

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR.**

## JUDGMENT

L.Rs. of Vijay Raj vs. Nain Mal

S.B.Civil Second Appeal No.147/1984 against the judgment and decree dated 2.11.1984 passed by Civil Judge,Chittorgarh in Civil appeal(Decree) No.104/1983.

Date of Judgment: January 30, 2006.

**PRESENT**  
**HON'BLE MR. PRAKASH TATIA, J.**

Mr. Rajendra Mehta ,for the appellant.  
Mr. R.R. Nagori, for the respondent.

**BY THE COURT:**

Heard learned counsel for the parties.

This appeal is by the tenant-defendant-appellant against the judgment and decree of the trial court dated 30.5.1980 passed in Civil Suit No.57/75 and the appellate judgment and decree dated 2.11.1984 dismissing the appeal of the defendant-tenant-appellant.

Brief facts of the case are that the plaintiff Nain Mal filed the suit for eviction of his tenant Vijay Raj before the trial court on 30.4.1975. According to the plaintiff, the suit property was let out to defendant for a rent of Rs.30 per month for which a rent-deed was executed on

27.7.1971. The plaintiff submitted that the defendant paid the rent amounting to Rs.425/- only for the period from 1.8.1971 to 31.12.1972 and, therefore, Rs.85/- is due in the defendant against the rent amount. It is submitted that from 1.1.1973, no rent was paid by the defendant to the plaintiff and, therefore, by the time of filing of the suit, the tenant-defendant has become defaulter in payment of rent, therefore, the plaintiff is entitled to decree for eviction of the tenant. The plaintiff, before filing of the suit, served a notice upon the defendant through his Advocate on 28.12.1974 but the defendant did not reply the notice nor deliver the possession of the suit property, therefore, the suit was filed. The plaintiff also pleaded that the suit property is required for the personal bona fide need of the plaintiff.

The defendant denied the need of the plaintiff for the shop in dispute and for the rent he pleaded that in fact the defendant took the suit premises on rent on rent of Rs.25/- per month only. It is stated by the defendant that in fact the suit shop was taken on rent by oral agreement in the year 1959 on rent of Rs.13/- per month which was increased to Rs.17.50 per month from 23.7.1961 and thereafter Rs.20/- on 1.2.1964 and thereafter Rs.25/- per month from 1.10.1966. According to the defendant, the rent continued to be Rs.25/- per month only. The defendant however admitted the rent-deed but pleaded that in fact the

plaintiff brought rent deed and obtained the signature of the defendant with assurance that the terms and conditions of the rent tenancy shall remain as they were in existence and the rent will be Rs.25/- per month. It is also submitted that on 1.8.1971, when the plaintiff demanded increased rent, the defendant asked the plaintiff to give some more benefit regarding repairing of the shop and then the defendant will pay Rs.30/-.

The plaintiff submitted rejoinder to the written statement filed by the defendant. The trial court framed the issues whether the suit property was let out for Rs.30/- per month and whether Rs.85/- is due in the defendant as due rent for the period from 1.7.1971 to 31.12.1972, whether any hardship will be caused to the defendant in case the decree for eviction is passed.

Before the trial court, the defendant submitted an application on 27.8.1975 under Section 13(4)- (5) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short “the Act of 1950”) that though he has not received the copy of the plaint but still he is ready to deposit the rent as claimed in the plaint. The trial court directed the defendant to deposit the rent as claimed in the plaint within 15 days and further in accordance with law, obviously as provided under Section 13(4)-(5) of

the Act of 1950. This order dated 27.8.1975 was never under challenge, rather the defendant deposited the rent as per the direction of the court dated 27.8.1975. On 3.3.1976, an application was submitted by the plaintiff under Section 13(5) old ( New 13(6)) of the Act of 1950 for striking out of the defence of the tenant-defendant on the ground that the defendant did not deposit the arrears of rent of Rs.85/- and interest on rent and further he has not deposited the rent of the month of September, 1975 in time, therefore, the defendant's defence may be struck off. The trial court after hearing both the parties, on 6.8.1976 struck off the defence of the defendant-tenant. Thereafter, the issues were framed by the trial court on 21.3.1977. The evidence of the plaintiff was recorded and thereafter the trial court decreed the suit of the plaintiff by judgment and decree dated 30.5.1980.

The defendant preferred appeal against the judgment and decree dated 30.5.1980 . In appeal, an objection was raised about the non-framing of the issues, upon which the first appellate court by order dated 23.6.1983 after observing that since both the parties led their evidence, despite the fact that no specific issue about the default and personal necessity of the plaintiff was framed, therefore, no prejudice has been caused to the defendant and hence there is no need to frame the issue on the plea of default of the defendant in payment of rent and for the personal bona fide necessity of the plaintiff. Before the first

appellate court, both the parties agreed that so far as issue of partial eviction is concerned, the same may be framed. The first appellate court framed the issue regarding partial eviction and remitted the matter back to the trial court by order dated 23.8.1983. The trial court by order dated 6.1.1984 decided issue of the partial eviction in favour of the plaintiff and held that the need of the plaintiff cannot be satisfied by evicting the tenant from the part of the premises only. The first appellate court after reversing finding of the trial court on issue of partial eviction, heard the appeal of the tenant-defendant and dismissed the appeal by impugned judgment and decree dated 2.11.1984. Hence this second appeal.

Following substantial question of law was framed by this Court on 18.12.1984 while admitting the appeal:-

*“Whether the courts below were right in holding that as the defence of the tenant against eviction has been struck of no issues regarding grounds of default and bona fide necessity averred by the plaintiff were required to be framed and whether in the absence of such issues and proof thereto, the decree for eviction could be passed.”*

According to the learned counsel for the appellant, the rent of the suit property was Rs.25/- per month only and the trial court failed to frame the issue about the plea of default taken by the plaintiff and

contested by the defendant under assumption that since the defence against the eviction of the tenant has been struck off by the trial court's order dated 6.8.1976, therefore, there is no need to frame issue because of the reason that the defendant will have no right to take any defence in the suit, may it be on the ground of default or on the ground of personal bona fide necessity. According to the learned counsel for the appellant, now the law is well settled that upon striking out of defence of tenant on the ground of non-payment of determined rent or default in payment of rent during trial, the tenant's defence against default only cannot be heard but so far as other pleas are concerned, the defendant can contest the suit and has right to lead evidence also. It is also submitted that even on the issue of default, the defendant has right to demolish the case of the plaintiff from plaintiff's own evidence, therefore, the court below should have framed the issue about the alleged default in payment of rent by the tenant. The learned counsel for the appellant also tried to submit that in case the rent which has been deposited by the appellant-tenant is given due credit by treating the rent to Rs.25/- per month then the total rent has been paid by the defendant and, therefore, the courts below committed illegality in striking out the defence of the defendant.

The learned counsel for the respondent vehemently submitted

that on application of the defendant himself, the court determined the rent and the court specifically directed the defendant to deposit the rent as claimed in the plaint. The defendant did not deposit the rent in time and, therefore, the courts below were right in striking out the defence of the defendant. It is also submitted that the plaintiff led the evidence and the trial court decided the question about the personal bona fide necessity of the plaintiff for the suit premises and also decided the issue of the default against the defendant, therefore, no prejudice has been caused to the defendant by non-framing of the issue by the trial court. It is also submitted that the defendant never raised any objection for non-framing of the issue during the entire trial. The defendant was given full opportunity to lead evidence and he availed that opportunity and cross-examined the witnesses at length, therefore, the defendant cannot take a plea that any illegality was committed by the courts below by non-framing of the issue or any prejudice has been caused. So far as default is concerned, the default is admitted fact and to prove the prior default, the default prior to the filing of the suit in payment of the rent by the tenant is concerned, the plaintiff gave his own evidence, therefore, finding is based on evidence. In view of the above, the appeal may be dismissed.

I considered the submissions of the learned counsel for the parties

and perused the record.

So far as the contention of the learned counsel for the appellant that the rent of the suit property was Rs.25/- per month only is concerned, the two courts below decided this question of fact against the appellant-tenant. Apart from it, it will be worthwhile to mention here that before the trial court, the defendant submitted an application for determination of the rent which was allowed by the trial court by order dated 23.8.1975 and the trial court directed the defendant-appellant-tenant to deposit the rent as claimed in the suit and this direction is specific. Not only this but after the order dated 23.8.1975, the defendant himself deposited the rent in the court in this very suit, accepting the rent as Rs.30/- per month and continued to deposit the rent throughout at the rate of Rs.30/- per month and for the first time, took the plea of rent being Rs.25/- per month in reply to the application under Section (old) 13(5) 13(6) of the Act of 1950 knowing it well that despite taking the defence in the written statement that the rent is Rs.25/- per month, he has deposited the rent at the rate of Rs.30/- per month. Therefore, the plea taken by the appellant-tenant that the rent of the suit property as he understood is Rs.25/- per month, ordered in the order of the trial court dated 27.8.1975 to be deposited in future is absolutely wrong and against the action of the defendant himself, therefore, the order of striking out of the defence by the trial

court is in the facts of the case is in accordance with law only.

So far as non-framing of the issue about default in payment of rent is concerned, it is clear from the facts mentioned above itself that the plaintiff contained full averments about the default which has been committed by the tenant in payment of rent. The defendant contested this fact by filing written statement and by taking specific plea that the rent is Rs.25/- per month and he has not committed default in payment of rent. The defendant himself submitted an application before the trial court for determination of the rent and deposited the rent without disputing the rent, therefore, the prior default is proved not only from the evidence produced by the plaintiff but by the subsequent admission of the defendant. It is further relevant to mention here that the defendant failed to make out any case of prejudice to the defendant because of non-framing of the issue when he has been given full opportunity to meet with the case of the plaintiff and permitted to cross-examine the plaintiff and his witnesses on all issues.

In view of the above, in the facts of this case and particularly in view of the fact that the order of the remand dated 23.5.1983 has not been challenged by the appellant-tenant-defendant in time, therefore, he cannot have any grievance for non-framing of the issue by the trial court.

In view of the above, the substantial questions of law are decided against the appellant and the appeal of the appellant is dismissed. No order as to cost.

( PRAKASH TATIA ),J.

mlt.