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KALPANA VYAS

v.

RAJ KUMAR RANGWANI

(Civil Appeal No.10811 of 2018)

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OCTOBER 29, 2018

**[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]**

*Constitution of India – Art.227 – Jurisdiction of High Court – Scope of – Eviction petition filed by the appellant-landlady against the respondent-tenant on ground of bona fide need – Petition dismissed by Rent Tribunal – Appellate Tribunal set aside the order of the Rent Tribunal – High Court restored the order of the Rent Tribunal – Held: High Court while allowing the respondent’s writ petition held that the Appellate Tribunal allowed the appellant’s appeal with casual approach and failed to record any categorical finding on the plea of bona fide need – Having held that, the High Court had two options, either to remand the case to the Appellate Tribunal for deciding the appeal afresh on merits or to decide the matter itself on merits – High Court ought to have resorted to the first option and remanded the case back to the Appellate Tribunal, since it was hearing the matter in its writ jurisdiction u/Art.227 and it was not possible to examine the issue on facts in detail like an Appellate Court – High Court committed error in not taking recourse to any option and without deciding the issue arising in the case on its merit, simply restored the order of the Rent Tribunal – There was no factual finding recorded on the question of bona fide need – Case remanded to the Appellate Tribunal to be decided afresh on merits – Rent Control and Eviction.*

**Allowing the appeal, the Court**

**HELD: 1.1 The need to remand the case to the Rent Appellant Tribunal occasioned because the High Court, while allowing the respondent’s writ petition, came to a conclusion and accordingly held that the Rent Appellate Tribunal allowed the appellant’s appeal with a casual approach and failed to record any categorical finding on the plea of *bona fide* need. Having held that, the High Court had two options: first either to remand the**

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case to the Rent Appellate Tribunal for deciding the appeal afresh on merits in accordance with law and second, to decide the matter itself on merits in accordance with law. Since the High Court heard the matter in its writ jurisdiction under Article 227 of the Constitution, it was not possible to examine the issue on facts in detail like an Appellate Court. It is for this reason, the High Court ought to have resorted to first option and remanded the case back to the Rent Appellate Tribunal for deciding the appeal afresh on merits in accordance with law. [Paras 15, 16] [576-A-B]

1.2 The High Court committed error in not taking recourse to any option and without deciding the issue arising in the case on its merit, simply restored the order of the Rent Tribunal. This approach of the High Court caused prejudice to the appellant because there was no factual finding recorded either by the first appellate Court or the High Court on the question of *bona fide* need. [Paras 17, 18] [576-C-D]

1.3 It is for this reason that the finding of the High Court is upheld in relation to the approach and the manner in which the Rent Appellate Tribunal decided the appellant's appeal but it would be just and proper to remand the case to the Rent Appellate Tribunal for its decision on merits afresh in accordance with law. Impugned order is modified to the extent that the case is remanded to the Rent Appellate Tribunal for deciding the appeal afresh on merits in accordance with law. [Paras 19, 20] [576-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10811 of 2018.

From the Judgment and Order dated 02.01.2018 of the High Court of Judicature for Rajasthan Bench at Jaipur in S.B. Civil Writ Petition No. 5403 of 2015.

Dr. Manish Singhvi, Satyendra Kumar, Irshad Ahmad, Advs. for the Appellant.

Purvish Jitendra Malkan, Utkarsh Tiwari, Ms. Khushboo Vinodray Malkan, Bhaskar Singh, Ms. Dharita P.Malkan, Advs. for the Respondent.

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- A The Judgment of the Court was delivered by  
**ABHAY MANOHAR SAPRE, J.** 1. Leave granted.
2. This appeal is directed against the final judgment and order dated 02.01.2018 passed by the High Court of Rajasthan Bench at Jaipur in S.B. Civil Writ Petition No. 5403/2015 whereby the High Court has  
B allowed the writ petition filed by the respondent herein.
3. The issue involved in the appeal is short, as also the facts of the case lie in a narrow compass, which would be clear from the narration  
infra.
- C 4. The appellant is the applicant, whereas the respondent is the non-applicant in the eviction petition filed by the appellant against the respondent before the Rent Control Tribunal, Rajasthan out of which this appeal arises.
5. The appellant - a landlady of the suit premises filed the eviction  
D petition against the respondent-tenant of the suit premises under Section 9 of the Rajasthan Rent Control Act (for short called "The Act") before the Rent Tribunal Kota (R-84/2005) praying therein for respondent's eviction from the tenanted suit premises.
6. The appellant claimed respondent's eviction from the suit  
E premises on the ground of her personal *bona fide* need for raising construction in the existing suit premises to be used for her children and for stay of appellant's guest in the suit premises.
7. The respondent denied the appellant's need and, *inter alia*,  
F contended that the appellant is in possession of an alternative accommodation in the city and hence her alleged need set up in the eviction petition can be accomplished by using the alternative accommodation available in the city.
8. By order dated 8.2.2011, the Rent Tribunal dismissed the  
G appellant's eviction petition holding that appellant's need can be accomplished with an alternative space available with her in the city.
9. The appellant (landlady) felt aggrieved and filed an appeal  
H (144/2014) before the Appellate Tribunal. The Appellate Tribunal by order dated 12.2.2015 allowed the appeal, set aside the order of the Rent Tribunal, decreed the appellant's eviction petition and passed the eviction decree against the respondent, in relation to the suit premises.

10. The respondent (tenant) felt aggrieved and filed writ petition before the High Court of Rajasthan (Jaipur). By impugned order, the learned Single Judge allowed the respondent's writ petition and set aside the order of the Appellate Tribunal and restored the order of the Rent Tribunal which gives rise to filing of the special leave to appeal in this Court by the landlady.

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11. So the short question, which arises for consideration in this appeal, is whether the High Court was justified in allowing the respondent's (tenant's) writ petition thereby justified in setting aside the appellate order of the Rent Appellate Tribunal and restoring that of the Rent Tribunal.

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12. Heard Dr. Manish Singhvi, learned counsel for the appellant and Mr. Purvish Jitendra Malkan, learned counsel for the respondent.

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13. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal, modify the impugned order and remand the case to the Rent Appellate Tribunal for deciding the appeal (144/2014) afresh on merits.

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14. In our opinion, the need to remand the case to the Rent Appellate Tribunal has occasioned because the High Court, while allowing the respondent's writ petition, came to a conclusion and accordingly held that the Rent Appellate Tribunal allowed the appellant's (landlady's) appeal with a casual approach and failed to record any categorical finding on the plea of *bona fide* need. The operative part of the High Court order reads as under:-

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**“Taking into consideration the fact aforesaid, I do not find any reason for Rent Appellate Tribunal for setting aside the order of the Rent Tribunal. The perusal of the impugned order shows a casual approach of the Rent Appellate Tribunal in reversing the finding of the Rent Tribunal, that too, without going into the issue of personal bonafide necessity. The Rent Appellate Tribunal was expected to first decide the issue as to whether respondent is having personal bonafide necessity or not. Accordingly, impugned order passed by the Rent Appellate Tribunal is set aside.”**

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(emphasis supplied)

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A 15. Having held that, the High Court had two options: first either to remand the case to the Rent Appellate Tribunal for deciding the appeal afresh on merits in accordance with law and second, to decide the matter itself on merits in accordance with law.

B 16. Since the High Court heard the matter in its writ jurisdiction under Article 227 of the Constitution, it was not possible to examine the issue on facts in detail like an Appellate Court. It is for this reason, in our view, the High Court ought to have resorted to first option and remanded the case back to the Rent Appellate Tribunal for deciding the appeal afresh on merits in accordance with law.

C 17. The High Court, therefore, committed an error in not taking recourse to any option and without deciding the issue arising in the case on its merit, simply restored the order of the Rent Tribunal.

D 18. This approach of the High Court caused prejudice to the appellant (landlady) because there was no factual finding recorded either by the first appellate Court or the High Court on the question of *bona fide* need.

E 19. It is for this reason that we uphold the finding of the High Court in relation to the approach and the manner in which the Rent Appellate Tribunal decided the appellant's appeal but consider it just and proper to remand the case to the Rent Appellate Tribunal for its decision on merits afresh in accordance with law.

F 20. In view of foregoing discussion, the appeal succeeds and is allowed. Impugned order is modified to the extent that the case is remanded to the Rent Appellate Tribunal for deciding the appeal (No. 144/2014)(Old No. 41/11) afresh on merits in accordance with law.

G 21. Since the matter pertains to *bona fide* need and eviction, the Rent Appellate Tribunal will decide the appeal within six months as an outer limit strictly in accordance with law without being influenced by any observations made by this Court and the High Court.

22. Pending application(s), if any, stand disposed of.