

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAI PURO R D E R

S. B. CIVIL WRIT PETITION NO. 8145/2009

SARDAR AHMED Vs. KANTI DEVI

DATE: 31. 03. 2011HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN

Mr. Amir Aziz, for the petitioner.

Mr. Girish Khandelwal, for the respondent.

Heard the learned counsel for the parties.

2. Applicant/respondent Kanti Devi filed an application, before the Rent Tribunal, Sawai Madhopur against non-applicant/petitioner, for eviction of rented premise and for arrears of rent. Non-applicant filed his reply, thereafter, applicant filed her rejoinder.

3. Non-applicant/ petitioner filed an application under Section 21(1) of the Rajasthan Rent Control Act, 2001 to allow non-applicant to cross examine the landlord as well as her witnesses, namely, Bal mukand, Ganeshi Devi and Pooran Mal.

4. Non-applicant also filed another

application to allow him to file reply to rejoinder, filed by applicant.

5. Learned Rent Tribunal vide order dated 30.05.2009, dismissed both the applications. Being aggrieved with the same, non-applicant has preferred the present writ petition before this Court.

6. Submissions of the learned counsel for petitioner is that in the facts and circumstances of the case, cross-examination of landlord and her witnesses was necessary, but the Rent Tribunal committed an illegality in not allowing the non-applicant to cross examine them. He further submitted that in view of new facts narrated in the rejoinder, filing of reply to rejoinder was also necessary, but the Rent Tribunal committed an illegality in not permitting the non-applicant to file reply to rejoinder.

7. Learned counsel for respondent submitted that in the facts and circumstances of the present case, the learned Rent Tribunal was fully justified in rejecting both the applications of non-applicant. He submitted that the reasons assigned by the Tribunal for rejecting the applications are

fully justified and no case is made out for interference in the said order.

8. I have considered the submissions of the learned counsel for the parties and examined the impugned order passed by the Rent Tribunal.

9. Learned Rent Tribunal, while refusing permission for cross-examination of applicant and her witnesses, observed that a fact that applicant has other shops, has not been mentioned in the reply, whereas sufficient time was granted to him to file reply to application. So far as another application for permitting the non-applicant to file reply to rejoinder is concerned, the Rent Tribunal, while dismissing it, has observed that there is no such provision in the Act and further that no new fact has been mentioned by the applicant in the rejoinder, therefore, it is not necessary to grant permission for the same.

10. The Division Bench of this Court in *Ramswaroop Vs. Charanjeet Singh & Others*, 2008(1) WLC(Raj.) 47, held that ordinarily prayer regarding cross-examination of applicant's witnesses should be granted and

it should be refused only where circumstances justify denial thereof in the interest of justice. Para 19 of the judgment is reproduced as under: -

"19. We have already indicated above that the proceedings before the Tribunal (original and appellate) are not governed by the Code of Civil Procedure and to that extent the provisions of the Code of Civil Procedure are not applicable to such proceeding. However, the procedure before the said Tribunal has to be in conformity and in consonance with the principles of natural justice. Though cross-examination of the witnesses of the opposite party cannot be claimed as a matter of right, yet such right being very valuable right since the order of the Tribunal may be seriously prejudicial, upon the application made by a party for cross-examination of the witnesses of the other party, unless the circumstances justify denial thereof in the interest of justice, ordinarily such prayer deserves to be granted."

11. As per judgment of the Division Bench, grant of permission for cross-examination is a rule and refusal is exception. The Rent Control Act also provides compliance of principles of natural justice.

12. In these circumstances, I am of the view that the learned Rent Tribunal committed an illegality in not allowing the non-applicant to cross examine the applicant as well as her witnesses.

13. So far as another application about granting permission to file reply to rejoinder is concerned, I am satisfied that in the facts and circumstances of the case, the same was necessary.

14. In view of above discussions, the writ petition is allowed and the impugned order dated 30.05.2009 passed by the Rent Tribunal, Sawai Madhopur is set aside. Non-applicant/petitioner is permitted to cross examine landlord Kanti Devi and her three witnesses, namely, Bal mukand, Ganeshi Devi and Pooran Mal. Petitioner is also permitted to file his reply to rejoinder on or before 11.04.2011.

15. Learned counsel for both the parties prayed that a particular date may be fixed for cross-examination of the applicant and her witnesses so that matter may not be delayed further. Prayer is allowed. Both the parties are directed to remain present before the Rent Tribunal, Sawai Madhopur on 13.04.2011. Learned counsel for applicant/respondent undertakes that all the witnesses will remain present for cross examination on the above date. Learned counsel for non-applicant/petitioner undertakes that he will

cross examine all the witnesses on the same date.

16. It is needless to mention that in case applicant/respondent moves an application for cross-examination of non-applicant/petitioner and his witnesses, then the Rent Tribunal will consider the same in the light of observations made by the Division Bench in Ramswaroop's case (*supra*).

(NARENDRA KUMAR JAIN), J.

/KKC/

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAI PUR**ORDER**

S. B. CIVIL STAY APPLICATION NO. 985/2009
IN
S. B. CIVIL WRIT PETITION NO. 8145/2009
SARDAR AHMED Vs. KANTI DEVI

DATE: 31. 03. 2011

HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN

Mr. Amir Aziz, for the petitioner.
Mr. Girish Khandelwal, for the respondent.

Since the writ petition itself has been allowed, therefore, this stay application also stands disposed of.

(NARENDRA KUMAR JAIN), J.

/KKC/