HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil First Appeal No. 105/2020

M/s National Silk Palace, Bapu Bazar, Jaipur

----Appellant

Versus

M/s Golecha Cinetalk Pvt Ltd.

----Respondent

<u>Connected With</u>

S.B. Civil First Appeal No. 307/2020

M/s. New Lucky Silk Palace

----Appellant

Versus

M/s Golecha Cinetalk Pvt Ltd.

----Respondent

For Appellant(s)	:	Mr. J.P. Goyal, Sr. Advocate with Mr. Abhi Goyal, Advocate
For Respondent(s)	:	Mr. Kamlakar Sharma, Sr. Advocate with Mr. Abhishek Sharma, Advocate

HON'BLE MR. JUSTICE PRAKASH GUPTA

Order

15/12/2021

These two appeals have been filed by the appellants-defendants (for short, the defendants') against the judgment dated 5.12.2019, whereby the Trial Court determined the standard rent of both the suit shops at Rs. 1,13,160/- and Rs. 50,160/- respectively and held the plaintiff entitled to get the standard rent so fixed from the date of filing the suits.

Mr. J.P. Goyal, learned Sr. Counsel with Mr. Abhi Goyal, Advocate submits that since in the year 1978, the standard rent had already been fixed @ Rs. 710/- per month and Rs. 705/-

respectively, therefore, the present suits filed by the plaintiffs were barred by principle of res-judicata and not sustainable.

Learned Sr. Counsel further submits that the suit property is in a dilapidated condition as it was rented out in the year 1958. He further submits that rent of the nearby shops in the vicinity is not @ Rs. 70/- per sq. ft. The shops of which the rent is said to be Rs. 72/- per sq. ft. or Rs. 70/- per sq. ft., are located at a far better place and are situated in Nehru Bajar and at M.I. Road, Jaipur respectively, whereas the present shops are situated in Bapu Bajar. He further submits that the trial court without there being any evidence on record, assessed the rent @ Rs. 60/- per sq. ft. and determined the rent at Rs. 1,13,160/- and Rs. 50,160/- respectively, which is excessive. He further submits that since the tenancy is of the year 1958 and shops are old, prevailing rent of the shops in the vicinity cannot be much relevant for determination of the standard rent of these shops. The rate for assessing the rent should not exceed Rs. 40/- to 50/- per sq. ft. and looking to the area and conditions of the shops, the trial court ought to have determined the rent on reasonable basis.

Learned Sr. Counsel has drawn the attention of the Court towards sub-section (5) of Section 6 of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (for short, 'the Act of 1950') and submits that if the tenant institutes a suit under the Act of 1950, the date for fixation of standard rent shall be the date of the institution of suit, but in every other case (e.g. in the case of landlord) in which the Court is required to determine the standard rent of any premises under this section, the Court shall determine / ascertain a date from which the standard rent so determined shall be deemed to be payable. In this view of the matter, the Court was required to determine the standard rent from the date of the order instead of date of filing the suit.

He further submits that as per valuation report (Ex.-5) prepared by the valuer and produced by the plaintiff himself, area of one of the suit shop is 78.07 Sq. Mtrs., which is approximately 840 Sq. Ft., but the trial court wrongly determined the standard rent treating the area as 1886 Sq. Ft. He further submits that as per valuer's report (Ex.-A/1) produced by the defendants, rental value of the suit shops is Rs. 19,203/- per month and Rs. 18,195/- per month respectively, which have not been considered by the trial court in right perspective.

It is also submitted that on an application filed under Section 151 CPC, the defence of the defendants was wrongly struck off vide order dated 20.7.2019, which is per-se illegal and not sustainable. In this regard, he has drawn the attention of this Court towards Section 7 (4) of the Act of 1950. He further submits that the order dated 20.7.2019 has already been challenged by the defendants in Civil Misc. Appeal No. 5287/2019, which is pending adjudication. In this way, the defendants have not been given any opportunity to lead evidence.

Learned Sr. Counsel further submits that both the shops are adjacent to each other and the facilities in Bapu Bajar are less than those in Nehru Bajar and M.I. Road. Looking to the area, condition of the shops, rent of the nearby shops in the vicinity and non availability of the facilities in Bapu Bajar, both the appeals deserve to be admitted and execution proceedings going on against the defendants are required to be stayed.

On the other hand, Mr. K.K. Sharma, learned Sr. Counsel appearing with Mr. Abhishek Mishra for the plaintiff submits that in para no. 9 of the plaint, the plaintiff specifically mentioned that the area of the suit shops is 1886 Sq. Ft. and and 836 sq. ft. respectively and rent of the shops was stated to be Rs. 70/- per sq. ft. and thus, the plaintiff claimed the standard rent at Rs. 1,32,020/- per month and Rs. 58,520/- per month respectively, but in the written statement, no specific denial was made by the defendants that the area of the suit shops is not 1886 Sq. Ft. and 836 sq. ft. In support of this contention, he has placed reliance on the judgment passed by the Hon'ble Apex Court in the case of **Jaspal Kaur Cheema and Another Versus Industrial Trade Links and Others** reported in (2017) 8 SCC 592.

Learned Sr. Counsel has drawn the attention of the Court towards para 9 of the affidavit of Shri Sudhir Puri produced in evidence by the plaintiff and submits that he made exactly the same averments, as were made in the plaints. Mr. Kamlakar Sharma, learned Sr. Counsel further submits that there is neither any pleading nor any evidence to this effect on behalf of the defendants. The written statements were filed by Dalu Ram and Jetha Nand, partners, but the defendants neither appeared as a witness themselves nor did any cross-examination from the plaintiff's witness on this point. The valuation report (Ex.-5) has not been duly proved, therefore, no reliance can be placed on the said valuation report. Moreover the objection with regard to area of the suit shop/s was not raised before the trial court and no issue in this regard was framed by the trial court.

Since there was no pleading, evidence and argument before the trial court with regard to size of the shop/s, such an argument cannot be raised first time before this Court.

So far as the argument of learned counsel for the defendants with regard to res-judicata, Mr. Kamlakar Sharma, learned Sr. Counsel submits that as far as standard rent is concerned, it can be re-determined under the Act of 1950 because in the first instance, the suit for standard rent was filed in the year 1976. Thereafter the matter was compromised, a new rent note was executed in the year 1978 and rent was enhanced.

He has drawn the attention of the Court towards the findings of the trial court on issue no.3, wherein the trial court noted that the defendants did not produce any document relating to the purportedly previous instituted suit, written statement and the judgment passed by the trial court.

Mr. Kamlakar Sharma, learned Sr. Counsel has drawn the attention of the Court towards Section 6 of the Act of 1950 and submits that where for any reason, the rent agreed upon is claimed to be <u>low or excessive</u>, the landlord or the tenant may institute a suit in the lowest court of competent jurisdiction for fixation of standard rent for any premises. He has also drawn the attention of the Court towards second proviso of clause (b) of sub-section (2) of Section 6 of the Act of 1950. He further submits that the agreed rent was determined in the year 1978 and thereafter in the year 2001, the suits for determination of the standard rent were filed. In this view of the matter, the question of res-judicata does not arise.

Mr. Kamlakar Sharma, learned Sr. Counsel further submits that in the plaint, rental rate of the shops was stated to be Rs. 70/- per sq. ft., but the learned trial court reduced it and determined the standard rent @ Rs. 60 per sq. ft.

He further submits that so far as the argument with regard to determining the standard rent from the date of filing the suits is concerned, there are judgments to the effect that the standard rent is to be determined from the date of application. He further submits that sub-section (5) of Section 6 of the Act of 1950 gives a discretion to the trial court to fix the date from which the standard rent is to be determined. No illegality whatsoever has been committed by the trial court. All the findings of the trial court are based on proper appreciation of the evidence. In support of his contentions, he has placed reliance on the judgment passed by the Coordinate Bench of this Court in the case of **Dharamveer Kaliya Versus Khem Singh & Ors.** reported in 1982 (1) RCJ 599.

He further submits that since the year 2019, the defendants are not paying the standard rent, so determined by the trial court irrespective of the fact that no interim order is operating in their favour. Hence, no interim order is required to be passed in favour of the defendants. He has referred the order dated 19.12.2019 passed by this Court in **S.B. Civil First Appeal No. 713/2019** titled **Smt. Parmeshwari Devi Sharma Versus M/s. Saraogi Mansion Estate Private Limited**.

Heard learned counsel for the parties.

The matter requires consideration. Hence, the appeals are admitted.

Since the respondent-plaintiff is duly represented by its counsel, hence fresh notice need not be issued.

(PRAKASH GUPTA),J

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