

(2016) 01 RAJ CK 0209

RAJASTHAN HIGH COURT

Case No: Civil Second Appeal No. 276 of 2001 and Civil Misc. Appeal No. 679 of 2001.

LRs. of Gomad Ram and Others -
Petitioners @HASH LRs. of
Ganga Dutt

APPELLANT

Vs

RESPONDENT

Date of Decision: Jan. 11, 2016

Acts Referred:

- Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Section 13(1)

Citation: (2016) AIRCC 3345 : (2016) 2 RCRRent 571 : (2017) 1 RentLR 132

Hon'ble Judges: Dr. Vineet Kothari, J.

Bench: Single Bench

Advocate: D.D. Chitlangi, Advocate, for the Plaintiff-Appellant-Landlord; J.K. Bhaiya,
Advocate, for the Defendant-Respondent-Tenant

Final Decision: Disposed Off

Judgement

Dr. Vineet Kothari, J. - The present second appeal under Section 100 CPC has been filed by the plaintiff-appellant-landlord against the judgment and decree dated 03.03.2001 passed by the learned appellate court of Additional District Judge No. 2, Bikaner in **Appeal Decree No. 33/99 - LRs. of Gomadram & Ors. v. LRs. of Gangadutt**, affirming the judgment and decree dated 22.01.1985 passed by the learned trial court of Munsif & Judicial Magistrate, First Class, Nokha (Bikaner) in **Civil Original Suit No. 50/80 - Shri Gomadram & Ors. v. Gangadutt**, dismissing the suit for eviction filed by the plaintiff-appellant-landlord in respect of the suit shop in question situated at Nokha, Bikaner.

2. The present eviction **Suit No. 50/80 - Shri Gomadram & Ors. v. Gangadutt** about the suit shop in question situated at Nokha, is the second round of litigation between the landlord and tenant. The present suit was filed on the ground of second default committed by the defendant-tenant in payment of rent. The first

round of litigation initiated by the **Civil Suit No. 2/74 - Gomad Ram v. Ganga Dutt** upon two rounds of remand is still subject matter of **S.B. Civil Misc. Appeal No. 679/2001 - Shri Prakash Ranga v. LRs. of Gomad Ram**, which is still pending in this Court is also being disposed of by this judgment.

3. The present second suit (**Civil Original Suit No. 50/80 - Shri Gomadram & Ors. v. Gangadutt**), filed on the ground of second default committed by the defendant-tenant, came to be rejected by both the courts below with the following findings:--

"(i) **Relevant findings of the learned trial court of Munsif & Judicial Magistrate, First Class, Nokha (Bikaner) in the order dated 22.01.1985 passed in Civil Original Suit No. 50/80 - Shri Gomad Ram & Ors. v. Gangadutt:-**

:g okn oknhx.k dh vksj ls eqfUIQ U;k;ky; chdkusj esa fnukad 27-05-1977 dks is" k fd;k x;kA bl U;k;ky; ds l'ftr gksus ds dkj.k ;g eqdnek LFkkukUrfjr gksdj bl U;k;ky; esa izklr gqvka

la{ksi esa oknh i= ds rF; bl izdkj gS fd izfrokn us oknhx.k ls ,d nqdku e; xksnke rFkk pksdh 27@& :i;s ekgokj fdjk;s ds fglkc ls fdjk;s ij yhA ftldk fooj.k okn i= ds iSjk uEcj ,d esa ntZ gSA fdjk;snkjh ekg nj ekg FkhA gj ekg dh leklrh ij fdjk;k vnk djuk Fkka ysfdu izfrokn fdjk;k vnk djus esa rRij ugha jgkA N% ekg ls Hkh vf/kd vof/k dk fdjk;k vnk u djus ds dkj.k fdjk;snkjh leklrh dk uksfVI izfrokn dks fn;k x;kA tks izfrokn dks fnukad 24-07-1973 dks izklr gks x;kA bl izdkj vuqca/khr fdjk;snkjh leklr dj nh x;hA mlds ckn izfrokn ds fo:) oknhx.k dh vksj ls ,d okn mDr ifjlj dks [kkyh djus o vU; vk/kkjksa ij rFkk fMQkYVj ds vk/kkj ij fd;kA tks tSjdkj gSA mlds ckn jktLFkku izSfelst dUV~ksy vkWQ jsUV ,M ,foDlu ,DV esa rjehe gks tkus ds dkj.k /kkjk 13, ds rgr vUnj fe;kn nj[okLr nsus rFkk mDr /kkjk ds rgr vnkys ds vkns" k ds vuqlkj jde le; ij tek dj nsus ij fMQksYV ds vk/kkj ij csn[ky djus ls cpk fy;k x;kA izfrokn us Hkh mDr /kkjk ds gr vUnj fe;kn nj[okLr is" k dhA rFkk U;k;ky; ds vkns" k fnukad 15-01-1976 ds vuqlkj fdjk;k tek dj fn;kA bl dkj.k mls ,d ckj fMQkYV ls Qk;nk fey x;kA ysfdu mlds ckn Hkh izfrokn us tuoJh 1976 ls bl nkos ds rS;kj djus dh rkjh[k fnukad 27-03-1977 rd fdjk;k le; ij u rks vnk fd;k vkSj u gh Vs.Mj fd;kA bl izdkj izfrokn 6 ekg ls vf/kd le; dk fdjk;k vnk u dj fMQksYVj gks x;kA ,slh lwjr esa mDr ,DV dh /kkjk 13@6 ds vuqlkj ,DV dh lqj[kk [kks pqdk gSA vkSj nwljh ckj fMQksYVj gks tkus ij izfrokn ls fooknkLin ifjlj [kkyh djokus ds fy;s oknhx.k vf/kd' r gks x;k gSA bl dkj.k cdk;k fdjk;k izklr djus rFkk nqckjk fMQksYVj ds vk/kkj ij nqdku [kkyh djkus dh fMdzh iznku dh tkus dh izkFkZuk oknhx.k us dh gSA

izfrokn us okn i= ds tokc esa tokcnkok is" k dj crk;k gS fd oknhx.k ls mlus fooknkLin ifjlj fdjk;s ij fy;k] tks igys vkB :i;s ekgokj ij fdjk;s esa fy;k vkf[kjdkj 27@& :i;s fdjk;s ij bl ifjlj dk fdjk;k vnk fd;k tkrk jgk gSA ekg nj ekg fdjk;k vnk djus dk bdjkj ugha gqvka Fkka oknhx.k vDIj vklke o caxky esa O;kikj djrs gSaA blfy;s tc Hkh oks ogkWa ls vkrs fdjk;k vnk fd;k tkrkA oknhx.k viuh lqfo/kkuqlkj fdjk;k ysrs FksA izfrokn us fdjk;k ekg ebZ o twu lu~ 1973 dk oknhx.k dks vkWQj fd;k] vkSj u ysus ij euhvkMZj fd;k ftldks Hkh oknhx.k us ysus ls bUdkj dj fn;kA vkf[kjdkj /kkjk 19, ds rgr fdjk;k jkf" k U;k;ky; esa tek djkbZA bl izdkj dHkh Hkh oknhx.k ds fdjk;s dh izfrokn us vnk djus esa pqd ugha dh gSA /kkjk 13, ds rgr fdjk;k U;k;ky; }kjk r; fd;k x;kA vkSj vkns" k vuqlkj izfrokn jde tek dj nksA izfrokn cjkj 27@& :i;s ekgokj ds fglkc ls fdjk;k vnk djrk vk jgk gSaA tks fdjk;k ekg nj ekg cjkj U;k;ky; esa tek gks jgk gSA tks okn dks gh vnk gks jgk gS blfy;s u rks fdllh fdjk;s ds p<+kus dk iz" u gS vkSj u gh fdllh fMQksYVj dka

bl okn ls iwoZ tks okn oknhx.k }kjk is" k fd;k x;k Fkk] ftldk QSlyk fnukad 31-10-1979 dks gqvka ml QSlys dh izfrokn us vihy dhA vihy ds nksjku izfrokn us ,d nj[okLr is" k dh fd vc oknhx.k dh izfrokn us dh nqdku dh vko";drk ugha gSA bl dkj.k nkok pyus ;ksX; ugha gSA bl nj[okLr dk tokc oknhx.k dh vksj ls is" k fd;k x;kA vihyUV dksVZ us nksuksa i{kksa dh lquokbZ dj nj[okLr dks dqN lhek ds vUnj Lohdkj dj funsZ" kksa ds lkFk ekeyk fjek.M fd;kA ftlds fjek.M gksus ds ckn nkok o tokc nkok esa la" kks/ku gq,A okn i= esa okn uEcj rhu MkWDVj izselq[k dk uke vkSj tksM+k x;kA oknhx.k us viuh nj[okLr tokc esa :g crk;k fd QSfeyh lsVyesUV gks tkus ds dkj.k oknhx.k xkseUnjke rFkk MkWDVj izselq[k dk u;s

fuekZ.k ls dksbZ laca/k ugha gSA D;ksafd u;k fuekZ.k tks fd;k x;k gS oks ifjokj ds vU; InL;ksa ds fgLLs esa vk;k gSA iwoZ dks ewy i=koyh ds fjek.M gksus ds ckn ubZ rudh uEcj ikap vkSj cukbZ x;h rFkk ml ij fQj oknh MkWDVj izselq[k o izfroknh xaxknr ds c;ku fy;s x;sA

rudh uEcj ,d

vk;k izfroknh fdjk;k vnk;xh esa fMQksYVj gks x;k gSA bl ckr oknhx.k us vius okn esa crk;k gS fd iwoZ esa twu 1973 ls fdjk;k vnk ugha fd;k vkSj 6 ekg ls T;knk vof/k iwjh gks tkus ds dkj.k mlus fMQksYVj fd;kA iwoZ okn esa Hkh ,slh gh ckr crkbZ x;hA tcfd izfroknh us vius tokcnkok o c;ku esa Li"V :i ls crk;k fd iwoZ esa twu 1973 ;k mlds ckn fdjk;k vnk;xh esa dHkh dksbZ pqd ugha dhA iwoZ esa eqdnek uEcj 1,@81 esa Hkh U;k;ky; us fnukad 15-01-1976 dks fdjk;k r; fd;k Fkk] ml 15-01-1976 ds vkns"k dh udy Hkh bl i=koyh esa is"k gqbZ gS] ftlesa Hkh U;k;ky; us ;g mYys[k fd;k gS fd dqy 917@& :i;s fdjk;s ds curs gS ftlesa ls dqy 873@& :i;s tek gks pqds gSA ckdh 44@& :i;s izfroknh dks vnk djus gSA bl izdkj iwoZ esa fdjk;k vnk;xh esa izfroknh us dksbZ pqd ugha dh gSA izfroknh us ;g crk;k gS fd mlus fdjk;k nsuk pkgk tks oknhx.k us fy;k ughaA euhvkMZj }kjk Hkst mls Hkh ugha fy;kA bl dkj.k /kkjk 19, ds rgr fdjk;k U;k;ky; esa tek dj;kA bls ;g izekf.kr gS fd izfroknh fdjk;k vnk djus esa ges"kk rRij jgk gS vkSj mlus fdlh Hkh izdkj dh dksbZ pqd ugha dh gSA blfy;s igyk fMQksYV ugha gqvK gSA tgkWa rd nwlj ckj fMQksYVj gksus dh ckr gS bl ckjs esa Hkh gkykafd oknhx.k us vius okni= esa ;g crk;k gS fd tuojh lu~ 1976 ls 16 ekg rd dk fdjk;k oknh us u rks vnk fd;k vkSj u gh Vs.Mj fd;kA tc fd izfroknh us ;g crk;k gS fd mlus le; le; ij fdjk;k U;k;ky; esa tek dj;k gS] D;ksafd oknh us fdjk;k fy;k ughaA bl laca/k esa izfroknh us cSad esa fdjk;k tek gksus ds pkyku b0,DIO,0 1 ls ysdj b0,DIO ,0 22 is"k fd;s gSA ftlesa ekg tuojh lu~ 1976 ls ekg vDVwcj 1977 rd gj ekg dk le; & le; ij fdjk;k tek gksuk lkfcr gSA bu pkyku dks QthZ gksus vFkok xyr gksuk oknhx.k ugha crks] u gh ,slh dksbZ ckr fdjKMZ ij vkbZ gS ftls ;g irk yxs ;g pkyku lgh ugha gS vFkok bu pkyku ds tfj;s fdjk;k cSad esa tek ugha gqvKA izfroknh Mh0MCY;w0 1 xaxknr us Hkh vius c;ku esa bu pkyku ds tfj;s fdjk;k tek djuk crk;k gSA bl izdkj izfroknh i{k dh lk{; ls ;g c[kwch lkfcr gS fd izfroknh dh vksj ls le; le; ij fdjk;k vnk gksrk jgk gSA mlesa dksbZ pqd ugha gqbZ gSA tcfd oknhx.k dh vksj ls ,slh dksbZ lk{; is"k ugha gqbZ gS ftl ls ;g lkfcr gks fd mDr jkf"k izfroknh }kjk tek ugha djkbZ x;hA bl izdkj rudh uEcj ,d oknhx.k ds fo:) rFkk izfroknh ds i{k esa fuf.kZr dh tkrh gSA

rudh uEcj pkj

mDr tks pkj rudh;kr fuf.kZr dh gS muesa ls rudh uEcj ,d o ikWap izfroknh ds i{k esa fuf.kZr dh x;h gSA rFkk uEcj nks o rhu oknhx.k ds i{k esa fuf.kZr dh gSA pwafrudh uEcj ,d esa ;g r; fd;k tk pqdk gS fd izfroknh fdjk;k vnk;xh esa fdlh Hkh izdkj ls fMQksYVj ugha jgk gSA vkSj rudh uEcj ikWap esa ;g r; fd;k tk pqdk gS fd oknhx.k dk QSfeyh lsVyesUV dsoy ek= eux<+ur o nqdku [kkyh djkus dk cgkuk ek= gSA nwlj vkSj rudh uEcj nks o rhu ds tfj;s ;g crk;k gS fd uksfVI oS/k :i ls fn;k x;k rFkk iwoZ ds okn esa pwafrudh uksfVI fn;k tk pqdk Fkka vr% nqckjk bl ckn esa uksfVI nsus dh vko";drk ugha Fkha D;ksafd ;g okn Hkh mlh ckn ls lacaf/kr gSA ysdu bu nks rudh;kr ls izfroknh ds i{k esa rudh uEcj ,d o ikap fuf.kZr dh x;h gS ml ij dksbZ izHkko ugha iM+rka bl izdkj mDr pkjsa fuf.kZr rudh;kr dk lEfeyr izHkko ;g gS fd pwafrudh izfroknh us fdjk;k vnk;xh esa dHkh dksbZ pqd ugha dh gS] rFkk QSfeyh lsVyesUV oknhx.k }kjk ckn esa lksp fopkj dj eux<+ur rS;kj fd;k x;k gSA tks lPpkbZ ls ijs gSA ,slh gkyr esa oknhx.k izfroknh ls fooknLin ifjl [kkyh djkus ds fy;s gdnkj ugha gSA vkSj izfroknh ij oknhx.k dk iwoZ esa dksbZ fdjk;k ckdh ugha jgk gSA vr% oknhx.k izfroknh ls fdlh Hkh izdkj dh jkf"k Hkh izklr djus ds vf/kdkjh ugha gSA oknhx.k izfroknh ls fdlh Hkh izdkj dk vuqrks"k ikus ds fy;s Hkh vf/kdkjh ugha gSaA vr% oknhx.k dk okn [kkfjt fd;k tkrk gSA

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(gjlq[kjke iwfu;k)

(eqfUIQ ,oa U;kf;d eftLVs~V)

izFke oxZ] uks[kk (chdkusj)

(ii) Relevant findings of the learned appellate court of Additional District Judge No. 2, Bikaner in the order dated 03.03.2001 passed in Appeal Decree No. 33/99 - LRs. of Gomad Ram & Ors. v. LRs. of Ganga Dutt:-

10- eSaus nksuksa i{kksa ds rdkSa ij fopkj fd;kA ;g Lohd`r fLFkr gS fd i{kdkjsa ds e/; tks iwoZ okn la0&2@74 gS] mlesa fnukad& 15-01-1976 dks la"kkf/kr /kkjk 13, vf/k0 ds vuqlkj izfroknh }kjk izkFkZuk&i= izLrqr fd;k x;k Fkk] ftlds

vk/kkj ij fnIEcj 1975 rd dk fdjk;k fu/kkZfjr dj fn;k x;k vkSj ;g Hkh Lohd`r fLFkfr gS fd bl vkns"k dh ikyuk esa leLr cdk;k fdjk;s dh jkf"k izfroknh us tek djok nh Fkh vkSj bl izdkj tks /kkjk 13, vf/k0 ds vuqlkj pqd dk vk/kkj Fkk] og vfLrRo esa ugha jg x;k Fkka pwaFd mDr okn esa /kkjk 13(1)(,) vf/k0 ds vk/kkj ds vykok csn[kyh gsrq vU; vk/kkj Hkh okn esa Fks] blfy;s okn dk fuLrkj.k ugha gqvk vkSj okn dh dk;Zokgh lqpk: :i ls vU; vk/kkjksa ij tkjh jghA iz"u ;g mBrk gS fd tc i{kdkjksa esa okn vU; vk/kkjksa ij fopkj/khu jg x;k] rc blh ifjlj dk] ftlds laca/k esa iwoZ esa okn py jgk gS] dk fdjk;k izfroknh & fdjk;snkj dgkWa ij tek djok;s\

11- ;g lgh gS fd izfroknh }kjk iwoZ okn esa fnukad 15-01-1976 ds vkns"k dh ikyuk djus ds mijkar izfr ekg ns; fdjk;s dh iwoZ okn la0&2@74 esa mlds }kjk fdjk;k vnk;xh dk vfHkFku fd;k x;k gSA vr% ;g ns[kuk gS fd iwoZ okn la0&2@74 esa tuojh 1976 ls yxkrkj ;g okn izLrqr djus rd dk fdjk;k izfroknh }kjk Vs.Mj ds ek/e ls tek djok;k tk jgk gS\

12- bl laca/k esa izfroknh ds lk[kh Mh0MCY;w0 1 xaxknRr us viuh lk{; esa cryk;k gS fd og bl ifjlj dk fdjk;k vnkysr esa Vs.Mj ,&1 ls ,&22 nLrkost ds tfj;s tek djok pqdk gSA oknh dk ;g dFku gS fd bl ifjlj dk fdjk;k tuojh 1976 ls mls vnk ugha fd;k x;k gSA ;g lgh gS fd izfroknh us O;fDrxr rkSj ls tuojh 1976 ls fdjk;k oknh dks vnk ugha fd;k gSA pwaFd nksuksa i{kksa ds e/; iwoZ okn la0&2@74 orZeku okn ds izLrqr gksus dh fnukad dks fopkj/khu Fkk] blfy;s izfroknh bl ifjlj dk fdjk;k mDr okn la0&2@74 esa tek djok jgk Fkk] ftlds Vs.MIZ ,Dth0 , 1 ls , 22 gSa] ftudk esjs }kjk voyksdu fd;k x;k gSA buds tfj;s izfroknh us tuojh 76 ls vDVwcj 1977 rd dk fdjk;k izfrekg le; ij tek djok;k gS vkSj tc fnukad 27-05-1977 dks orZeku okn izLrqr fd;k x;k Fkk] ml fnukad rd vfFkZr~ vizSy 77 rd dk ns; fdjk;k izfroknh }kjk tek djok;k tk pqdk Fkka bl izdkj okn izLrqr gksus dh fnukad rd ns; leLr fdjk;k izfroknh }kjk tek djok;k tkrk jgk gSA bu nLrkostksa ds QthZ gksus dh laHkkouk Hkh ugha gS] D;ksafd ;s U;k;ky; ds nLrkost gSa vkSj buds ek/e ls U;k;ky; esa izfroknh us fdjk;k tek djok;k gS] ftls ;g rF; lkfcr gks tkrk gS fd iwoZ okn esa tuojh 76 ysdj vizSy 1977 rd dk yxkrkj fdjk;k okn izLrqr gksus dh fnukad rd ns; fdjk;k] izfroknh }kjk tek djok;k tk pqdk Fkka

13- iz"u ;g mBrk gS fd D;k bl tek"kqnk jkf"k dks oknh dks vnk;xh fd;k gqvk ekuk tkos\ esjs le{k ,slh dksbZ fof/k vihykFkhZ i{k dh vksj ls izLrqr ugha dh x;h gS fd bl tek"kqnk jkf"k dks oknh dks vnk;xh ugha ekuk tk ldrk gSA D;ksafd i{kdkjksa ds e/; blh ifjlj dks fDr djokus gsrq okn iwoZ ls fopkj/khu py jgk Fkk vkSj blfy;s izfroknh }kjk ln~Hkkfod rkSj ij fdjk;k mDr iwoZ okn esa tek djok;k x;k gSA ,slh fLFkfr esa ;g ekuk tkosxk fd izfroknh }kjk mi;qZDr izdkj ls fujarj fdjk;s dh vnk;xh oknh dks dh tk jgh gS vkSj og fdlh izdkj ls O;frdkeh ugha gSA v/khuLFk U;k;ky; us ,slk gh ekudj bl fook/kd dk fu.kZ; oknhx.k ds fo:) ,oa izfroknh ds i{k esa fd;k gS] tks lgh gS vkSj ftldh iqf"V dh tkrh gSA

fook/kd la0& 2 o 3

14- bu nksuksa fook/kdksa dk ifgys gh oknhx.k ds i{k esa r; dj fn;k x;k gS vkSj buds fo:) dksbZ vihy is"k ugha gqbZ gS] vr% budks vc iqu% fu/kkZfjr djus dh vko";drk ugha gSA

fook/kd la0&4

15- ;g vuqrks"k dk fook/kd gS] ftldk fu.kZ; fook/kd la0&5 ds mijkar fd;k tkosxkA

fook/kd la0&5

16- ;g fook/kd oLrqr% vuko";d :i ls bl izdj.k esa fojpr fd;k x;k gS ;g fook/kd cuk;k x;k gS fd vk;k la"ksf/kr okni= ds vuqlkj orZeku i{kdkjksa }kj QSesyh lsVyesaV dh fLFkfr ds mijkar ;g okn la/kkj.kh; gS\ D;ksafd ;g izdj.k f}rh; O;frdze ds vk/kkj ij yk;k x;k gS vkSj ;fn ;g ekuk Hkh tkos dh i{kdkjksa esa dksbZ ikfjokfjd le>kSrK gks x;k] rc Hkh ;g okn pyus ;ksX; gS] D;ksafd ewy :i ls okn esa tks oknh Fks] os vkt Hkh fojeku~ gSa vkSj ;fn ;g ekuk tkos fd i{kdkjksa ds e/; ikfjokfjd le>kSrK ugha gqvk gS] rc Hkh ;g okn pyus ;ksX; gS] D;ksafd iwoZ ds okfn;ksa ds vykok ,d u;k oknh izselq[k tksM+ fy;k x;k gSA ;fn ;g ekuk tkos fd ,slk le>kSrK ugha gqvk gS rks ,slh fLFkfr esa vf/kd ls vf/kd izselq[k vuko";d i{kdkj ekuk tk ldrk gS vkSj bls vk/kkj ij Hkh okn vla/kkj.kh; ugha gksrk gSA blfy;s bl fook/kd dk dksbZ egRo gh ugha gS vkSj bl fook/kd dks =qfVo"k v/khuLFk&U;k;ky; us izfroknh ds i{k esa fu.khZr fd;k gSA bl okn esa mDr rF; ns[kus dh vko";drk gh ugha Fkh vkSj nksuksa gh fLFkfr;ksa esa ;g okn la/kkj.kh; gSA vr% fook/kd ij fn;s x;s v/khuLFk&U;k;ky; ds fu.kZ; dks iyVk tdkj bls oknhx.k ds i{k esa izfroknh ds fo:) rd fd;k tkrk gSA

fook/kd la0&4

17- pwaFd fook/kd la0&1 dk fu.kZ; izfroknh.k ds i{k esa gqvk gS] vr% ;g vihy Lohdkj ;ksX; ugha gS vkSj fujLr fd;s tkus ;ksX; gSA vihy dk O;; i{kdkjku viuk&viuk Lo;a ogu djsaxsA

,IMh@&

ch0,e0 xqlrk

%%vkns" k%%

18- vr,o vihykFkhZx.k&oknhx.k dh ;g vihy fujLr dh tkdj v/khuLFk&U;k;ky; ds fu.kZ; ,oa fMdzh dh iqf"V dh tkrh gSA vihy dk O;; i{kdkjku viuk&viuk Lo;a ogu djsaxsA rn~uqlkj fMdzh ipkZ fojpr fd;k tkosA

,IMh@&

(ch0,e0 xqlrk)

vij ftyk U;k;k/kh" k la0 2

chdkusjA"

4. While admitting the present second appeal on **28.01.2003**, a coordinate Bench of this Court framed the following substantial question of law for consideration by this Court:--

"Whether deposit of rent in the court without there being an order of the court can be said to be the payment envisaged under Section 13(1) of the Act?"

5. Learned counsel for the plaintiff-appellant, Mr. D.D. Chitlangi urged that the defendant-tenant has not paid any rent for the suit shop in question after 1996. He has also produced before this Court a copy of the information supplied by the concerned trial court of Civil Judge (Junior Division) & Judicial Magistrate, First Class, Nokha (Bikaner) vide ID No. 01 dated **28-07-2011**, in which under the Right to Information Act, the concerned court has disclosed that after **01.02.1996**, no rent with respect to the said suit premises has been deposited by the defendant-tenant. However, upto **31.01.1996**, monthly rent @ Rs. 27/- was being deposited from January, 1982 till 31.01.1996. He further submitted that in view of the judgment of this Court in **Bulaki Dass v. Ram Swaroop, 2009(2) RLW 1175 (Raj.)**, the eviction decree deserves to be granted in favour of the landlord and against the tenant and the orders of the learned courts below deserve to be set aside.

6. On the other hand, Mr. J.K. Bhaiya, learned counsel appearing for the defendant-respondent-tenant urged that for the period after 1996 from February, 1996 also, the money orders for the rent @ Rs. 27/- per month were sent to the landlord, however, on account of refusal to receive the said rent, the same could not be paid to the plaintiff-landlord. He submitted that upon the remand by the first appellate court, against which **S.B. Civil Misc. Appeal No. 679/2001 - Shri Prakash Ranga v. LRs. of Gomad Ram** is pending in this Court, the eviction on the ground of first default is still pending before the learned trial court. Therefore, he submits that the second suit filed on the basis of the alleged second default should not be filed by the plaintiff, and therefore, rejection of the present suit by both the learned courts below was justified and proper.

7. Having heard the learned counsels for the parties, this Court is of the considered opinion that the present appeal of the plaintiff-landlord deserves to be allowed and

the substantial question of law framed above deserves to be answered in favour of the plaintiff-landlord and against the defendant-tenant.

8. This Court in **Bulaki Dass v. Ram Swaroop, 2009(2) RLW 1175 (Raj.)**, relying upon the decision of the Hon'ble Supreme Court in **Shiv Dutt Jadiya v. Ganga Devi, (2002) 3 SCC 189** and **Nasiruddin v. Sita Ram, 2003 DNJ (SC) 180**, clearly laid down that unless the defendant-tenant deposits continuously the monthly rent as fixed by the court or mutually agreed between the parties, the defendant-tenant is under legal obligation to pay the said rent during the appellate proceedings, if not paid, the same is bound to be paid as second and subsequently multiple defaults on the part of the defendant-tenant and the eviction decree is liable to be passed against him.

9. The relevant portion of the judgment of this Court in **Bulaki Dass v. Ram Swaroop**, (supra) is quoted below for ready reference:--

"18. Having heard the learned counsel at length and having gone through the record of the case and the judgments of two Courts below and the judgments cited at Bar, this Court is of the opinion that the Courts below cannot be said to have erred in any manner in passing the eviction decree against the appellant-tenant on the ground of second default. The deposit in the Court of learned Munsif Magistrate without any procedure known to law at all under Section 19A of the Act or otherwise is of no consequence and cannot enure to the benefit of the defendant-tenant. The said deposit, if any, is no deposit and has been rightly treated as not a valid tender of rent by the defendant-tenant by the Courts below. Admittedly, the first deposit itself for the month of June, 1980 was made by the tenant on 17.7.1980 after the suit proceedings terminated on 11.7.1980 with dismissal of the appeal by the first appellate court. Therefore, on 14.7.1980, no proceedings were pending in the Court and, therefore, deposit of rent for the month of June, 1980 in the learned trial Court was not at all a valid tender. Similarly deposits for the month of July, 1980 and August, 1980 were also without any consequence. The present and second suit came to be filed by the plaintiff on 4.2.1981. Though it was required of the learned trial Court to determine the arrears of rent under Section 13(3) of the Act, since it was a suit on the ground of second default, merely because that is not done, the defendant-tenant cannot take any advantage of that situation. After institution of the suit on 4.2.1981, any deposit under Section 19A of the Act was also not permissible as held by this Court in **Swaran Devi v. Kailash Chandra, 1996(1) RLW 292** (supra). The provisions of Section 19A of the act are meant to be resorted to if the landlord illegally refused to accept the rent from the tenant after following the procedure under Clause (a) and (b) both, as has been laid in the case of **Bajrang Lal v. Ramdeo, 1988(1) RLW 343**. (supra). Nothing of this sort under Clause (b) was followed by the appellant for any of the default months upto January, 1981. The tenant in order to maintain his tenancy right is allowed to deposit the rent in the Court instead of payment of the same to the landlord only after following the

mandatory procedure under Clause (a) and (b) both. In the present case, there is nothing on record to show that the rent at least for the month of June, 1980 to August, 1980 was tendered to the landlord at any point of time, therefore, deposit for these three months cannot be said to be a valid deposit as per provisions of Section 19A of the Act. Similarly, for the month of September, 1980 to November, 1980, the money orders sent by the defendant which were of course refused by the plaintiff landlord for these three months also, there was no deposit of the same by the tenant in the Court under Section 19A of the Act. Thus, for six months from June, 1980 to November, 1980, the second default stood committed by the tenant. The deposit under Section 19A of the Act which came to be made by the defendant - tenant on 10.2.1981 for 5 months (September, 1980 to January, 1981) was not in accordance with law, after institution of present suit on 4.2.1981 and as procedure both under Clause (a) and (b) was not followed by the tenant and, therefore, the said deposit also does not wash away the second default which already stood committed by the defendant - tenant. Admittedly, the law does not permit any leniency and waiver in the case of second default and eviction decree under Section 13(1)(a) of the Act is bound to be passed on commitment of second default in payment of rent. As already discussed above, the second default for the period of six months from June, 1980 to November, 1980 stood committed by the defendant-tenant on 15th December, 1980 and the eviction decree was bound to be passed and was, therefore, rightly passed by the Courts below.

19. The judgments cited by the learned counsel for the appellant-defendant do not help the case of the appellant in any manner, and they are distinguishable from the facts of the present case, whereas the judgments relied upon by the learned counsel for the plaintiff-respondent fully support the case of the plaintiff-respondent, particularly decision of the Hon"ble Supreme Court in the case of Kuldeep Singh (supra), decision of this Court in the case of Bajrang Lal (supra) and the decision of this Court in the case of Swaran Devi (supra) also support the case of the plaintiff-respondent.

20. Consequently, this Court is of the opinion that there is no force in the present second appeal filed by the appellant-defendant and the same deserves to be dismissed and the substantial question of law quoted above deserves to be answered against the defendant-tenant and the decree of eviction deserves to be upheld by this Court. Accordingly, this second appeal is dismissed with costs throughout.

21. The appellant-defendant shall hand over vacant and peaceful possession of the suit premises to the respondents-plaintiffs within a period of two months from today. The appellant shall also pay arrears of rent and mesne profits if any within two months and shall pay further enhanced mesne profit of Rs. 1000/- per month to them with effect from February, 2009 payable every month before 15th of succeeding month till the actual handing over of the vacant and peaceful possession

of the suit property to the respondents-landlords. The decree be made accordingly. If the appellant-defendant fails to hand over vacant and peaceful possession of the suit property to the respondent-plaintiff within a period of two months from today as aforesaid or fails to pay mesne profits including the arrears of rent and mesne profit as directed above, the plaintiff-respondent shall not only be entitled to seek execution of the decree in normal course, but the appellant-defendant may also render himself liable for action under the contempt law."

10. The Hon"ble Supreme Court in the case of **Nasiruddin v. Sita Ram** (supra) also held as under:--

"41. Thus, on analysis of the aforesaid two decisions we find that wherever the special Act provides for extension of time or condonation of default, the Court possesses the power therefor, but where the statute does not provide either for extension of time or to condone the default in depositing the rent within the stipulated period, the Court does not have the power to do so.

42. In that view of the matter it must be held that in absence of such provisions in the present Act the court did not have the power to either extend the period to deposit the rent or to condone the default in depositing the rent.

43. Coming to the second question, we are of the view that Sec. 5 of the Limitation Act, 1963 is not applicable where there is a default in depositing the rent by the tenant under section 13(4) of the Act.

44. It is true that Rajasthan Act does not expressly exclude the application of Limitation Act. But Section 5 in its terms is not applicable to wherever there is a default in depositing the rent by the tenant.

45. Section 5 of the Limitation Act reads under:-

"5. Extension of prescribed period in certain cases.-Any appeal or any application, other than an application under any of the provisions of O. XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfied the Court that he had sufficient cause for not preferring the appeal or making the application within such period."

46. On perusal of the said Section it is evident that the question of application of Section 5 would arise where any appeal or any application may be admitted after the prescribed period, if the appellant or the applicant satisfied the court that he had sufficient cause for not making the appeal or application within such period. Section 13(4) provides that in a suit for eviction on the ground set forth in Clause (a) of sub-section (1) the tenant shall on the first date of hearing or on or before such date, the Court may on the application filed in this behalf or within such time the tenant shall deposit in court or pay to the landlord in Court as determined under sub-section (3) from the date of such determination or within such further time not exceeding three months as may be extended by the Court. Thus, sub-section (4)

itself provides for limitation of a specified period within which the deposit has to be made, which cannot be exceeding three months as extended by this Court.

47. The matter may be examined from another angle. The deposit by the tenant within 15 days is not an application within the meaning of Section 5 of the Limitation Act, 1963. Since the deposit does not require any application, **therefore, the provisions of Section 5 cannot be extended where the default takes place in complying with an order under sub-section (4) of Section 13 of the Act."**

11. In view of the aforesaid settled legal position and the information produced by the learned counsel for the plaintiff-appellant-landlord on record that the defendant-tenant has failed to deposit the monthly rent after **01.02.1996** with the learned trial court, the eviction decree is liable to be passed against the defendant-tenant and the present second appeal of the landlord is bound to be allowed.

12. Accordingly, the present second appeal of the plaintiff-appellant-landlord is allowed. The substantial question of law framed above also deserves to be answered in favour of the plaintiff-appellant-landlord and the same is accordingly so answered. **S.B. Civil Misc. Appeal No. 679/2001 - Shri Prakash Ranga v. LRs. of Gomad Ram** also stands disposed of accordingly.

13. In the circumstances, it is directed that the respondent-defendant-tenant shall hand over the peaceful and vacant possession of the suit property in question to the appellant-plaintiff on or before **31.12.2016** and shall pay **mesne profit @ Rs. 5,000/- per month (Rupees Five Thousand only) commencing from the month of January, 2016 and will further continue to pay the mesne profit each month by 15th day of the next succeeding month or in advance to the appellant/plaintiff also and in case there is any default in payment of mesne profit, the period of One Year for eviction shall stand reduced and the decree of eviction would become executable forthwith. The respondent/defendant/tenant shall also clear all the arrears of rent and mesne profit and pay the same to the appellant/plaintiff within three months from today, otherwise the same will bear interest @9% per annum. The respondent/tenant shall also not sub-let, assign or part with the possession of the suit shop or any part thereof in favour of any one else and would not create any third party interest in the same during the aforesaid period and if it is so done, the same would be treated as void. The defendants-tenants shall furnish a written undertaking incorporating the aforesaid conditions in the trial court within one month and one copy thereof along with affidavit, in this Court. It is made clear that if the peaceful and vacant possession of the suit premises is not handed over to the appellant-plaintiff within a period of One Year from today or mesne profits are not paid as directed above, besides the expeditious execution of the decree in normal course, the appellant-plaintiff shall also be entitled to invoke the contempt jurisdiction of this Court. No costs. A copy of this judgment be sent**

to both the learned Courts below and the parties concerned forthwith.