by his oral evidence has proved that that the tenant-defendant has committed default in payment of rent, than the onus shifts on the defendant-tenant and since tenant has not produced sufficient evidence, the rent deposited by tenant in the court, cannot be treated as lawful and valid, accordingly, the tenant was held defaulter in payment of rent.

5. The Hon'ble Supreme Court in case of **Kuldeep Singh vs Ganpat Lal And Another reported in [(1996) 1 SCC 243]** and **Fakir Mohd. vs Sita Ram reported in [(2002) 1 SCC 741]** has examined the scope of Section 19(A) of the Act of 1950 as well as the issue as to in what circumstances, the rent deposited in court under the provisions of Section 19(A) of the Act of 1950



can be treated to be lawful and valid. As per the proposition of law, expounded by the Hon'ble Supreme Court, the arrears of rent deposited by the tenant in the Court under Section 19(A) of the Act of 1950 has been found to be invalid. The coordinate bench of the Rajasthan High Court, Jaipur Bench in case of **Bajrang Lal Vs. Ramdeo reported in [(1988) 1 RLW 343]** has also held

that when the amount of rent for more than six months was not remitted to the landlord by money order nor any notice as required under Section 19(A)(3)(b) of the Act of 1950, was given by the tenant prior to depositing rent in court, the deposition of rent in court is invalid.

6. The trial court, on appreciation of material available on record and following the settled proposition of law, recorded findings that the tenant has committed default in payment of rent under Section 13(1) of the Act of 1950.

7. Further, the trial court observed that in the present suit the provisional rent was determined vide order dated 14.12.1988 under Section 13(3) of the Act of 1950 and as per Section 13(4) of the Act of 1950 it was required for the tenant to deposit the determined arrears of rent within prescribed time period as well as to deposit the rent continuously month by month within the time limit. The tenant was found defaulter in deposition of the provisional rent as well as in payment of rent of future months during pendency of the suit. The trial court observed that the provisional determined rent was deposited on 11.01.1989 instead of 29.12.1988. Thereafter, the tenant was also found defaulter in payment of rent from months of April 1994, May 1994, August 1994, August 1997, April 2000 and May 2000. The trial court, relying upon the provisions of Section 13(6) of the Act of 1950,



did not extend the benefit of first default to the tenant. Finally, the decree for eviction on the ground of default was passed by the trial court vide its judgment dated 29.08.2002.

8. The tenant challenged the judgment and decree for eviction passed on the ground of default by way of filing first appeal. The first appellate court re-heard the matter as a whole and after re-

appreciation of the evidence on record as also considering the proposition of law, concurred with the fact findings on the issue of default recorded by the trial court. The first appellate court also considered the application under Order 41 Rule 27 CPC to produce additional evidence.

9. It appears from the record that on the request of counsel for appellant-tenant, the first appellate court heard the parties separately on the application under Order 41 Rule 27 CPC and the application was allowed vide order dated 11.02.2004. Perusal of order dated 11.02.2004 goes to show that the first appellate court accorded opportunity to adduce the additional evidence before the first appellate court itself in view of the fact that the proceedings for eviction was pending since 1983. Both parties adduced their additional evidence before the first appellate court.

10. As far as, application filed by appellant-tenant under Section 65 of the Indian Evidence Act, is concerned, the same was heard and dismissed on merits vide order dated 07.04.2004 by the first appellate court with observations/findings that the secondary evidence has been prayed for those documents which have been alleged to be misplaced. The documents of money order, acknowledgment receipt, refusal coupon of money order, etc. are of the period prior to the institution of the eviction suit in the year 1983. Before the trial court, no such application for seeking



additional evidence was filed. The first appellate court observed that even at the time of producing the additional evidence before this Court, no such application was filed, the application was not treated as bona fide and was filed just to cause delay, hence the application was dismissed vide order dated 07.04.2004. This order has not been challenged in the present appeal, nor any substantial

question of law is framed on this issue of disallowing secondary evidence.

11. The first appellate court, on appreciation of the evidence on record as also the additional evidence produced by the parties pursuant to allowing the application under Order 41 Rule 27 CPC, observed that the defendant-tenant is defaulter in payment of rent and the arrears of rent deposited in court under Section 19(A) of the Act of 1950 is not lawful and valid deposition. The plea of tenant that since his erstwhile counsel suffered from weakness of eye-sight and could not produce the documents of money order and acknowledgment receipt of registered notice issued to the landlord asking bank account was not believed. The tenant even could not produce the refusal coupon of money order and acknowledgment receipt in his additional evidence. The registered notice, alleged to be issued by the tenant to the landlord though has been produced but the acknowledgment receipt to show the service of notice upon the landlord has not been produced. It is a case, where the tenant could not produce sufficient evidence to prove the deposition of rent arrears in court after following the pre-conditions as enshrined under Section 19(A) and could not discharge the onus shifted upon him.

12. Finally, the first appeal was dismissed vide judgment dated 02.09.2005, hence against the concurrent findings of fact on the



issue of default and passing decree for eviction on the ground of default, this second appeal has been preferred.

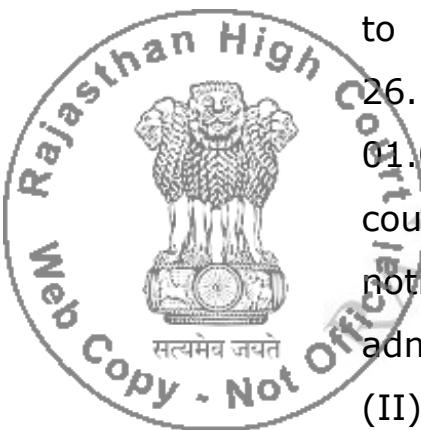
13. This Court admitted the second appeal vide order dated 25.11.2005 formulating following substantial questions of law:-

"(I) Whether any cause of action can be said to have accrued to the plaintiffs for filing the suit on ground of default claiming rent from 01.01.1983 to 30.09.1983 in the suit which was filed on 26.11.1983 when the amount of rent from 01.01.01983 to 31.07.1983 was deposited in the court vide application dated 02.08.1983 Ex.2 the notice of which was received by the plaintiffs admittedly on 05.11.1983?

(II) Whether the plaintiffs were estopped from filing a suit on ground of default as envisaged under Section 13(1)(a) of the act when there was a practice in between the parties to pay and accept the rent yearly?"

14. Heard counsel for both parties and perused the impugned judgments and record of both courts below.

15. As far as, substantial question of law No.(I) is concerned, this question requires re-appreciation of evidence as a whole. The re-appreciation of evidence by the High Court while exercising the jurisdiction under Section 100 CPC is not permissible, unless and until some perversity in the fact findings recorded by both courts below either based on misreading/non-reading of evidence or based on some inadmissible evidence or passed ignoring evidence on record have been pointed out. Both fact findings courts have evaluated the evidence produced by parties and observed that though, the defendants-tenant deposited the rent from January, 1983 in the court under Section 19(A) of the Act of 1950, but such deposition has been held as invalid. The defendants-tenants could





not produced evidence to show that before deposition of rent in court either he remitted the rent through postal money order or issued a legal notice to the landlord asking his bank account details to deposit the rent. Before the trial court, defendants-tenants neither produced the refusal coupon of money order nor produced any notice alleged to be issued to the landlord for

asking his bank account details. Thus, the trial court observed that the mandatory pre-requisites of Section 19(A)(3)(c) & (4) of the Act of 1950 to deposit the rent in court were not complied with.

Before the first appellate court, the defendants-tenants were allowed to adduce additional evidence by allowing their application under Order 41 Rule 27 CPC. Tenant, in his additional evidence also could not produce the documents to show his remittance of rent through money order. Though, the tenant produced legal notice issued to the landlord to disclose the bank account details but the acknowledgment slip of the postal receipt that the notice had been delivered to the landlord and was received by him, was not produced. The first appellate court also observed that in absence of proof to adopt either of the mode of remittance of rent to the landlord, either by way of postal money order or by way of issuing notice to deposit the rent in the bank account, have not been fulfilled, hence the rent deposited in the court is invalid. The findings recorded by both courts below, find support with the proposition of law, as expounded by the Hon'ble Supreme Court in case of **Fakir Mohd. (Dead) By Lrs vs Sita Ram reported in [(2002) 1 SCC 741]**.

In this case, the Hon'ble Supreme Court observed that it was obligatory on the part of the tenant to prove the service of notice in view of the statement on oath given by the landlord, denying receipt of any such notice. The facts of case in



hand are clear that neither tenant could prove that before deposition of rent in court under Section 19(A) of the Act of 1950, he remitted the due rent from January, 1983 through postal money order to the landlord nor could show that he sent a notice to landlord asking his bank account details. In such backdrop of factual matrix, the substantial question of law No.(I) does not arise at all in the present case and deserves to be answered in negative.

16. As far as, substantial question of law No.(II) is concerned, it may be noted that in the present case the period of default is from 01.01.1983 to 30.09.1983. In the written statement of defendants-tenants, they never took a defence that the rent for the previous years prior to January, 1983 was being paid yearly. In evidence also defendants-tenants never put a suggestive question to the plaintiff-landlord that rent was being paid yearly prior to 1983 and not on monthly basis. Thus, this substantial question of law is based on the factual matrix, which is not available on record. In this view, this substantial question of law deserves to be answered in negative.

17. Except the aforementioned two substantial questions of law, no other substantial question of law has been suggested to be involved in the present appeal nor is found to be arisen in the present case.

18. The Hon'ble Supreme Court in case of **Umerkhan Vs. Bismillabi Shaikh & Ors. Reported in [(2011) 9 SCC 684]**

has observed that if a second appeal is admitted on substantial question of law, while hearing the second appeal finally, the court can re-frame the substantial question of law or can frame new substantial question of law or even can hold that the substantial



question of law as already framed do not fall within the purview of substantial question of law but the High Court cannot exercise its jurisdiction under Section 100 CPC, without formation/involve ment of substantial question of law.

19. The scope of interference by the High Court in second appeal under Section 100 CPC has been discussed by the Hon'ble Supreme Court in umpteen number of cases. It is no more *res integra* that the jurisdiction is strictly confined to the case, involving substantial question of law. In the foregoing discussion, this Court has observed that the substantial questions of law as framed and as suggested additionally are not the substantial questions of law. It has also said that as a whole second appeal under Section 100 CPC it is not permissible for the High Court to re-appreciate evidence on record and interfere with the findings recorded by the courts below and/or the first appellate court. If the first appellate court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffered from an error either of law or of procedural require interference in the second appeal. Ordinarily, the High Court should not interfere with the concurrent findings of fact unless the same suffer from grave perversity or based on the inadmissible evidence or have been passed without evidence. In support of such proposition of law, the judgment of Hon'ble the Supreme Court in case of **Narayanan Rajendran and Anr. Vs. Lekshmy Sarojini and Ors. Reported in [(2009) 5 SCC 264]** and **Gurnam Singh and Ors. Vs. Lehna Singh Reported in [(2019) 7 SCC 641]** may be referred.



20. Before parting with the present judgment, this Court would also like to consider the aim and object of the rent control legislation in order to consider that as to whether the appellants-tenant who have completed the tenure of tenancy for more than 60 years in the rented shops (tenancy begun from 1948) are entitled to seek protection under the Rent Control Act, 1950. It

may be noticed that the rent control legislation was entitled to strike a reasonable balance between the landlord and tenant. At one hand where the tenant requires adequate protection against his eviction at the hands of aggressive designed greedy landlord, at the same time rights of landlord also require protection to increase the rent reasonably and to evict tenant on the grounds permissible in law. The basic object of the Rent Control Act, 1950 is to save the harassment of tenant from unscrupulous landlords.

The object of the Rent Control Act, 1950 may not be misconstrued to deprive the landlords of their bona fide properties for all times to come.

Such proposition of law was expounded by the Hon'ble Supreme Court in case of **Shakuntala Bai Vs. Narayan Das reported in [(2004) 5 SCC 772]**, **Satyavati Sharma Vs. Union of India Reported in [(2008) 5 SCC 287]** & **State of Maharashtra Vs. Super Max International Private Limited Reported in [(2009) 9 SCC 772]**.

21. Having discussed the sustainability of the impugned decree for eviction on the merits in detail as also considering the aim and object of rent control legislation, this Court is not inclined to interfere with the decree for eviction passed against appellant-



tenant, at least at the stage of second appeal. As a consequence, this second appeal is dismissed and the decree for eviction is sustained.

22. However, it has been noticed that the rented premise was in tenancy of the tenant since 1948, three months time is granted to appellant-tenant to vacate and hand over the rented premise to

respondents, subject to payment of due arrears of rent/mesne profits, if any.

23. There is no order as to costs.

24. All other pending application(s), if any, also stand(s) disposed of.

25. Record of both courts below be sent back.

(SUDESH BANSAL),J

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