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**(1952) 12 AHC CK 0006**

**Allahabad High Court**

**Case No:** Civil Revision No. 594 of 1950

Kishan Chand Hari Kishun Chand

APPELLANT

Vs

Diwan Chand Ghasi

RESPONDENT

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**Date of Decision:** Dec. 4, 1952

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 18 Rule 13, Order 20 Rule 4
- Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Section 5(4)

**Citation:** AIR 1953 All 287 : (1953) 23 AWR 115

**Hon'ble Judges:** Mukerji, J

**Bench:** Single Bench

**Advocate:** Mohd. Hamid Husain, for the Appellant; Man Singh, for the Respondent

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

Mukerji, J.

This is an application in revision by a defendant who had been sued u/s 5 (4), Control of Rent and Eviction Act. The plaintiff in the suit was the tenant. He sued the landlord on the ground that the rent of Rs. 75, to which he had agreed, was much above the reasonable rent for the premises and consequently he claimed that the rent should be fixed in accordance with the "reasonable rent" payable in respect of the premises in suit. The premises of which the plaintiff was the tenant were not substantial buildings in any sense. They were more or less tin sheds having small accommodation but these premises were situated in a very busy locality commercially and consequently they were in great demand and apparently landlords were able to get very high rents for them.

2. I may also note that the landlord himself also filed a suit against the tenant, namely Shri Diwan Chand (plaintiff in suit no. 754 of 1949) for arrears of rent at the

rate of Rs. 75 per mensem. The suit of the landlord for arrears was numbered as 841 of 1949. Both these suits, namely suit No. 754 of 1949 by the tenant for fixation of rent and suit no. 841 of 1949 by the landlord for arrears of rent, were consolidated and tried together by the Additional Munsif of Ghaziabad, Shri N.N. Misra.

3. In the plaint of suit no. 754, Diwan Chand alleged that he had rented premises no. 18 which was situated opposite the Tahsil of Ghaziabad for his son, Yogendra Kumar, for opening a vulcanizing and welding business on the premises. He further alleged that he had taken the premises in June 1948 from the defendant at Rs. 75 per mensem as rent. He, however, alleged in the plaint that the rent of Rs. 75 per mensem was excessive, unfair and abnormal.

4. On the plaint, it is clear that the plaintiff had, for several months, paid the landlord rent at the rate of Rs. 75 per mensem. According to the plaint allegation, the plaintiff discovered, after about six months of having been on the premises, that the defendant (the landlord) had been getting Rs. 5 per mensem for these premises from its previous tenant and consequently, according to the plaintiff, he approached the landlord to fix rent in accordance with the municipal assessment plus 25 per cent, over and above it. According to the plaint this came to Rs. 7 per month only. In the plaint there was no allegation that the defendant landlord had in any manner taken unfair advantage of the tenant in getting him to agree to Rs. 75 per month as rent for these premises.

5. The defence to the suit was that there was an agreement to pay rent at Rs. 75 per month and that that was the fair rent having in view the situation of the premises and the prevailing rent in the locality. The defendant further pleaded that he had rebuilt these premises after 1946 and had spent a good deal of money on their reconstruction.

6. The learned Munsif, who tried the suit, struck four issues, the two main issues being, one, "whether the building was constructed after 1946, if so to what effect", (2) "what is the fair rent of the shop in dispute and from what date is it payable," On the first issue, the finding of the learned Munsif was that the shop had been in existence since 1942 and that no additions were made either before or after 1946. On the second issue, the learned Munsif found that, according to the municipal assessment, the rent of the premises could only be Rs. 5 per mensem. He naturally found that in view of the municipal assessment of 1942, the agreed rent was much higher than what would have been reasonable rent under the Rent Control Act. The learned Munsif then went on to say that

"the plaintiff Diwan Chand had deposed that he was in pressing need of a shop for his son and that no other shop was available to him at that time."

In view of this statement of the plaintiff, which the learned Munsif referred to, he came to the conclusion that the transaction was unfair between the parties and that

the landlord had "taken undue advantage of the pressing needs of the plaintiff". He, therefore, fixed the fair rent at Rs. 5-8-0 per mensem and held further that the said rent was payable from 1-4-1949.

7. Learned counsel for the applicant has contended before me that the statement of the plaintiff Diwan Chand, to which the learned Munsif has made reference in his judgment, does not find place in the statement which was recorded of the plaintiff in Court.

8. I have myself, with the assistance of counsel on either side, read that statement and I must say that the statement recorded does not contain anything like what the learned Munsif thought was there in that statement. The record of the statement of the plaintiff Diwan Chand is in Hindi and I am constrained to say that it has been recorded in a most illegible manner. The statement appears to have been recorded by the learned Munsif in his own hand--I say "so; because I find that the writing of the Reader of that Court is different from the writing in which the statement has been recorded.

Further, I find that the statement has been recorded in the same ink and bears the same characteristics in which the signature of the learned Munsif appears on the statement. It is a pity that judicial officers, while recording statements themselves, a very laudable thing, do not bear in mind the fact that there may be others apart from themselves who would have to read their handwriting and a little care in writing things legibly is, in my judgment, worth the trouble.

9. I may here state that learned counsel present in Court, had the same difficulty in deciphering this record of the evidence by the learned Munsif as myself.

10. The plaintiff Diwan Chand not having stated either in his plaint or in his statement in Court that any unfair advantage was taken of the situation in fixing the rent at Rs. 75 was, in my judgment, not entitled to the relief which was granted to him by the Court below. Section 5 (4) makes it clear that an agreed rent can only be varied by a Court if the Court is satisfied that the transaction, between the parties was unfair. Unless there is an allegation or there is some evidence to indicate that the transaction is unfair, the Court cannot assume a transaction to be, unfair simply because the Court finds a great disparity between the agreed rent and the municipal assessment. It appears from the record that these very premises were assessed at Rs. 960 per annum by the Municipality in the year 1948. It also appears from the evidence of the plaintiff himself that the adjoining premises are also fetching a rental of Rs. 75 per mensem.

11. Mr. Man Singh appearing on behalf of the opposite party has contended before me that I must accept the statement of the learned Munsif contained in the judgment to the effect that the plaintiff had deposed that he was in pressing need of a shop for his son and that no other shop was "available to him at that time as correct. I regret, I am unable to accept this contention of learned counsel for the

simple reason that a Court is not entitled to put something into the judgment in regard to a witness's statement if that statement does not contain what the judgment says it contains.

Mr. Man Singh further contended that in this case, the learned Munsif was not bound to record the statement "in extenso" and that he need have only recorded a memorandum of the statement in accordance with Order 18, Rule 13, Civil P. C. This may have been so because admittedly no appeal is provided for from a decision given by a trial Court u/s 5 (4), Control of Rent and Eviction Act.

But that does not mean that it was open to a Court to omit recording the most vital part of a witness's statement in its memorandum and refer to that vital part at the time of writing a judgment for the obvious reason that the law could not contemplate leaving vital statements made by witnesses or parties which were to effect their rights to the vicissitudes of a judicial officer's memory.

In my opinion the real import of Rule 13 of Order 18 is giving to the Judge a discretion in the matter of excluding making a record of unimportant matters appearing in the statement of witnesses and no more. It does not, in any event, give the Judge a right to record unimportant and insignificant matters and leave out the recording of important and relevant matters in the memorandum and instead making a record of them in his memory only. I cannot, in the view that I take of Order 18, Rule 13, accept Mr. Man Singh's contention that the learned Munsif must have carried that impression about the witness's statement in his memory and if he has referred to it in his judgment, then it must be taken by me that the witness must have so stated.

12. In the view that I have taken, I cannot uphold the decision of the learned Munsif and must set aside that decision. This revision is therefore allowed with costs.