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Smt. Sushila and others Vs IVth Addl. District Judge, Kanpur and others

Court: Allahabad High Court

Date of Decision: Sept. 11, 1998

Acts Referred: Provincial Small Cause Courts Act, 1887 â€" Section 25
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 â€" Section 20(1), 20(2), 30(1), 30(6)

Citation: (1999) 1 AWC 644

Hon'ble Judges: J.C. Gupta, J

Bench: Single Bench

Advocate: S.P. Mehrotra, for the Appellant;

Final Decision: Allowed

Judgement

J.C. Gupta, J.
This writ petition by the tenant is directed against the judgment and order dated 15.2.1992 of the revisional court,

respondent No. 1. whereby the judgment of the trial court has been reversed and the plaintiffs suit for recovery of rent and ejectment has been

decreed against the petitioner.

2. The facts relevant in brief are that respondent No. 2 is the landlord of the disputed premises and late Ganga Charan Bari. the predecessor in

interest of the petitioners was the tenant at the rate of Rs. 100 per month. It is not disputed that rent upto 30.9.1982 was paid by late Ganga

Charan Bari to the plaintiff on different dates. As per the plaint allegations thereafter no rent was paid by Ganga Charan Bari and rent became due

from 1.10.1982. The plaintiff demanded the arrears of rent from late Ganga Charan by serving a notice on him on 25.6.1985. By the same notice

the tenancy was also determined. Since the notice did not evoke any response, the landlord respondent filed suit for eviction of the petitioners on

the ground of default. It may be mentioned here that before the filing of the suit, Ganga Charan Bari died on 25.6.1983, hence suit was filed against

his legal representatives, i.e., the present petitioners.

3. The suit was contested by the present petitioners and their defence was that rent from 1.10.1982 and onwards was rendered to the landlord by

late Ganga Charan Bari and when it was not accepted, the same was sent by Money Order at the plaintiff"s address. Money Order was not

accepted by the landlord and the same was received back with the endorsement of ""refusal"" and thereafter the tenant deposited the entire arrears

of rent from 1.10.1982 to 30.4.1985 in Court u/s 30 (1) of the U. P. Act No. XIII of 1972, hereinafter referred to as the Act. This deposit was

made much prior to the service of notice of demand sent by the plaintiff. After the demand notice was received, the rent for the months of May and

June, 1985 was again sent to the landlord through Money Order but this time also the same was returned back as refused. Thus, according to the

defence version on the date of service of notice of demand rent for more than four months was not due and therefore, the tenant could not be said

to be a ""defaulter"" within the meaning of clause (a) of Section 20 (2) of the Act.

4. The trial court accepted the defence version and dismissed the plaintiff''s suit holding that since rent upto 30.4.1985 had been duly deposited by

the defendant tenant u/s 30 (1) of the Act, rent for more than four months was not due on the date of service of notice of demand and accordingly

no decree of eviction could be passed. The landlord preferred revision against the judgment of the trial court and the same has been allowed by

respondent No. 1 by the impugned order.

5. Parties'' counsel were heard at length. Records have also been perused.

6. The only question that arises for consideration in this writ petition is whether the revisional court was justified in reversing the finding of the trial

court that the tenant petitioner committed no default in payment of arrears of rent and accordingly was not liable for eviction?

7. A perusal of the judgment of the trial court shows that on appraisal of evidence, both oral and documentary, the trial court recorded a

categorical finding that rent for the period from 1.10.1982 to 30.4.1985 was sent by the tenant to the landlord by Money Order and when the

same was not accepted by the landlord, rent was deposited by the tenant in Court u/s 30 (1) of the Act. After the said deposit, the landlord served

the tenant with a notice of demand and since rent upto April, 1985 stood validly deposited u/s 30 (1) of the Act, rent for more than four months

was not due and accordingly no decree of eviction could be passed against the tenant.

8. Section 20 (1) of the Act imposes a bar on the landlord''s right to institute suits for the eviction of tenants. This bar of course gets lifted if any of

the grounds mentioned in clauses (a) to (g) of sub-section (2) is shown to exist. In the present case, the landlord filed suit for eviction on the ground

covered by clause (a) which provides that a suit for the eviction of tenant from a building after the determination of his tenancy may be instituted on

the ground that the tenant is in arrears of rent for not less than four 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. A plain reading of this provision would indicate that the notice of demand will be invalid and

cannot be made basis of a suit for eviction, if the tenant was not in arrears of rent for more than four months and the tenant cannot be held to be a

defaulter within the meaning of this sub-clause.

9. Section 30 (1) of the Act permits a tenant to deposit rent in Court on refusal of the landlord to accept the rent tendered to him by the tenant.

Under sub-section (6) of Section 30 of the Act. the deeming clause has the effect of treating the deposit made under sub-section (1) as a payment

to the person in whose favour the amount has been so deposited.

10. In the present case, the trial court recorded a clear and specific finding of fact that rent for the period from 1.10.1982 to 30.4.1985 was sent

by the tenant to the landlord by Money Order and when it was not accepted by the landlord, the same was received back by the tenant with the

endorsement of ''refusal''. Thereafter the tenant without loss of any time deposited the entire amount in Court u/s 30 (1) of the Act and his

application was allowed on 14.5.1985, that is. much before the date of service of notice of demand in question which even according to the

landlord was served upon the tenant on 25.6.1985. By virtue of sub-section (6) of Section 30 of the Act. the rent so deposited by the tenant in

Court would be deemed to be a payment made to the landlord and in this view of the matter, the rent for more than four months was not due on

the date when the notice of demand was served upon the tenant and for this reason, no decree of eviction could legally be passed against the

tenant on account of the provisions of Section 20 (2) (a) of the Act. The revisional court acted on surmises and conjectures in reversing the finding

of the trial court and substituting the same with its own finding that there was no guarantee that the Money Order was sent by the tenant at the

correct address of the landlord. The learned Judge under a mistaken view jumped to observe that since subsequent Money Order was sent on a

wrong house number of the landlord, there could be no guarantee, that the first Money Order was refused by the landlord. This view of the learned

Judge is wholly perverse and erroneous in law. The first Money Order was undisputedly sent at the landlord''s address : House No, 31/126, Lathi

Mohal, Kanpur and the same was received back by the sender with an endorsement ""refused"". A presumption under law had arisen that Money

Order was tendered to the addressee but was not accepted by him as under the postal rules, the Money Order is always tendered to the

addressee and it is sent back to the sender with, the endorsement of refusal only when the addressee does not accept the same. This presumption

could not be rebutted by the landlord and the revisional court committed a gross error of law in substituting the finding of fact of the trial court on

mere surmises. The mere fact that while sending two month''s rent for May and June. 1985 after the service of demand notice, there occurred a

clerical mistake in mentioning landlord''s house number which was mentioned as 31/125, Lathi Mohal, Kanpur instead of 31/126, Lathi Mohal.

Kanpur, it could not be conclusively inferred that the first Money Order was also not refused by the landlord or that there was a collusion between

the postman and the tenant, specially when there was nothing on the record to Indicate that any other person by the name of the plaintiff landlord

was living in House No. 31/125, Lathi Mohal, Kanpur. The revisional court exercising power u/s 25 of the Small Cause Court Act had no

jurisdiction to reappraise the evidence and substitute its own finding of fact for the one recorded by the trial court. Therefore, the order in question

is not sustainable as the revtsional court exceeded its jurisdiction in recording the same.

11. It has been already pointed out above that on account of valid deposit having been made u/s 30 (1) of the Act much before the service of

notice of demand, the bar created under sub-section (1) of Section 20 of the Act for filing suit for eviction did not get lifted in the present case and,

therefore, no decree for eviction could be passed. The view taken by the revisional court contrary to this suffers from manifest error of law and

accordingly the order of the revisional court decreeing the plaintiffs suit for eviction cannot be sustained. However, the suit for recovery of rent was

liable to be decreed only for the amount of rent not covered by the deposit made u/s 30 (1) of the Act.

12. For the reasons staled above, this writ petition succeeds and is allowed. The Impugned order of the revisional court decreeing the plaintiffs suit

for eviction of the petitioners from the accommodation in question is set aside and that of the trial court is restored subject to the modification that

suit shall stand decreed for the recovery of the amount claimed as arrears of rent minus the amount deposited by the defendant tenant u/s 30 (1) of

the Act and the plaintiff shall be entitled to withdraw the said amount. in the circumstances the parties are directed to bear their own costs.