

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

O R D E R

Ravinder Mehta v. Shri Manaklal & Ors.

S.B.CIVIL WRIT PETITION NO.6357/2005
under Articles 226 and 227 of the
Constitution of India.

Date of order : 27th October, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.N.Trivedi, for the petitioner.
Mr. Manish Shishodia, for the respondent-caveator.

BY THE COURT :

The petitioner in present petition is son of Late Ramdita to whom a shop was rented on April 1, 1976 at monthly rent of Rs.150/- which was subsequently increased upto Rs.225/- per month. The possession of the premises rented was kept with by the children of Shri Ramdita even after his death, therefore, respondent applicant Shri Manaklal preferred an application under Sections 6 and 9 of the Rajasthan Rent Control Act, 2001 (hereinafter referred to as "the Act of 2001") for revision of rent in respect of existing tenancy and for eviction of tenant from the premises rented.

The application aforesaid was preferred by the respondent applicant on the grounds of default in payment of rent, bonafide necessity of landlord and on the count that possession of the premises was parted with from the tenant due to his death.

A written statement was filed by the non-applicant petitioner contending therein that a composite application under Sections 6 and 9 of the Act of 2001 cannot be maintained. The non-applicant petitioner also averred in the written statement that the tenancy of the premises concerned stood acquired by him after death of Shri Ramdita as he was continuing the business in the premises. The non-applicant petitioner also contended that the necessity shown for getting premises evicted is not bonafide.

On basis of pleadings learned Rent Tribunal, Bikaner framed following issues:-

“1-आया विपक्षी ने दिसम्बर - 2001 से किराया अदा नहीं किया? वादी

2-आया विपक्षीगण रामदिता की मृत्यु के बाद बतौर वारिस विवादित दुकान पर काबिज रहने का कोई अधिकार नहीं रखते हैं? वादी

3-आया प्रार्थी को विवादित दुकान की निजी व सदभावी आवश्यकता है ? वादी

4-आया प्रार्थना पत्र कम न्याय शुल्क पर है ? प्रतिवादीगण

5-अनुतोष ?”

The statements of Shri Manaklal (PW-1), Anurag (PW-2) and Jeevraj (PW-3) were recorded by the Tribunal and the documents Ex.1 to Ex.25 were also exhibited to support the application. On behalf of non-applicant statements of Shri Ravindra Kumar (DW-1) were recorded to oppose the application. The applicant did not press the issue No.1, therefore, the other issues were decided by the tribunal on basis of pleadings and evidence available on record. Issues No.2 and 3 were decided in favour of the applicant and issue No.4 was decided against the non-applicant. On basis of finding given with regard to issues referred above the tribunal accepted the application and ordered for eviction of premises within a period of three months from the date of judgment.

The non-applicant petitioner being aggrieved by the judgment referred above dated 11.3.2005 preferred an appeal before the Appellate Rent Tribunal as prescribed under Section 19 of the Act of 2001. The appellate tribunal dismissed the appeal by judgment dated 26.9.2005, hence the present writ petition is preferred by the petitioner under Articles 226 and 227 of the Constitution of India.

while giving challenge to the judgments dated 11.3.2005 and 26.9.2005 it is contended by counsel for

the petitioner that the courts below failed to appreciate that no composite application under Sections 6 and 9 of the Act of 2001 could be preferred. According to counsel for the petitioner the scope of Sections 6 and 9 is absolutely different, therefore, the procedure for these proceedings is also totally different. The procedure to conduct proceedings under Section 6 is provided under Section 14 of the Act of 2001 and the procedure to decide the application under Section 9 is prescribed under Section 15 of the Act of 2001. It is contended by counsel for the petitioner that being two different procedures are provided for adjudicating the applications under Sections 6 and 9, therefore, no composite application could be preferred for revision of rent and for eviction from the premises rented.

I do not find any force in the contention so raised. Section 14 of the Act of 2001 prescribes a procedure to decide an application under Section 6 and whatever procedure prescribed to decide it is also part of the procedure prescribed under Section 15 to decide an application under Section 9 of the Act of 2001. In the present case the composite application under Sections 6 and 9 is decided by the tribunal by adhering the procedure prescribed under Section 15 of the Act of 2001. In view of it whatever procedure prescribed to decide an application under Section 6 was adhered by the tribunal. Counsel for the

petitioner utterly failed to satisfy as to how any prejudice is caused to the petitioner's right by entertaining and adjudicating a composite application under Sections 6 and 9 of the act of 2001. In view of it I am of the considered opinion that no error has been committed by the court below by entertaining a composite application under Sections 6 and 9 of the Act of 2001.

The next contention of counsel for the petitioner is that the court below erred while holding that the petitioner was not a tenant of the respondent applicant being tenancy parted with after death of Shri Ramdita. It is emphasised by counsel for the petitioner that the court below at one hand by treating the petitioner tenant ordered for recovery of rent under Section 6 of the Act of 2001 for the period the premises in question was in possession of the petitioner and at the same time treated him a stranger by giving a finding that the tenancy was not vested with him after the death of Shri Ramdita.

I do not consider it appropriate to adjudicate this question as the court below on basis of available evidence specifically gave a finding that the rented premises was required to be evicted due to bonafide necessity of the applicant. While arguing the case challenge to the finding pertaining to bonafide necessity is not given by counsel for the petitioner.

In view of it even if it is held that the petitioner was tenant of the respondent applicant then too he is liable to be evicted from the premises.

In view of the discussion above, I am of the considered opinion that the orders impugned do not suffer from any error which may warrant interference by this Court under Articles 226 and 227 of the Constitution of India.

The writ petition, therefore, is dismissed.

(GOVIND MATHUR),J.

kkm/ps.