
(1979) 02 AHC CK 0009

Allahabad High Court

Case No: Civil Revision No. 450 of 1977

Basu Dev Sahai

APPELLANT

Vs

Brij Mohan Lal

RESPONDENT

Date of Decision: Feb. 9, 1979

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 13 Rule 1, Order 17 Rule 1, Order 5 Rule 5

Citation: (1979) AWC 153

Hon'ble Judges: N.N. Mittal, J; H.N. Seth, J

Bench: Division Bench

Advocate: H.C. Kharbanda, for the Appellant; S.C. Verma, for the Respondent

Final Decision: Allowed

Judgement

H.N. Seth, J.

This revision application by Defendant Basu Dev Sahai, is directed against the judgment of the IVth Additional District Judge, Pilibhit dated 21-2-1977, dismissing a revision application filed by him against the judgment and decree dated 4-8-1976 in Small Cause Court suit No 2 of 1974.

2. Plaintiff Brij Mohan Lal, claiming himself to be landlord of a shop filed suit No. 2 of 1974, in the court of Judge Small Cause Court, Pilibhit for ejectment of the Defendant therefrom as also for recovery of a sum of Rs. 337.70 paise as arrears of rent, Rs. 1358/- as arrears of mesne profits and pendente lite and future mesne profits at the rate of Rs. 25/- per month.

3. According to the Plaintiff, the Defendant was a tenant in the shop in suit on a monthly rent of Rs. 25/ -. In spite of repeated demands he did not pay the rent for the period 1-1-1971 to 31-12-1971. He was, accordingly served with a notice dated 14-1-1974, demanding rent and asking him to vacate the shop. As he neither paid the rent nor vacated the shop; hence the suit.

4. After the suit was filed, the Judge Small Cause Court, in the normal course, directed that summons be issued to the Defendant for 23-4-1974. The summons issued to the Defendant mentioned the date 23-4-1974 as the date fixed for filing the written statement and for framing issues. It did not state it to be the date fixed for final hearing, as is normally stated in such summons issued by court of Small Causes. On 23-4-1974 the Defendant appeared before the court and was granted time up to 24-5-1974 for filing his written statement. On 24th of May, 1974 the case was adjourned and the next date fixed was 4th of July, 1974. On that date, the Defendant deposited the entire amount as contemplated by Section 20 of U.P. Act No. 13 of 1972, and filed a written statement admitting that he was a tenant of the shop in dispute. He, however, alleged that neither was any valid notice served upon him nor did he commit any default in payment of rent. He claimed that as he had deposited the amount contemplated by Section 20 of U.P. Act 13 of 1972, he was entitled to be relieved of his liability to be evicted from the shop.

5. The trial court found that a valid notice demanding rent had been served upon the Defendant who did not pay the amount demanded within one month of receipt of notice by him. It held that as the Defendant did not deposit the amount, on the first date of hearing i. e., on 23-4-1974, it could not be said that he had complied with the provisions of Section 20(4) of the U.P. Act No. 13 of 1972. Accordingly he was not entitled to be relieved of his liability for eviction from the shop. In revision, the District Judge upheld the view taken by the trial court. Being aggrieved, the Defendant has now come up in revision before this Court.

6. At the hearing of the revision application the Defendant relied upon a Division Bench's decision of this Court in the case of [Bankey Behari Vs. Gopal Das](#), , as also on a decision by a learned Single Judge in Civil Revision No. 2037 of 1976, Neota Ram v. Kartar Singh decided on 18-4-1977 and contended that the deposit made by him on 4th of July, 1974 had been made before the first hearing in the case took place. Accordingly, he was entitled to be relieved of his liability for eviction from the shop-in dispute as contemplated in Section 20(4) of the U.P. Act No. 13 of 1972.

7. Learned Counsel appearing on behalf of the Plaintiff opposite party, however, relied upon a Single Judge's decision of this Court in Civil Revision No. 1507 of 1974 decided on 21-3-1978, in which the learned Judge opined that observation made in Bankey Behari v. Gopal Das (supra) that the date of first hearing is not necessarily, the first date on which the case is taken up by the court, is obiter dicta, and that in a case tried by a court of Small Causes, the first hearing is necessarily the very first day fixed for disposal of the case, whether the case is adjourned or not. He accordingly, contended that in this case, as the Defendant did not deposit the entire amount of rent and mesne profit together with costs etc., on or before 23rd of April, 1974 which was the first date of hearing he was not entitled to be relieved of his liability for eviction from the shop.

8. In view of the observations made by the learned Single Judge in Civil Revision No. 1507 of 1974, the learned Judge before whom the present revision application came up for hearing thought it proper to refer this case for decision by a Division Bench. Principal question that arises for consideration in this case is as to whether the two courts below are right in holding that the Defendant applicant is not entitled to be relieved of his liability for eviction from the shop in accordance with the provisions of Section 20(4) of the U.P. Act No. 13 of 1972.

9. Section 20(1) of the Act, in a general way provides that no suit can be instituted for eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner. Section 20(2), however, provides for exception to the aforesaid general rule and lays down the circumstance in which a suit for eviction of a tenant from a building can, after determination of his tenancy, be instituted. It inter alia provides in Clause (a) of Sub-section (2) that such a suit can be filed where the tenant is in arrears of rent for not less than 4 months and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand. Section 20(4) of the Act then makes provision for relieving a tenant of his liability for eviction on the ground mentioned in Clause (a) of Section 20(2) of the Act, and runs thus:

In any suit for eviction on the ground mentioned in Clause (a) of sub-Section (2), if at the first hearing of the suit the tenant unconditionally pays or (tenders to the landlord or deposits in court) the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under Sub-section (1) of Section 30, the court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground.

10. A perusal of the aforesaid provision indicates that the tenant can claim relief against his liability for eviction on the ground mentioned in Section 20(2)(a), if he deposits the entire amount contemplated by the Sub-section or tenders the same to the landlord at the first hearing of the suit. This means that if he deposits or tenders the entire amount contemplated by Section 20(4) of the Act before the first hearing of the suit takes place he can when his eviction is sought on the ground that he was in arrears of rent for more than four months and that he had failed to pay the same within one month of service of notice of demand upon him, be relieved of his liability for eviction. It may be that first hearing of the suit may not take place on the first date fixed for its hearing. There is clear distinction between the requirement that a deposit should be made on the first date for hearing fixed in the case and that it should be made at the first hearing of the suit. So long as the tenant deposits the

requisite amount before the first hearing in the suit takes place, it can be said that he has deposited the same at, the first hearing and he would be entitled to claim the relief contemplated by Section 20(4) of the Act.

11. We respectfully agree with the following observations made by the Division Bench in the case of [Bankey Behari Vs. Gopal Das](#), :

As far as the second question as reframed by us is concerned, it may be profitably noticed that Section 20(4) does not use the words "date of first hearing". On the other hand, it provides for the tenant being relieved of the liability for eviction if he deposits the requisite amount mentioned in that Sub-section at the first hearing of the suit. This leads, in our opinion, to the inevitable conclusion that if on a date fixed for hearing of a suit no hearing has in fact taken place and the case is adjourned for one reason or the other, the failure of the Defendant to deposit the amount on that date does not disentitle him to the benefit of Section 20(4) of the Act as it stands amended.

12. We also agree with the following observations made by learned Single Judge of this Court in the case of [Bal Mukund Agrawal Vs. District Judge and Others](#), :

In this context I would also like to say that mere fixing of a date for framing of issues does not make it a date of first hearing. If on the date fixed, the case is adjourned for one reason or the other such as when the Presiding Officer himself is absent and no issues are actually struck then it would not be date of first hearing. It is only when the pleadings of the parties are actually gone into by the court and it has applied its mind to the case of the parties and issues are actually framed that the date of first hearing can be said to have been reached and not otherwise.

13. It is true that Order 5 Rule 5 of the CPC lays down that in a suit heard by a Court of Small Causes, the summons which are initially issued to the Defendant are issued fixing the date for final disposal of the suit, and-that in such suits the Judge Small Cause Court is not bound to frame issues. However, merely because the first date fixed in such a suit is for its final hearing, it does not, as already explained above, necessarily mean that the first hearing of the suit takes place on that date. Viewed in this light we are unable to agree with the learned Judge who decided Civil Revision No. 1507 of 1974 on 21-3-1978, when he observes that in cases tried by a Small Cause Court, the first hearing is necessarily the very first date fixed for the disposal of the case, whether the case is adjourned or not.

14. Learned Counsel appearing for the Plaintiff opposite party argued that the first hearing of the suit takes place the moment the court brings its judicial mind to bear on any lis as between the parties before it. He urged that as soon as on 23-4-1974 the Defendant moved an application for time to file the written statement, the court had to consider that case judicially and as soon as the court proceeded to consider that application hearing in the suit took place. Accordingly, in the instant case first hearing in the case took place on 23-4-1974. In support of this submission, the

learned Counsel relied upon a decision of the Calcutta High Court in the case of Madhu Sudan v. Kali Charan Sinha AIR 1919 Cal. 800, wherein the learned Judges of Calcutta High Court, while considering the scope of words of "at the first hearing" as used in Order 13 Rule 1 Code of Civil Procedure, observed thus:

Rule 1 speaks of the first hearing of the suit, but no difficulty arises as to that because the word "hearing" is one of those comprehensive words which may be used with a more or less extensive meaning according to the context. Order 17 Rule 1 which gives the power to adjourn the hearing of a suit draws a distinction between the hearing of the suit and the hearing of evidence. There was a hearing of the suit if not on the day when issues were settled, at any rate on 8th October, 1912, though the hearing resulted only in adjournment....

15. In our opinion, the context in which the word has been used in Section 20(4) of U.P. Act No. 13 of 1972 "hearing" of the suit takes place when the court proceeds to bring its judicial mind to bear on the lis involved in the suit itself. After a suit is filed, certain interlocutory proceedings also take place which in a sense may be connected with the suit, but which have no direct bearing on the adjudication of the lis involved in the suit. A consideration of such proceedings wherein also the court has to apply its mind cannot be said to be hearing of the suit itself. When a party moves an application praying for time to file written statement or, to get the case adjourned on some other ground to a future date, the request has to be considered by the court in a fair manner but then it cannot be said that while considering such a request the court is applying its judicial mind to the lis involved in the suit. Accordingly, consideration of an application for adjournment to file written statement, cannot be equated with the first hearing of the suit. Apart from saying that there is a distinction between hearing of a suit and that of evidence, learned Judges of the Calcutta High Court have not mentioned any other reason for saying that consideration of a request for adjournment of a suit amounts to its hearing.

16. We are, accordingly of opinion that even in Small Cause Courts suit, if on the first date mentioned in the summons issued to a Defendant which normally is the date fixed for hearing of the case, the case is merely adjourned without the court applying its judicial mind to the lis involved in the suit, no hearing of suit takes place on that date.

17. It may be that when the court scrutinises the plaint and the written statement with a view to frame issues, it applies its judicial mind to the lis involved in the suit between the parties before it and hearing of the suit takes place.

18. We are, therefore, of opinion that in the case before us no hearing of the suit took place on 23-4-1974 and 24-5-1974 and that the hearing which took place on 4-7-1974 was the first hearing in the suit. Accordingly, the deposit made by the Defendant on 4-7-1974 can be described as a deposit made at the first hearing of the suit as contemplated by Section 20(4) of the U.P. Act No. 13 of 1972 and the

Defendant was entitled to be relieved of his liability for eviction from the shop in question.

19. We may, before parting with the case, make it clear that the U.P. Legislature has since intervened and has enacted U.P. Act No. 28 of 1976 whereunder an explanation has been added to Sub-section (4) of Section 20 which reads thus:

For the purposes of this Sub-section

(a) the expression "first hearing" means the first date for any step or proceeding mentioned in the summons served on the Defendant.

(b)....

This explanation is prospective in nature and it does not apply in the case before us.

20. In the result, the revision application succeeds and is allowed. Judgment of the Judge Small Cause Court dated 4-8-1976 as confirmed in revision by the Additional District Judge vide his judgment dated 21-2-1977, is set aside and Plaintiffs' suit for ejectment of the Defendant from the shop is dismissed. In the circumstances we direct the parties to bear their own costs in this civil revision.