

CASE NO.:
Appeal (civil) 1901 of 2003

PETITIONER:
Yunus Ali (Dead) through his L.Rs.

RESPONDENT:
Khursheed Akram

DATE OF JUDGMENT: 28/05/2008

BENCH:
C. K. Thakker & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T
REPORTABLE

Lokeshwar Singh Panta, J.

The subject-matter of the challenge in this appeal is a judgment of the High Court of Rajasthan passed in S.B. Civil Revision Petition No.669/2001 on 18th July 2001 setting aside the judgments of the Courts below where both the trial court as well as the lower Appellate Court determined the provisional rent under Section 13(3) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (herein after referred to as the \021Act of 1950\022) at the rate of Rs.400/-p.m. for the shop in question with effect from 01.06.1994 to 01.07.1999. The High Court in revision re-appreciated the evidences and reversed the concurrent findings of the Courts below and held as under: -

\023Thus, the provisional determination of rent by both the courts below at the rate of 400/-p.m. appears on the very face to be illegal and both the courts below have committed jurisdictional error in determining the rent at such rate and they should have determined the rent at the rate of Rs.200/-p.m. as it was the rent last paid by the defendant-petitioner to the plaintiff-respondent.

For the reasons stated above, it is held that the orders dated 16.02.2001 passed by the learned Additional District Judge No.5, Jaipur City, Jaipur and 13.07.1999 passed by the learned Additional Civil Judge (J.D.) No.3, Jaipur City, Jaipur are contrary to the provisions of Section 13(3) of the Act of 1950 and interference becomes inevitable for ends of justice and they are liable to be set aside and this revision is liable to be allowed.

Accordingly, this revision petition filed by the defendant-petitioner Khursheed Akram is allowed and the impugned orders dated 16.02.2001 passed by the learned Addl. District Judge No.5, Jaipur City, Jaipur and 13.07.1999 passed by the learned Addl.Civil Judge (J.D.) No.3, Jaipur City, Jaipur are set aside. The learned

Addl.Civil Judge (J.D.) No.3, Jaipur City, Jaipur is directed to determine provisional rent at the rate of Rs.200/-p.m. It is made clear that this provisional rent is not final, but is only interim till the final decision of the court and subject to adjustment as provided under Section 13(8) of the Act of 1950. No order as to costs.\024

Brief facts, leading to the filing of this appeal, are as under:-

Yunus Ali, the appellant (now represented through his legal representatives as the appellants) was owner of shop No. 2 situated at House No. 242 at Nahari Ka Naka behind Khetri House, Madina Masjid Road, Jaipur. By an oral agreement, he leased the shop on rent to Khursheed Akram, tenant-respondent herein, on a monthly rent of Rs. 300/- excluding electricity and water charges. The respondent-tenant also paid an advance amount of Rs. 5,000/- which was to be adjusted against the instalments of rent or to be returned when tenancy will expire. On 22.01.1993, a rent deed was duly executed between the parties on a stamp paper of Rs. 10/- giving effect to the agreed terms and conditions of the earlier oral agreement of monthly rental of Rs. 300/-. The agreement was executed in the presence of the witnesses and attested by a Notary.

In the month of March 1994, the original landlord at the request of the respondent-tenant, made addition of a platform in front of the shop with stone floor and erection of shutter over the shop. There was agreed marginal increase of the rent amount after the renovation was over. A fresh rent deed was duly executed in favour of the original landlord on 01.04.1994 whereunder rent was increased to Rs. 400/- per month payable w.e.f. April 1994. It was also agreed that the advance amount of Rs. 5000/- shall be adjusted in 14 monthly instalments of the rent due upto 31.03.1994 @ Rs. 300/- per month and thereafter upto 31.5.1994 @ Rs. 400/- per month and other terms remained unchanged and unaltered. Though, in spite of repeated requests and demands of the original-landlord, the respondent-tenant failed to pay rent even after the execution of rent deed on 01.4.1994. Arrears of the rent started accumulating since 01.06.1994 after adjustment of the advance amount of Rs.5,000/-. The landlord left with no other remedy except to file a suit for eviction on 29.01.1997 before the Court of Additional Civil Judge (S.D.) No. 3, Jaipur City, Jaipur inter alia contending that apart from various other grounds mentioned in the plaint, the respondent-tenant has defaulted in payment of the arrears of rent since 01.06.1994.

The respondent-tenant in his written statement pleaded that the agreed rent of the shop was Rs.200/- per month and he had paid an advance amount of Rs. 10,000/- and later on the rent was never agreed to be increased to Rs.300/- per month and further to Rs. 400/-per month w.e.f. 01.04.1994 as claimed in the plaint. It was admitted by him that he had paid rent upto April, 1995 @ Rs.200/- per month and in support thereof, he placed rent receipts on the record.

On 13.07.1999, the learned Civil Judge, after considering the fact that the rent was being paid by the respondent-tenant @ Rs. 200/- in support of which he had produced cash receipts but since a fresh rent deed was executed between the parties, which prima facie would reveal that the rent was agreed to be charged @ Rs. 400/- per month and on the premise of the agreed rate of rent, the trial court determined

the provisional rent under Section 13(3) of the Act of 1950 @ Rs. 400/- per month from 01.06.1994 to 01.07.1999.

Being aggrieved by the above-said order of the learned Civil Judge, the respondent-tenant preferred a Civil Miscellaneous Appeal before the learned District Judge, Jaipur City, Jaipur which was transferred to the learned Additional District Judge No. 5, Jaipur City, Jaipur, for trial. During the course of hearing of the appeal, the respondent-tenant produced a copy of compromise deed dated 30.03.1993 before the Appellate Court in support of his defence that the rent of the shop was Rs. 200/- per month and not Rs.400/- per month. The learned Additional District Judge, on careful perusal of the said document, arrived at the conclusion that the said deed pertained to shop No. 5 and not shop No. 2 which was the subject-matter of the suit. The learned Additional District Judge has found no error or illegality in the order of the learned Additional Civil Judge and, accordingly, rejected the appeal of the respondent-tenant.

Thereafter, the respondent-tenant filed S.B. Civil Revision Petition No. 669/2001 before the High Court of Rajasthan, Bench at Jaipur, under Section 115 of the Civil Procedure Code. The learned Single Judge of the High Court, as noticed earlier, allowed the revision.

Hence, the original landlord filed this appeal by way of special leave. During the pendency of this appeal, the landlord died and his legal representatives have been brought on record as appellants.

Mr. Ajay Choudhary, learned counsel appearing on behalf of the appellants, submitted that the impugned order is perverse, erroneous and illegal as the High Court has exceeded its jurisdiction under Section 115 CPC to replace concurrent findings of facts with its own findings as if it was exercising the jurisdiction of the Appellate Court. He contended that the High Court has exercised its jurisdiction contrary to the well-settled law laid down by this Court in a series of decisions that the High Court should not interfere in the findings of facts recorded by the courts below based upon proper and reasonable appreciation of evidence.

On the other hand, Mr. Abhijeet Sinha, learned counsel appearing on behalf of the respondent-tenant, in support of the order, has submitted that the High Court in exercise of its revisional powers vested in it under Section 115 of CPC has rightly interfered with the erroneous and unsustainable orders of both the courts below and this Court normally under Article 136 of the Constitution should not interfere with the well-reasoned order of the High Court.

Having heard the learned counsel for the parties and having examined the orders of the courts below, we are of the opinion that the High Court's order on the face of it does not stand legal scrutiny and deserves to be set aside.

We do not think it proper and necessary to embark upon the facts of the present case in detail. Suffice it to notice that the predecessor-in-interest of the appellants had entered into oral agreement with the respondent-tenant to lease out shop No. 2 situated at House No. 242 at Nahari Ka Naka behind Khetri House, Madina Masjid Road, Jaipur, to the respondent-tenant at the rate of Rs.300/- per month as rent. The expenses of electricity and water were also agreed to be paid separately as pleaded by the original landlord in the plaint. In pursuance of the oral agreement, a rent deed was executed on 22.01.1993 incorporating all the agreed terms and conditions therein. The respondent-tenant also paid an amount of Rs.5,000/- as advance to the predecessor-in-interest of the appellants, which was agreed to be adjusted against the non-payment of rent by the respondent-tenant or shall be returned

to him at the time of vacation of the shop. The predecessor-in-interest of the appellants pleaded in the suit that the respondent-tenant failed to pay the rent at the agreed rate since 01.02.1993 onwards and it was desired by him that the rental amount should be adjusted from the advance amount of Rs.5,000/- deposited by the respondent-tenant as security with the predecessor-in-interest of the appellants. Accordingly, rent of 14 months from 01.02.1993 to 31.03.1994 was stated to have been adjusted. Some addition was made to the shop by the predecessor-in-interest of the appellants at the request of the respondent-tenant and thereafter rent @ Rs.400/- per month was agreed to be paid by the respondent-tenant w.e.f. 01.04.1994, for which Rent Deed dated 10.04.1994 was executed in the presence of the witnesses and duly attested by a Notary. The amounts of two months' rent from 01.04.1994 to 31.05.1994 @ Rs.400/- per month were also adjusted out of the advance amount and the balance amount of rent was not paid by the respondent-tenant despite repeated requests and demands made by the predecessor-in-interest of the appellants.

The respondent-tenant pleaded before the trial court that the shop in question was given to him on rent by the predecessor-in-interest of the appellants @ Rs.200/- per month and he had paid Rs.5,000/- as advance against the amount of rent. On 30.03.1993, a rent deed was executed and he had paid the rent upto January 1997, but the predecessor-in-interest of the appellants did not give rent receipts after April 1995. The respondent-tenant denied the claim of the predecessor-in-interest of the appellants that the monthly rent of the shop was ever increased from Rs.300/- to Rs.400/- and he reiterated and reasserted that the agreed rent was Rs.200/- per month.

The learned trial court, during the pendency of the eviction suit and on examination of the rent deeds produced before him, determined the provisional rent of the shop @ Rs.400/- per month under Section 13(3) of the Act of 1950 payable by the respondent-tenant for a period of 61 months, i.e. from 01.06.1994 to 01.07.1999, and the total amount of arrears of rent works out to be Rs.24,400/- on which an interest at the rate of 6% has been imposed. The trial court directed the respondent-tenant to deposit the arrears of rent together with interest in the bank account of the predecessor-in-interest of the appellants and also directed the respondent-tenant to pay the rent, as determined, regularly in the account of the predecessor-in-interest of the appellants. The order of the trial court has been upheld by the first Appellate Court.

It is well-settled position in law that under Section 115 of the Code of Civil Procedure the High Court cannot re-appreciate the evidence and cannot set aside the concurrent findings of the Courts below by taking a different view of the evidence. The High Court is empowered only to interfere with the findings of fact if the findings are perverse or there has been a non-appreciation or non-consideration of the material evidence on record by the courts below. Simply because another view of the evidence may be taken is no ground by the High Court to interfere in its revisional jurisdiction.

Considering all the facts and circumstances as noticed above, we are constrained to hold that the order of the High Court cannot be sustained and as such we set aside the same. The High Court has acted in exercise of its jurisdiction with material irregularity to interfere with the well-merited concurrent findings and reasonings recorded by two courts below. The High Court, with respect to it, has lost sight of the important fact that it was provisional determination of the amount of rent by the trial court and the eviction suit is still

pending before it for final decision.

For the foregoing reasons, the impugned judgment is set aside and the appeal is allowed, but in the facts and circumstances of the case, without any order as to costs.

JUDIS