

(2016) 05 UK CK 0003

Uttarakhand High Court

Case No: Civil Revision No. 29 of 2015

Ish Kumar

APPELLANT

Vs

Rekha Sharma

RESPONDENT

Date of Decision: May 6, 2016

Citation: (2016) 166 AIC 850 : (2016) 117 ALR 512 : (2016) 3 ARC 228

Hon'ble Judges: Servesch Kumar Gupta, J.

Bench: Single Bench

Advocate: Mr. Siddhartha Singh, Advocate, for the Appellant; Mr. Nagesh Agarwal,
Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Servesch Kumar Gupta, J.—By means of this revision, the challenge is to the judgment and order dated 24.02.2015 rendered by the Judge, Small Cause Courts/Additional District Judge, Haridwar, whereby the Suit No.02 of 2011, instituted by Smt. Rekha Sharma, was decreed against Ish Kumar @ Harish Kumar (revisionist).

2. The disputed property is a small house which was previously owned by Mr. Prem Chand Sharma, grandfather of Mr. Saurav Sharma and Mr. Sameer Sharma. Revisionist Ish Kumar was a tenant in second floor of this house since long back and Mr. Prem Chand Sharma used to collect rent thereof through his power of attorney holder Mr. Narendra Goswami, who was a very close relative of Mr. Sharma. The attitude of Mr. Ish Kumar of not paying the rent within time became the prime cause for the brothers duo, as afore-named, to sell this property on 1.11.2008 in favour of Smt. Rekha Sharma. Thus, she became the owner-cum-landlady of this property which is admitted to the parties. The fact which is also not in dispute is that the building, in question, is not exempted from the application of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 (hereinafter will be referred as the Act.

3. This approach of tenant-Ish Kumar persisted with the new owner-cum-landlady as well, as he continued in making defaults of payment of rent for a long time, so the notice was issued to him by Smt. Rekha Sharma on 2.11.2009, thereby terminating the tenancy, which was served upon him on 10.11.2009. But when the tenant neither paid the rent due against him nor did he vacate the questioned property, so Smt. Rekha Sharma was constrained to file the Small Cause Suit No.02 of 2011, thereby seeking the eviction of the tenant/defendant from the premises, in dispute. No sooner did the revisionist received notice of the said suit, he tendered the rent, with all other dues, through a money order favouring Smt. Rekha Sharma but she did not accept the same. So, the revisionist filed his written statement before the Court with all the facts, as have been stated above. After considering the oral testimony besides other documents, as brought on record by the parties in support of their contentions, learned Trial Judge has decreed the suit directing the tenant to vacate the premises, in question, within a month, from the date of rendering the judgment together with payment of rent @ Rs.1,200/- per month with effect from 2.11.2008 till 24.2.2015, and further the mesne profits, at the same rate, from the date of judgment till the possession is actually delivered. It was also directed by the court below that in case of making default in making the payments, as aforesaid, the landlady would also be liable to get twelve percent annual simple interest after the due date on the entire amount of arrears.

4. According to the revisionist, the rate of rent of the disputed property, initially, was Rs.450/- per month, which was increased to Rs.600/- subsequently, but it had never been Rs.1,200/- per mensem, as averred by the landlady.

5. Before the Court below, Smt. Rekha Sharma has examined herself as PW1 besides her witnesses Saurav Sharma as PW2 and Narendra Goswami as PW3. All these witnesses have proved that the rate of rent was Rs.1,200/- per mensem and in order to prove their version, the original receipts, some time for the year 1999, have been produced divulging such rate of rent paid by the tenant Ish Kumar. The previous owner Mr. Saurav Sharma, who inherited this property from his grandfather Mr. Prem Chand Sharma, has also proved these receipts which are at Serial Nos.4, 5, 11, 23 and 25 in the Book meant for the purpose. It needs to be mentioned here that the receipts, at Sl. Nos. 4, 5 and 11, countenances the signature of Mr. Ish Kumar, which perfectly resemble with his signatures made by him in the written statement as also in the memo of this civil revision.

6. Receipt Nos.23 and 25 bear the signatures of Smt. Geeta (W/o Ish Kumar) and Narendra Goswami. It has been in the evidence, as adduced by Mr. Goswami (power of attorney holder on behalf of previous owners), that these receipts were issued by him bearing the signatures of Mr. Ish Kumar as well as Smt. Geeta, as aforesaid. To refute this evidence, nothing has been brought on record by the tenant/revisionist except his own oral testimony, which has certainly less evidentiary value as against the written documents. The Hon^{ble} Allahabad High Court in the case of

◆Sukhanand v. The IV Additional District Judge◆ AIR 1994 Allahabad 59, has held that ◆the burden of proof regarding payment of rent lies on the tenant. Liability in this regard is not discharged by mere oral allegation of payment without receipts and without satisfactory explanation for non-recourse to money order.◆ It was further held that ◆such oral testimony could not be considered reliable so as to discharge the liability of payment of rent. Thus, where a tenant failed to satisfactorily discharge the onus of proof of not being in arrears of rent for not less than four months, suit for eviction under Section 20(2)(a) of the Act is maintainable.◆ While passing the aforesaid judgment, the Hon◆ble Allahabad High Court placed reliance on a judgment rendered by the Hon◆ble Apex Court in the case of ◆Madan Mohan v. Krishna Kumar Sood◆ reported in 1993 AIR SCW 743. It was propounded therein that ◆whatever protection the Rent Acts give, they do not give blanket protection for ◆non payment of rent◆. This basic minimum requirement has to be complied with by the tenants. The Rent Acts do not contemplate that if one takes a house on rent, he could continue to enjoy the same without payment of the rent. The onus to show payment of rent lies on a tenant.◆

7. Learned counsel for the revisionist argued that the money order was sent by him making payment of rent @ Rs.600/- per month with all other dues but the new owner of the premises denied to accept the same. I find that the learned counsel has not read the complete evidence of Smt. Rekha Sharam because she, in her deposition, has clarified the reason of such denial. She has made it explicitly clear that the money order, sent by the tenant, was denied by her because the payment of rent was not made after being calculated at the rate of Rs.1,200/- per mensem. Even Section 20(4) of the Act makes it mandatory for the tenant to make payment of rent and damages for use and occupation of the building which is due from him. This phrase ◆due from him◆ does not mean the rent at the rate which the tenant proposes on his own whims. There should be some substance behind the rate on which the rent is being sent/paid.

8. In the present set of facts, I find that there is overwhelming evidence available on the record to show that the building, in question, was let out to the tenant Ish Kumar at the rate of Rs.1,200/- per month when Smt. Rekha Sharma purchased the same from its previous owners.

9. It was further contended on behalf of the revisionist that the municipal records do not show such rate of rent, rather those entries indicate the rate of rent as Rs.450/- or Rs.600/- per month. The said contention, in this regard that such municipal entries should be accepted as conclusive proof for determination of rent, is highly unsustainable for the reason that it has been a trite law that the municipal entries, regarding the ownership indicating the rent, are not conclusive in nature. Even the Hon◆ble Punjab & Haryana High Court in case of ◆Som Dutt & others v. Jagdish Ram @ Jagdish Rai◆ reported in (2006) 144 PLR 163, has held that:-

◆It is well settled that the entries in the house tax assessment register are prepared by the Municipal Authorities for the purpose of levy of house tax but such entries are not conclusive about the rate of rent, as it is not prepared by the parties to the dispute.◆

10. So, in my opinion, such entries, if any in the municipal records, cannot be given precedence over the oral testimony and other documentary evidence filed by the landlady, and more so, such documentary evidence bears the signature of tenant Ish Kumar reflecting the rent at the rate of Rs.1,200/- per month.

11. The argument of learned counsel that how Mr. Narendra Goswami could be the proper person to collect the rent since he resided in Delhi, is quite irrelevant here for the reason that Mr. Goswami was a close relative of the previous landlords and at that time, he did not reside permanently in Delhi but in some local area of Haridwar.

12. Lastly, it has been argued by learned counsel for the revisionist that the Original Suit No.284 of 2008 was instituted by the tenant Ish Kumar wherein the relief sought was of injunction that he be not evicted without adopting due process of law, and in that suit, he pleaded the rent to be @ Rs.600/- per month. That suit was decreed by the regular Civil Court. So, the finding of the Civil Court has a binding effect upon the Judge, Small Causes Court and this way, the rent should be accepted as Rs.600/- per month. This argument of the learned counsel is wholly untenable for the reason that the certified copy of such judgment has not been produced either before the Trial Court or in this Court so that the facts could have been gathered as to who was the defendant in such case. Further, the contention of the learned counsel for the revisionist has been refuted by the landlord that she (Smt. Rekha Sharma) was not made a party in that suit, so there was no occasion for her to contest the same. All the more, it is not clear as to whether that suit was decreed ex parte or on merits, and even on merits, then against whom. For a moment, if this contention of the learned counsel is accepted, then also, it cannot be overlooked that the said suit was filed seeking injunction against the eviction by the means other than the law. To adjudicate the rate of rent was never an occasion for the regular Civil Court in that suit. Therefore, mere averment of the plaintiff (tenant) Ish Kumar made in that suit disclosing the rent @ Rs.600/- per month, did not go the test of adjudication. So, this contention, in this regard, is wholly baseless and is thus, discarded.

13. That apart, these are such factual questions which cannot be re-evaluated by this Court while exercising the powers of revision.

14. So, in view of foregoing discussion, I find no force in this revision. It is, therefore, dismissed with costs all throughout. Interim order dated 23.03.2015 passed by this Court is hereby vacated.

15. Let a copy of this judgment along with the LCR be transmitted to the Court concerned.