

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

S.B.Civil Writ Petition No. 18140 / 2015

Dilsad son of Ursad by caste-Musalman, resident of Shop No.35/5,
Ramganj Chopad, Purana Police Station, Jaipur

----Petitioner

Versus

Shri Krshan son of Shri Loonkaran, by caste-Mahajan, resident of
Hanumanji Ka Rasta, Jaipur

----Respondent

For Petitioner(s) : Mr. MM Ranjan, Sr. Adv. with Mrs. Nidhi
Mishra

For Respondent(s) : Mr. BB Ojha for Mr. Mukesh Agrawal

HON'BLE MR. JUSTICE M.N. BHANDARI

Judgment / Order

Date of Judgment

28th February, 2017

This writ petition has been filed to challenge the order dated 13.5.2013, passed by the Rent Tribunal, Jaipur Metropolitan, Jaipur and the order dated 14.10.2015, passed by the Appellate Rent Tribunal, Jaipur Metropolitan, Jaipur. The orders aforesaid were passed on an Original Application filed by the respondent for eviction of tenant-petitioner on the ground of default in making payment of rent. The Rent Tribunal accepted the Original Application and appeal thereupon was dismissed by the Appellate Rent Tribunal

Learned counsel for petitioner submits that the Original Application was accepted in ignorance of the objection raised by the petitioner. The shop in question was given on rent to late Shri

Irsad Mohd. (petitioner's father). A suit for eviction was earlier filed during life time of father, however, a compromise was then arrived on 30.8.1988 and, based on it, suit for eviction was decided. The Original Application was thereupon filed again in the year 2007 to seek eviction on the ground of default. It was without impleading all the legal heirs of late Mohd. Irsad and the tenants as party. The petitioner alone was made party to the Original Application. The petitioner took objection about maintainability of the Original Application on the ground of non-joinder of necessary parties but the issue aforesaid has not been decided by the Rent Tribunal as well as Appellate Rent Tribunal. In fact, the Original Application itself was not maintainable thus both the orders deserve to be set aside on the aforesaid ground itself.

Learned counsel for petitioner has even made reference of the statement of the landlord to show his ignorance about all the relevant issues which includes as to who was making payment of rent. The evidence was ignored by the Rent Tribunal as well as Appellate Rent Tribunal while passing the order for eviction. The landlord was not even knowing as to whom the notice under Section 9 of the Rent Control Act of 2001 was sent thus taking into consideration the aforesaid, even a case was not made out to pass an order for eviction on the ground of default. It is more so when due amount was paid by the petitioner thus no default exist.

Learned counsel for respondent-landlord has contested the petition. It is submitted that the shop was rented out to Irsad Mohd. but after his death, it was taken over by the petitioner. He alone was running the shop thus Original Application for eviction

was filed against him. The required notice under Section 9 was sent to the petitioner and was duly replied. It was not stated that petitioner alone is not running the shop thus notice on him is illegal, rather, it should have been given to all the brothers. The petitioner stated about due payment by him thus it becomes a case of admission of tenancy after the death of his father.

Taking into consideration the aforesaid, the issue of non-joinder of necessary party is for sake of it. The petitioner has made reference of the statement of the non-petitioner ignoring his own statement. He had admitted about payment of rent by him so as the receipt of notice under Section 9 of the Act of 2001 and its reply. Taking into consideration the aforesaid, the objection for non-joinder of parties was not sustainable. The issue was not framed for it by the Rent Tribunal and no objection was ever taken by the petitioner before the Rent Tribunal with an application to frame the issue in regard to non-joinder of parties. In absence of an issue, the petitioner cannot raise arguments in regard to non-joinder of parties. It is, otherwise, not tenable in the eye of law.

The petitioner had committed default in making payment. A concurrent finding of fact has been recorded by the court below. It may not be interfered by this court while exercising jurisdiction under Article 226 of the Constitution of India. The writ petition may accordingly be dismissed.

I have considered rival submissions of the parties and perused the record.

The Original Application for eviction of tenant from the rented premises was filed on the ground of default in payment of

rent. The Original Application was allowed by the Rent Tribunal followed by dismissal of appeal by the Rent Appellate Tribunal thus both the orders have been challenged by the petitioner.

It is submitted that the Original Application was filed only against the present petitioner leaving others, who had occupied the shop after the death of his father Irsad. Learned counsel stated that, originally, the premises was rented out to petitioner's father for running a shop. A suit for eviction was filed against Irsad Mohd but was settled in the year 1988. The original tenant Irsad Mohd. died thereupon thus if the fresh Original Application for eviction was to be maintained then it should have been against all the legal heirs of Irsad Mohd. and not against one son alone. The petitioner took objection of non-joinder of necessary parties but has not been decided by either of the Tribunal thus the impugned orders deserve to be set aside.

I have considered the arguments aforesaid and find that on the objection about non-joinder of parties, no issue was framed by the Rent Tribunal and petitioner did not submit application or raise objection. Only two issues were framed by the Tribunal. First issue was of default in payment of rent and other was for relief.

Learned counsel for petitioner submits that even if issue was not framed, it should have been decided by the Tribunal as both the parties led evidence on the aforesaid. Reliance on the judgment in the case of **Sayed Akhtar Vs. Abdul Ahad AIR 2003 SC 2985** has been made.

I have considered the fact aforesaid and perused the evidence led by the parties to find out whether the objection about

non-joinder of necessary parties is sustainable and should be decided even if issues have not been framed. The parties have led evidence and the statement of the tenant has been referred in the writ petition. The statement of the applicant/non-petitioner has been referred where he had shown ignorance about issuance of notice prior to filing of the Original Application apart from other issues which includes no knowledge about the present petitioner. As against the aforesaid, the statement of petitioner is also required to be considered. The perusal of the statement of the petitioner reveals admission for running of shop on the premises and even for payment of rent by him alone. It is not stated that the payment of rent was not paid by him alone but by his brothers also. When the petitioner has admitted the payment of rent by him and running of shop then other brothers of the petitioner cannot be said to be necessary party. It is not that the Original Application was filed against Irsad Mohd. and, thereupon, he died so as to bring his legal heirs on record. The Original Application was filed against the present petitioner himself thus it was not necessary to implead all the legal heirs of Irsad Mohd. as party when petitioner himself has admitted payment of rent by him and occupation of the rented premises, thus falls in the definition of tenant.

In the light of the facts given above, even if the issue was not framed regarding non-joinder of parties, I find that the objection aforesaid cannot be decided in favour of the petitioner for the reasons given above.

So far as the issue of default in payment of rent is

concerned, there exist concurrent finding of fact. The petitioner has challenged it in reference to the statement of non-petitioner who has shown his ignorance about the issuance of notice and even to specify the dates of default. I find that the evidence led by the parties is to be read in totality. The documentary evidence exist regarding issuance of notice and the Rent Tribunal has recorded its finding about receipt of the notice by the petitioner under his own signatures. The period of default has also been taken into consideration.

In view of discussion made above, I do not find any ground to cause interference in the orders passed by both the Tribunals while exercising jurisdiction under Article 227 of the Constitution of India when there exist concurrent finding of fact.

The writ petition is, accordingly, dismissed.

(M.N. BHANDARI)J.

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