

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

ORDER

Smt. Kamla Bajari Vs. Bhanwar Lal Mistri & Others
(S.B. Civil Writ Petition No.17429/2012)

S. B. Civil Writ Petition under Articles 226 and 227
of the Constitution of India.

Date of Order: October 31, 2012.

PRESENT

HON'BLE MR. JUSTICE ALOK SHARMA

Mr. J.P. Gupta, for the petitioner.

BY THE COURT:

This petition has been filed against the order dated 5-9-2012 passed by the Additional Civil Judge (Senior Division) Beawar, dismissing an application under Order 6 Rule 17 CPC moved by the petitioner-plaintiff (herein after 'the plaintiff') for amendment of the suit laid by the plaintiff for eviction under the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter 'the 1950 Act').

The facts of the case are that the plaintiff laid a suit for eviction on the ground of default. On the notice served on defendant-tenant Bhanwar Lal Mistri (now deceased represented by Legal Representatives) (hereinafter referred to 'the tenant') filed

written statement, where under the title of the plaintiff as landlord was purportedly denied. Based on denial of title in written statement, the plaintiff sought to amend the suit invoking an additional ground based on denial of title with reference to the 1950 Act. The fact of the matter however is that the 1950 Act has been repealed on 1-4-2003.

The trial court considered the matter and took the view that the plaintiff could not be allowed to amend his suit for eviction and invoke a new ground based on the provisions of the now repealed Act of 1950.

Heard learned counsel for the petitioner, and perused the material available on record of writ petition including the impugned order dated 5-9-2012 passed by the trial court.

Learned counsel for the petitioner submits that in dismissing the application for amendment, the trial court has overlooked the provisions of Section 32 of the Rajasthan Rent Control Act, 2001, more particularly the clause 3 of Section 32 which reads as under:-

(3) Notwithstanding the repeal under sub-sec.(1),-

(a) all applications, suits or other proceedings under the repealed Act pending on the date of commencement of This Act before any Court shall be continued and disposed of, in accordance with the provisions of the repealed Act, as if the repealed Act had continued in force and this Act had not been enacted. However, the plaintiff within a period of one

hundred and eighty days of coming into force of this Act shall be entitled to withdraw any suit or appeal or any other proceedings pending under the repealed Act with liberty to file fresh petition in respect of the subject matter or such suit or appeal or any other proceedings under and in accordance with the provisions of this Act and for the purposes of limitation such petition shall, if it is filed within a period of two hundred and seventy days from the commencement of this Act, be deemed to have been filed on the date of filing of the suit which was so withdrawn and in case of withdrawal of appeal or other proceedings, on the date on which the suit, out of which such appeal or proceedings originated, was filed;

(b) the provisions for appeal under the repealed Act shall continue in force in respect of applications, suits and proceedings disposed of thereunder;

(c) all prosecutions instituted under the provisions of the repealed Act shall be effective and disposed of in accordance with such repealed law;

(d) any rule or notification made or issued under the repealed Act and in force on the date of commencement of this Act shall continue to govern the pending cases.

I am afraid that there is no substance in the submission of learned counsel for the petitioner. All that sub-section 3 of Section 32 of the Rent Act, 2001 does is to save applications, suits or other proceedings under the repealed Act pending before the commencement of the 2001 Act effective 1-1-2003. What was pending on 1-1-2003 was the plaintiff's suit for eviction under the 1950 Act only on ground of default. The plaintiff could not have been allowed to amend the suit subsequent to 1-1-2003 as was

sought to be done under the provisions of the repealed 1950 Act and invoke the additional ground of denial of title therein. The Act of 1950 was non-existent on the date of the filing of the application for amendment of the suit to bring in a ground for eviction provided under the Act of 1950. The application for amendment of the suit as laid was wholly misdirected.

In my considered opinion, there is no perversity, error or misdirection in law in the impugned order of the learned trial court.

Consequently, I find no force in the writ petition and the same is dismissed. Stay application also stands dismissed.

(Alok Sharma), J.

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All corrections made in the order have been incorporated in the order being emailed.

Arun Kumar Sharma, Private Secretary.