

A

RAM PRATAP

v.

ANAND KANWAR & ORS.

(Civil Appeal No. 8504 of 2018)

B

AUGUST 21, 2018

[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]

C

Rajasthan Premises (Control of Rent and Eviction) Act, 1950 – s. 13(1) & (3) and s.19A – Eviction of tenant on the ground of non-payment of rent – Fixation of provisional rent – Mandatory or directory – Held: Use of the word ‘shall’ in s.13(3) makes it mandatory on the court to fix provisional rent within three months of the filing of the written statement but before framing of the issues, irrespective of any application or not – If the rent so determined by the court is paid by the tenant as provided u/s. 13(4), no decree for

D

eviction of the tenant can be passed on the ground of default, in view of s. 13(6) – Thus, compliance of s.13(3) is mandatory in the suit for eviction on the ground of default – Rent Control and Eviction.

E

Dismissing the appeal, the Court –

F

HELD: It is evident from Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 that the use of the word ‘shall’ puts a mandatory obligation on the court to fix provisional rent within three months of the filing of the written statement but before framing of the issues, irrespective of any application or not. If the rent so determined by the court is paid by the tenant as provided under Section 13(4), no decree for eviction of the tenant can be passed on the ground of default under Section 13(1)(a) in view of Section 13(6) of the Act. It is thus, clear that unless the determination under Section 13(3) takes place, s. 13(6) cannot be complied with and a valuable right given to a tenant would be lost. The High Court rightly held s. 13(3) to be mandatory. [Para 14] [75-D-F]

G

H

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8504 of 2018. A

From the Judgment and Order dated 08.08.2016 of the High Court of Rajasthan, Jaipur Bench, Jaipur in S. B. Civil Second Appeal No. 186 of 1998.

Sushil Kumar Jain, Sr. Adv., Ms. Astha Prasad, Ashish K. Singh, Ashish Prasad, Amalesh Prasad, Anupam Bhargava, Puneet Jain, Abhinav Gupta, Harsh Jain, Ms. Ankita Gupta, Ms. Pratibha Jain, Advs. for the appearing parties. B

The Judgment of the Court was delivered by

S. ABDUL NAZEER, J. 1. Leave granted. C

2. In this appeal, the appellant has questioned the legality and correctness of the judgment and order in S.B Civil Second Appeal No.186/1998 dated 08.08.2016, whereby the High Court of Judicature for Rajasthan (Jaipur Bench) has allowed the appeal and set aside the judgment and decree of the courts below and remanded the suit to the trial court for fresh disposal in accordance with law. D

3. The appellant-plaintiff is the landlord of the suit schedule premises, whereas the defendant is the tenant. The plaintiff filed Suit No. 357 of 1984 for eviction of the defendant from the suit schedule premises on the ground of non-payment of rents under Section 13(1) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short the "Rent Act"). E

4. According to the plaintiff, the defendant stopped paying monthly rent from 01.07.1981 to 30.06.1984. The defendant filed the written statement contending that he has been paying the rent regularly till 31.05.1983 to one Sh. Onkar Singh, who is a close relative of the plaintiff. Onkar Singh was issuing rent receipts on payment of the rent. The defendant also claims to have deposited the rent up to 31.12.1989 in the court. Moreover, it is claimed by the defendant that the plaintiff with an intention to get the premises vacated and let out the same to others on increased rent has been harassing the defendant and his other tenants. He prayed for dismissal of the suit. F G

5. The trial court vide order dated 20.7.1995 decided the matter in favour of the plaintiff. The defendant was directed to vacate the H

- A schedule premises and make payment of arrears of rent. The defendant filed an appeal against the said order. However, the first appellate court vide order dated 28.02.1998 held that since the matter was proceeded ex parte due to the absence of the defendant, determination of rent would be an empty formality and hence, the trial court has not committed any error in not determining the provisional rent under Section 13(3) of the Rent Act. The first appellate court accordingly upheld the decree.
- B The defendant filed a second appeal challenging the said order. The High Court vide order dated 08.08.2016 has held that Section 13(3) of the Rent Act is mandatory in nature so far as provisional determination of the rent is concerned and without determination of rent no decree of
- C eviction on the ground of default can be passed. The High Court remanded the suit to the trial court and directed the trial court to decide the matter afresh within six months from the date of receipt of the judgment. As noticed above, the defendant has questioned the legality and correctness of the said judgment in this appeal.
- D 6. Learned counsel for the appellant-plaintiff submits that the defendant intentionally did not appear before the trial court to defeat the process of the court and hence the court passed the order to proceed ex parte against the defendant. Determination of rent would be an empty formality, which was being heard ex parte due to the intentional absence of the defendant. The intention of the amended Section 13(3) of the Act
- E was to protect the interest of the landlord in the interim period when the suit for eviction is pending. Therefore, the High Court was not justified in remanding the matter to the trial court. On the other hand, learned senior counsel appearing for the respondent-defendant submits that
- F Section 13(3) and (4) of the Act are mandatory in nature. These Sections cast obligations on the court and following consequences are also provided thereof under sub-Section (5) or sub-Section (6) of Section 13. Unless such determination takes place, Section 13(6) cannot be applied and a valuable right given to a tenant would be lost. The respondents had filed the written statement on 08.08.1989 itself and the case was continuously adjourned for determination of rent. As a matter of fact, it is only after
- G a passage of three months the tenant was placed ex parte and thereafter, without determining the rent, the order of eviction was passed. In fact, the appellant has deposited the rent under Section 19A(4) of the Act. Therefore, the High Court was justified in remanding the matter.
- H

7. Having regard to the contentions urged, the question for consideration is whether compliance of Section 13(3) of the Act is mandatory in the suit for eviction on the ground of default and without determination of rent no decree of eviction on the ground of default can be passed. A

8. The material facts are not in dispute. The plaintiff's suit for eviction was filed under Section 13(1)(a) on the ground of default in payment of rent for the period from 01.07.1981 till 30.06.1984. The defendant filed the written statement on 08.08.1989. Thereafter, the matter was posted on different dates and it was continuously adjourned for determination of rent. The case set up by the plaintiff was that the rent had been enhanced to Rs.15/- per month, whereas the defendant has contended that the rent was Rs.10/- per month. The appellant's counsel remained absent on 24.04.1993 and on that date the court proceeded matter ex parte and fixed the next date on 24.07.1993. On the following date, the case was adjourned as the presiding officer was on leave and the next date was fixed on 22.09.1993 and, thereafter, the court proceeded with the suit. The court did not frame any issues and decreed the suit on 20.07.1995. B C D

9. The claim of the plaintiff is that the defendant had committed default in payment of rent for the period from 01.07.1981 till 30.06.1984. There was a dispute between the respondent and Onkar Singh as to title, for which suit was filed by him against the said Onkar Singh. The said suit was decreed on 07.11.1983 and during the said litigation the defendant was depositing rent in court under Section 19A of the Act. E

10. It is evident that the trial court without determination of provisional rent under Section 13(3) of the Act decreed the suit. The question which has been raised by the defendant is as to whether fixation of provisional rent by the trial court under Section 13(3) where eviction of a tenant is sought under Section 13(1)(a) is mandatory or directory. F

11. Section 13(1)(a) provides for eviction of as tenant for default in payment of rents which is as under:- G

“13. Eviction of tenants. – (1) Notwithstanding anything contained in any law or contract, no Court shall pass any decrees or make any order, in favour of a landlord, whether in execution

A of a decree or otherwise, evicting the tenant so long as he is ready and willing to pay rent therefor to the full extent allowable by this Act, unless it is satisfied.

(a) that the tenant has neither paid nor tendered the amount of rent due from him for six months”.

B 12. Section 13(3) as amended by Section 8(i) of Rajasthan Act No.14 of 1976, dated 13-02-1976 reads as under:-

C “In a suit for eviction on the ground set forth in clause (a) of sub-section (1), with or without any of the other grounds referred to in that sub-section, the court **shall**, on the first date of hearing or on any other date as the court may fix in this behalf which shall not be more than three months after filing of the written statement and shall be before the framing of the issues, after hearing the parties and on the basis of material on record provisionally determine the amount of rent to be deposited in court or paid to the landlord by the tenant. Such amount shall be calculated at the rate of rent at which it was last paid or was payable for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which such determination is made together with interest on such amount calculated at the rate of six per cent per annum from the date when any such amount was payable up to the date of determination:

E Provided that while determining the amount under this sub-section, the court shall not take into account the amount of rent which was barred by limitation on the date of the filing of the suit.”

F 13. It is also necessary to notice Section 13(4), (5) and (6) of the Rent Act, which are as under:-

G “**13(4)** The tenant shall deposit in court or pay to the landlord the amount determined by the court under sub-section (3) within fifteen days from the date of such determination, or within such further time, not exceeding three months, as may be extended by the court. The tenant shall also continue to deposit in court or pay to the landlord, month by month, the monthly rent subsequent to the period up to which determination has been made, by the fifteenth of each succeeding month or within such further time, not

H

exceeding fifteen days, as may be extended by the court, at the monthly rate at which the rent was determined by the court under sub-section (3). A

13(5) If a tenant fails to deposit or pay any amount referred to in sub-section (4), on the date or within the time specified therein, the court shall order the defence against eviction to be struck out and shall proceed with the hearing of the suit. B

13(6) If a tenant makes deposit or payment as required by sub-section (4), no decree for eviction on the ground specified in clause (a) of sub-section (1) shall be passed by the court against him:

Provided that a tenant shall not be entitled to any relief under this sub-section, if having obtained such benefit or benefit under section 13-A in respect of any such accommodation if he again makes a default in the payment of rent of that accommodation for six months.” C

14. It is evident from Section 13(3) of the Rent Act that the use of the word ‘shall’ puts a mandatory obligation on the court to fix provisional rent within three months of the filing of the written statement but before framing of the issues. The language of the Section is mandatory and places a duty on the court to determine the provisional rent irrespective of any application or not. If the rent so determined by the court is paid by the tenant as provided under Section 13(4), no decree for eviction of the tenant can be passed on the ground of default under Section 13(1)(a) in view of Section 13(6) of the Act. It is thus clear that unless the determination under Section 13(3) takes place, Section 13(6) cannot be complied with and a valuable right given to a tenant would be lost. The High Court, in our view, has rightly held Section 13(3) of the Act to be mandatory. D E F

15. In view of the aforesaid discussion, we are of the view that there is no merit in this appeal, which is accordingly dismissed. There will be no order as to costs. G