AIR 1987 All 1 : (1986) AWC 313

Allahabad High Court

Case No: Civil Revision No. 802 of 1985

Ram Laxman		APPELLANT
	Vs	
Dr. J.C. Bass		RESPONDENT

Date of Decision: Feb. 10, 1986

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11
- Provincial Small Cause Courts Act, 1887 - Section 25
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 20(1)

Citation: AIR 1987 All 1 : (1986) AWC 313

Hon'ble Judges: V.K. Mehrotra, J

Bench: Single Bench

Advocate: Ambrish Kumar Sharma and W.H. Khan, for the Appellant; R.N. Bhalla, Rakesh Bahadur and S.N. Varma, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V.K. Mehrotra, J.
This application in revision u/s 25 of the Provincial Small Cause Courts Act has been filed by a defendant in a suit for his ejectment from a shop. The order impugned in the Revision is dt. Nov. 22, 1985. It reads thus :

"Case called out. Parties are present through their counsel. Heard them on 79/C moved by the defendant and its objection 80/C filed by the plaintiff.

The question whether the building in question attracts the provisions of Act 13 of 1972 shall be decided by the evidence of the parties and not at this stage. Thus 79/C has no force and is rejected. Accordingly ...sic... 80/C is disposed of. Fix 17-12-85 for final

hearing."

2. Suit No. 425 of 1982 was filed on Nov. 11, 1982. The defendant had, eventually, to be served by publication. After repeated opportunities, the suit was decreed ex parte and the decree was put into execution. The defendant then made an application under Order IX, Rule 13, C.P.C. which was allowed. The suit was decreed ex parte again after some adjournments and a second application under Order IX, Rule 13, C.P.C. made by the defendant was allowed on Mar., 1984. Thereafter, the case was adjourned on various dates for some reason or the other, mostly on account of the prayer made by the defendant, and on July 24, 1985 the application 79/C was moved. By this application the defendant prayed that the suit of the plaintiff be dismissed without entering into the merits of the case, inasmuch as, the provisions of U.P. Act 13 of 1972 were applicable to the building in question and on the allegations made in the plaint itself, it was apparent that it was so. Further, the plaintiff had not given out any reason contemplated by Section 20 of that Act for the ejectment of the defendant. Denying the allegations made in the application, the plaintiff filed his objection 80/C.

3. Section 25 of the Provincial Small Cause Courts Act says that the High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the record of the case and pass such order with respect thereto as it think fit.

4. In the instant case, the suit is being tried by the Additional District Judge. The application in revision u/s 25 has, therefore, been made to this Court.

5. Sri W. H. Khan who has argued the case on behalf of the defendant with ability, has urged that it was incumbent upon the trial Judge to have considered the prayer contained in application 79/C in the first instance, without insisting upon the defendant filing his written statement in the case. He has urged that the assertions made in the application amount to saying that on the facts given out in the plaint itself it was beyond doubt that U.P. Act 13 of 1972 was applicable and further that in the absence of any ground for .ejectment of the defendant permissible under that Act u/s 20 having been taken in the plaint, the plaint was liable to be rejected under Order VII, Rule 11, C.P.C. His precise submission is that, inasmuch as, Section 20(1) of U.P. Act 13 of 1972 prohibited the filing of a suit for the ejectment of a lessee except on any of the grounds mentioned in Sub-section (2) of Section 20, the plaint was liable to be rejected under Order VII, Rule 11(d), C.P.C. Such rejection, if called for, is to be made at the outset in view of the dictum of a Full Bench of this Court in Jagannath Prasad and Others Vs. Smt. Chandrawati and Another, and could not be postponed to a stage after the recording of evidence as was being done by the trial Judge in the instant case.

6. Order VII, Rule 11, C.P.C. which dealt with the rejection of the plaint, provides in Clauses (a) and (d) asunder : --

"11. Rejection of plaint-- The plaint shall be rejected in the following cases : --

(a) where it does not disclose a cause of action;

(b) & (c) X X X X X

(d) where the suit appears from the statement in the plaint to be barred by any law."

7. Normally in cases covered by Clauses (a) and (d) it is on the allegations contained in the plaint itself, without any external aid in the form of further pleading or evidence, that the question whether the plaint deserved to be rejected or not, is to be determined at the threshold. In respect of the other two clauses, with which we are not concerned, it may sometimes be necessary to await the evidence being recorded in a case.

8. The case of the defendant in this Court is that the plaint in the present suit was liable to be rejected under Clause (d) of Order VII, Rule 11, C.P.C. The fact that this provision was not specifically referred to in the application 79/C, of which a copy has been filed as Annexure 1 to the affidavit of the defendant-applicant in support of the stay application, would not be very material in case it is found that the allegations contained in the application substantially amount to an objection that on the allegations made in the plaint the suit was barred by any provision of law.

9. In the normal course, it may have been possible to direct the trial Judge to consider the objection of the defendant-applicant founded upon Clause (d) of Rule 11 of Order VII, C.P.C. but for the objection which has been raised by Sri S.N. Verrna, appearing for the plaintiff-opposite party, in regard to the maintainability of this revision u/s 25 of the Provincial Small Cause Courts Act. The terms in which that provision is couched, and which have been noticed above, show that the Court has to satisfy itself that an order made in any case decided by a Court of Small Causes was according to law and if it felt otherwise, it could pass such order in respect thereto as it thinks fit. The impugned order only postponed the consideration of the question whether U.P. Act 13 of 1972 would be applicable to the building in question till such time that evidence is led in the case. The fact as to whether evidence would be needed for determining this question or not is primarily left to be determined by the trial Judge, Moreso, in the circumstances of the present case where the case of the plaintiff, as given out in the plaint itself, is that the defendant was inducted as a tenant in pursuance of a compromise entered into between him and the plaintiff before this Court in an earlier litigation between them. The proviso to Section 20(1) itself lays down that there will be no bar to a suit being filed for the eviction of a tenant on determination of his tenancy by efflux of time where tenancy was entered into in pursuance of a compromise between the parties recorded in a Court. Whether the proviso would govern the instant case is a question which need not be gone into at the moment. Suffice it to say that Section 20(1) of U.P. Act 13 of 1972 itself contemplates an exception to the absolute bar to the filing of a suit contained in the earlier part of the provision.

10. The Trial Judge has not chosen to dispose of the matter at this stage of the proceedings. By doing so, he has not affected the rights of the parties. His order, in these circumstances, cannot be said to be an order not being in accordance with law.

11. In Bajrang Bahadur Tripathi v. Chhotey Lal, (1984) 2 All Rent Cas 303 , K.N. Misra, J. was examining the question whether refusal of the trial Judge to go into the question as to the jurisdiction of the Court, as a preliminary issue, was an error in exercise of jurisdiction by him. That was a case u/s 115, C.P.C. and one of the issues raised was whether the Court trying the suit had jurisdiction to do so. The defence of the defendant had been struck off under Order VII, Rule 5, C.P.C. without deciding this question. This Court felt that the rights of the defendant were prejudicially affected by the decision to strike off his defence which should not have been done without first going into the question whether the trial Court had jurisdiction to proceed with the case.

12. State Bank of India, Faizabad v. Hari Narain was a case decided by the Lucknow Bench of this Court (by Mahabir Singh, J.). Full report of the case is not available but the summary thereof has been published in the Notes of Cases in 1980 All LJ 8 From the Head-note it appears that the learned Judge said that in Section 25 of the Provincial Small Cause Courts Act, the words "in a case decided" did not exclude orders passed in interlocutory matters and on preliminary issues. The learned Judge was of opinion that it was evident from the fact that word "order" had been used, besides the word "decree" indicating that an order short of final, determination of the proceedings pending in the Court could be agitated in a revision u/s 25 of the Act. But the learned Judge was careful enough to mention specifically that an order sought to be revised should be one which "affected the rights of the parties".

13. In Motilal Vs. Smt. Nirmal Kumari, the defendant had approached this Court u/s 25, assailing an order overruling an objection that a document was inadmissible. The view taken by the trial Judge that the document was admissible in evidence as it did not require registration was said to be manifestly erroneous. After referring to a number of decisions, S.D. Agarwala, J., who decided that case, ruled that before this Court could interfere u/s 25, there had to be a case decided by the trial Judge to enable it to exercise jurisdiction u/s 25. In para 16, the learned Judge observed that the question whether the document was admissible or not did not affect any right or liability of the parties. As such, it could not be said that it was a case decided.

14. By the impugned order, the trial Judge has not held that the provisions of U.P. Act 13 of 1972 were not applicable in the case. He has only postponed the decision of that issue to a future date. By this order, in the state of allegations made in the plaint and those made in the application 79/C, it cannot be said that the Court has declined consideration of the question whether the plaint deserves to be rejected under Rule 11(d) of Order VII, C.P.C at the threshold.

15. From the course of proceedings in the Court below as brought out, particularly, in paras 9 to 22 of the counter-affidavit of the plaintiff filed in the stay matter, which have virtually been accepted in the rejoinder affidavit it is apparent that the defendant-applicant has been procrastinating the matter. The effort of a defendant to do so, where he is a tenant in a building, is not unusual but it certainly appears desirable that the case should be disposed of expeditiously by the trial Judge.

16. In view of what has been said earlier, it is clear that the present application in revision does not strictly fall within the ambit of Section 25 of the Provincial Small Cause Courts Act and deserves to be dismissed. Even otherwise, the order being discretionary incharacter, I am not inclined to intervene in the matter at this stage.

17. The revision is dismissed. The ad interim order is discharged. Parties are, however, left to bear their own costs.