# Mundri Lal Vs Sushila Rani & Anr.

**Court:** Allahabad High Court

**Date of Decision:** Oct. 19, 2006

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€" Order 41 Rule 27, 151
Provincial Small Cause Courts Act, 1887 â€" Section 25

**Hon'ble Judges:** Poonam Srivastava, J

**Final Decision:** Dismissed

## Judgement

Mrs. Poonam Srivastava, J.
Heard Sri Manish Goyal, learned Counsel for the tenant/revisionist and Sri M.K. Gupta Advocate for the

landlordrespondents.

2. The instant revision has come after remand from the Hon''ble Supreme Court. The respondent landlord instituted a J.S.C.C. Suit for eviction.

The tenant preferred a Civil Revision before this Court which was allowed. The order was challenged in the Apex Court vide Civil Appeal No.

1460 of 2005 arising out of SLP (C) No. 22387 of 2001, Sushila v. Mundri Lal & Anr. The Apex Court has remanded the matter for the reason

that the civil revision was allowed by this Court placing reliance on a judgment in the case of Vineet Kumar v. Mangal Sain Wadhera, 1984 (3)

SCC 352, which stood overruled by a larger Bench, in the case of Suresh Chandra v. Gulam Chisti, (1990) SCC 593. Two subsequent decisions

of the Apex Court had taken similar view. While remitting the case to this Court, an observation was made that if other questions which arise for

consideration in the revision before the High Court, parties shall be heard and liberty was also given that this Court has discretion to remit the

matter to the trial Court if it so requires.

3. Sri Manish Goyal has filed an application under Order XLI, Rule 27 read with Section 151 C.P.C. to bring on record certain documents as

additional evidence at this stage.

4. The dispute relates to a shop which is part of House No. 177 Abu Lane, Meerut Cantt. which was purchased by the land lady in the year 1969

by means of a registered sale deed. The suit proceeded on the basis that the shop in question was constructed after the purchase and it is a new

construction, therefore, the provisions of U.P. Act No. 13 of 1972 will not be applicable. The trial Court agreed with the contention of the

contesting respondents and recorded a finding that the disputed shop which is the part of the house was constructed subsequently and, therefore, it

does not come within the clutches of the Rent Control Act (hereinafter referred to as the Act). Counsel for the tenantrevisionist has moved this

application stating that he has been legally advised to search out documents, whereby it can be proved that the shop in dispute is an old

construction and much before the enforcement of the Act. The trial Court decided the question of applicability of the Act against the tenant. The

revisionist made attempts to trace out such document which could be adduced in evidence by him in support of his contention that the building is

old and the provisions of the Act No. 13 of 1972 are applicable. On this legal advise the applicant searched out the record of the Cantonment

Board, Meerut and came across a sanctioned map, also an application dated 391954 moved by previous landlady Smt. Pushpa Devi alongwith

one proposed map for obtaining permission to construct a shop. The permission was granted by the Cantonment Board authority on 8101954.

The tenant applied for a copy of the map on 521998 which was issued to him on 331998. The tenant proposes to adduce this map and the said

application as an additional evidence. Besides, saledeed was executed by Smt. Pushpa Devi in favour of the landlady in the year 1969 which

mentions that the building purchased, was a double storied building. A rejoinder affidavit in case No. 64 of 1999, Smt. Sushila Rani v. Smt. Saroj

Mittal, filed by the landlady, where it is admitted that she has made substantial additions and alteration and thereafter let out the portion of the

ground floor to one Mundri Lal (revisionist). The year of alteration was given as 197475. All these documents are proposed to be filed as

additional evidence. In paragraph 16 of the affidavit filed in support of the said application, it is mentioned that certified copy has been obtained

recently and therefore, these documents could not be filed earlier. Sri Manish Goyal has placed reliance on a Division Bench decision of this Court

in the case of Virendra Singh Kushwaha v. VIIth Additional District Judge, Agra & Ors., 1996(2) JCLR 69 (All) : ARC 1996 (2) 108. The

Division Bench of this Court was of the view that the Court may admit additional evidence in exercise of inherent powers in a revision under

Section 25 of the Small Causes Act. An earlier Division Bench decision of this Court in the case of Babu Ram v. Additional District Judge,

Dehradun & Ors., 1983 (1) ARC 15, was taken into consideration while allowing additional evidence in JSCC Revision.

5. Sri M.K. Gupta has emphatically disputed the arguments of Sri Manish Goyal regarding permission to adduce additional evidence at this stage.

The objections are many folds. The first objection is that the documents sought to be brought on record were in existence when the suit was

pending before the trial Court and no effort was made by the tenant to bring the document on record. Emphasis is laid on a clear admission made

in paragraphs 7 and 8 of the affidavit that the tenantrevisionist thought of collecting additional evidence on the basis of legal advice given to him

after the suit was decreed; meaning thereby it was to fill up the lacuna in the judgment of Judge Small Causes Court. The evidence sought to be

adduced now is on the advice of his Counsel to somehow meet out the findings arrived at by the Court below. Besides, it is also pointed out, in

case these documents are permitted to be brought on record, it would lead to factual controversy. Each document which the revisionist desires to

bring on record at this stage, has specifically been assailed by the Counsel for the contesting respondents. Sri M.K. Gupta has submitted that the

sanctioned map relates to House Nos. 177 and 177/A while the disputed property bears Municipal No. 177E Raja Rati Ram who was original

owner of the entire property and sold it to Smt. Pushpa Devi and her two sons Chandra Prakash and Vijay Prakash Jain by a registered saledeed

on 2151965. Thereafter a family settlement took place in Original Suit No. 67 of 1969 and property bearing Municipal Nos. 177E and 177 F

came in the share of Smt. Pushpa Devi, copy of the said plaint has been annexed as Annexure2 to the counteraffidavit filed by respondent. The

other portion of the building bearing Municipal Nos. 177 and 177A went to other cosharers which was subsequently transferred by registered

saledeed dated 7121970 in favour of Anil Jain and Anand Jain. This portion is the same portion in respect of which the map dated 8101954 issued

by the Cantonment Board is being relied upon. The saledeed has also been annexed as Annexure CA 3. It is also not disputed that at the time

when the landlady purchased the house in question, it was two storied building but substantial additions and alterations were made by the

answering respondents and ground floor was converted into a nonresidential area by replacing the roof with four RCC Beams and by constructing

a bathroom and latrine after removing the passage and the store and earlier the five arches were removed which was replaced by pillars and

beams. All these new constructions were taken into consideration to arrive at a conclusion by the trial Court that the constructions are new. It was

on account of new construction, the valuation of the property escalated w.e.f 14 1978. Sri Manish Goyal has also tried to adduce Chalani Report

which is an order of the Judicial Magistrate dated 1611975 which relates to major construction of the first floor. This document was traced out on

the basis of statement of PW1 paper No. 23Ga where the time and date of construction has been given.

6. Sri M.K. Gupta has submitted that there is no such assertion on the part of the tenant that despite exercise of due diligence the evidence cannot

be procured and, therefore, the request for adducing additional evidence in a revision under Section 25 of the Small Causes Court should not be

accepted. Sri M.K. Gupta has also pointed out that perusal of the rejoinder affidavit which the learned Counsel for the revisionist wants to bring on

record as additional evidence, in fact supports him. On perusal of paragraph 11 of the said rejoinder affidavit, it transpires that in fact it helps the

land lady Smt. Sushila Rani where she has categorically stated that she has made substantial additions and alterations on the ground floor and

thereafter let out a portion thereof to Sri Mundri Lal, therefore, it is submitted that no good reason has been given for bringing on record the

additional evidence.

7. Sri Manish Goyal has tried to stress his argument on the basis of the fact that in another proceeding pending between the same parties, the IInd

Additional District Judge, Meerut has allowed the additional evidence vide order dated 1181998 and therefore, this Court should also permit the

revisionist to bring those additional evidence on record.

8. After hearing the respective Counsel for the parties on the application under Order XLI, Rule 27 read with Section 151 C.P.C. and after

perusal of the counter and rejoinder affidavits filed in support of this application, I am of the view that no doubt the Division Bench decision of this

Court has ruled that the additional evidence in exercise of inherent powers can be taken on record in a revision under Section 25 of the Judge

Small Causes Court, but it is also true that the additional evidence are not to be accepted in a mechanical manner. In fact a reference was made by

the learned Single Judge to decide the question that whether a Court sitting in Revision under Section 25 of the Act can take additional evidence.

The Division Bench after taking into consideration has no doubt come to a conclusion, that the Court may admit additional evidence but it cannot

be said that the additional evidence is to be allowed merely because one of the party desires to do so. There are a number of questions that has to

be examined before the application is allowed to lead additional evidence in a revision.

Order XLI, Rule 27 C.P.C. reads as follows:

Ã¯Â¿Â½27. Production of additional evidence in Appellate Court. (1) The parties to an appeal shall not be entitled to produce additional evidence,

whether oral or documentary, in the Appellate Court. But if

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within

his knowledge or could not, after the exercise of due diligence, he produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other

substantial cause,

the appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whether additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission. Ã¯Â¿Â½

9. In the instant case, Order 41 Rule 27 (1) (a) C.P.C. does not come into play at all because it is not a case where the Court below refused to

admit any evidence. In fact if the tenant/revisionist seeks permission to adduce additional evidence under Section 27 (1) (aa) and to avail this

benefit, the applicant has to establish that despite exercise of due diligence, such evidence was not within his knowledge or could not, after exercise

of due diligence, be produced by him at the time when the decree appealed against was passed. A bare reading of the application for bringing on

record the additional evidence, it is clear that the revisionist has admitted in an unequivocal terms that he started looking and searching for evidence

on the legal advice given to him. In other words, the legal advice to look for evidence was given to the revisionist only with a view to somehow

circumvent the findings of the Court of Judge Small Causes, regarding substantial additions and alteration in the building. After the legal advice was

given to him, he started searching for additional evidence. This by itself will not constitute due diligence'' and cannot fulfill the requirement of

subsection (aa) of Order 41 Rule 27 C.P.C. clause 1. The opening line of the paragraph 7 of the affidavit filed in support of the application states

that the applicant was legally advised to search out the documentary evidence, whereby it can be proved that the shop in dispute is an old

construction. Besides, in paragraph 8 of the same affidavit, it is submitted that he applicant made attempt to search out record of the Cantonment

Board, Meerut on legal advice and he came across the map which will help the tenant to establish that the constructions are an old one.

10. In the circumstances, it is evident that at no stage did the tenantrevisionist exercise due diligence or has made assertions in his affidavit that he

was prevented by circumstances which was beyond his control to adduce such evidence. Admittedly the documents relate to the year 1954 and is

a part of the record of the Cantonment Board, Meerut which are, for all intent and purposes, is a public document. This could have been obtained

during the trial provided the revisionist exercised "due diligence". So far the question of rejoinder affidavit is concerned filed in another

proceedings, it has no material bearing to the controversy involved. The land lady has clearly admitted that the substantial alteration was made and

thereafter let out to the revisionist which is also the case of land lady and, therefore, even it is allowed to be brought on record as additional

evidence, it will yield no good purpose. On the contrary, the matter will be considerably delayed.

11. For the reasons what has been discussed, I do not find any substance in this application under Order XLI, Rule 21 read with 151 C.P.C. and

it is accordingly rejected.

12. Now I proceed to decide this revision on merits. The tenant revisionist challenged the judgment and order dated 20101987 passed by Smt.

Sadhana Chaudhari, XII Additional District Judge, Meerut in J.S.C.C. Suit No. 4 of 1980. The suit was instituted for eviction from the property in

question and also realization of arrears of rent and damages. The landlordrespondent filed the suit on the ground that the disputed shop was given

on monthly rent of Rs. 1,600 with effect from 2611976. Material alteration and constructions were made in the suit property and after the new

constructions, afresh assessment with effect from 141978 was also done. The tenant defaulted in payment of rent despite notice. The

plaintifflandlord terminated the tenancy and instituted the instant eviction suit for realization of arrears of rent and damages. The tenant claimed that

the Act No. 13 of 1972 was applicable since the suit property was an old construction. The tenancy agreement was executed on 1611976

wherein it was stipulated that in the event the tenancy continues for a period of five years and if the petitioner desires to continue the tenancy, it

could be continued for a further period of five years on an enhanced rent by 5%. Since the five years period has not expired and therefore, the suit

was premature. The Judge Small Causes Court arrived at a conclusion that the suit property was constructed on 141978 and since ten years from

the date of construction was not completed, therefore building was exempted from the clutches of the Rent Control Act. The suit was decreed

against which a revision was preferred in this Court, which was allowed on the ground that the Act became applicable during the pendency of the

revision in the High Court. This Court while allowing the revision recorded a finding; Ã¯Â¿Â½.....Mr. Ravi Kiran, learned Senior Advocate

appearing for the opposite party however assailed the findings of the trial Court that the U.P. Act No. 13 of 1972 would not be applicable on the

facts and in the circumstances of the case, as ten years from the date of completion of the construction at the time of filing of the suit and even at

the time of the disposal of the suit were not completed. Therefore, let me keep in my mind that the aforesaid finding has not been challenged either

by the petitioner or by the opposite party. From the above finding of the trial Court it is, therefore, clear that the construction was completed on 1st

April, 1978 but ten years were not completed from the said date of completion of construction.Ã¯Â¿Â½

The revision was allowed in part vide judgment dated 24 102004. The part of the judgment so far it related to the order of eviction was set aside.

The revisional order passed by this Court was challenged in the Apex Court. The appeal filed by the land lady was allowed for the reason that this

Court had placed reliance on an overruled decisions and the Apex Court held even if ten years period elapsed during the pendency of the revision,

the provisions of U.P. Act No. 13 of 1972 would not be attracted. However, since the tenantrevisionist made an assertion that there are other

questions, which are to be considered by the High Court, the matter was remitted.

13. Sri Manish Goyal has raised a number of arguments besides the question of applicability of Rent Control Act. The first submission is that the

trial Court has not recorded any finding regarding service of notice under Section 106 of the Transfer of Property Act and, therefore, the suit could

not be decreed. A copy of the plaint has been placed before me by Sri Manish Goyal and it is emphatically argued that no notice dated 821979

was ever received. The plaint further mentions that the notice dated 8111979 was received by the defendant No. 2 on 13111979. Since the notice

alleged to have been served on the tenant was never received, the suit could not be decreed for want of notice. The trial Court failed to constitute

any issue on the question of validity of notice. In absence of any finding recorded by the trial Court regarding validity of notice under Section 106

of the Transfer of Property Act, the judgment of the Judge Small Causes Court stands vitiated in law.

14. Sri M.K. Gupta has disputed this argument and placed paragraph 5 of the plaint where there is specific assertion regarding service of notice

under Section 106 of the Transfer of Property Act. No doubt the date of notice is mentioned 821979 but a copy of the notice has been annexed

with the copy of the plaint, which is in fact is dated 8111979 and, therefore, fulfills the requirement of Section 106 of the Transfer of Property Act.

It is submitted that the date 821979 was a typing error and merely an omission. Besides, the validity of Notice is a legal question which can also be

considered at the revisional stage, specially when no additional evidence is required.

15. I have perused the plaint. Paragraph 5 of the plaint mentions the date of notice as 821979 through Counsel Narendra Pal Singh whereas notice

appended to the plaint is 8111979 and not February, 1979. The receipt of notice has been admitted in paragraph 5 of the written statement by the

tenant in an unequivocal term. It is admitted to the tenant that the plaintiff has served a notice dated 8111979 purporting to be a notice under

Section 106 of the Transfer of Property Act and the same was received by the answering defendant on 13111979. A perusal of paragraph 5 of

the said notice also specifies and fulfills the requirement of a notice under Section 106 of the Transfer of Property Act whereby the tenancy was

terminated on 30th day of expiry of the receipt of notice dated 8111979, therefore, there remains no dispute whatsoever regarding service of

notice dated 8111979 on 13111979 on the tenant through the plaintiff''s Counsel terminating the tenancy. In the circumstances, I am not in

agreement with the first argument of the Counsel for the revisionist that the judgment should be quashed for want of specific issue on the question

of validity of the notice. I cannot loose sight of the fact that in a suit of Judge Small Causes in view of the provisions of the Order 20 Rule 4 (1)

C.P.C. which provides that a judgment of Small Causes Court need not contain points for determination and decision thereof. The tenant has

unequivocally accepted the receipt of the notice, therefore, on the face of clear acceptance by the tenant that he has received notice, it cannot be

said that it was a point for determination and, therefore, the submission of the learned Counsel for the revisionist is without any force. In the case of

Raghubir Prasad v. Rajendra Kumar Gurudev & Ors., 1993 (22) A.L.R. 281, this Court ruled that since there was an unequivocal admission on

the part of the tenant about the receipt of the notice and there was no need to prove the same which was admitted or deemed to be admitted. I

have also noticed the finding recorded by the Judge Small Causes Court wherein it is stated that since the disputed construction was completed

only on 14 1978 and ten years period has not expired and the provisions of Act No. 13 of 1972 is not applicable, therefore, the notice under

Section 106 of the Transfer of Property Act informing the intention of the landlord is sufficient and I come to a conclusion that the judgment of the

trial Court cannot be set aside on the question of validity of notice. Reliance has been placed by the learned Counsel for the revisionist on a

decision of this Court in the case of Shaminullah v. The Ist Additional District Judge, Ballia & Ors., 1984 A.R.C. 70. The fact of the said case was

relating to a building under the Act No. 13 of 1972 was applicable and therefore, the period of 30 days from the date of service upon him for

payment of arrears of rent, was a material question. I do not think that the facts and findings of the said case are applicable in the present case.

16. The next submission on behalf of the revisionist is that the suit was premature and was instituted in contravention of Clause 14 of the lease

agreement. Sri Goyal has emphatically urged before this Court that the agreement was for a period of five years and, thereafter, the tenant was

entitled to retain the property in the capacity of tenant whereas the Counsel for the landlord has emphatically disputed this fact. It has been stated in

paragraph 5 of the counteraffidavit that the premises was let out to the revisionist alongwith Achru Ram as cotenant for a period of 11 months. One

of the condition in the agreement provided that in the event, the tenant continues in possession of the shop in question for a period of five years then

the rent would be increased by 5% on expiry of the aforesaid five years. It is admitted by both the parties that the agreement was an unregistered

document, therefore, if the contention of the Counsel for the revisionist is accepted that the lease was for a period of five years then it had to be

necessarily registered. Section 107 of the Transfer of Property Act makes it mandatory that a lease of immovable property for a period of one

year or more can only be made by a registered instrument. The condition No. 14 of the lease agreement only entitles the landlord to demand rent

at an escalated rate of 5% after a period of five years, if the tenant continues to be in possession.

17. In view of what has been stated above, the averments in the agreement to the effect that the rent will be enhanced by 5% after lapse of five

years, depends on an eventuality if the tenant continues to be in possession till that date. The admitted position is that the document was not

registered, therefore, I come to a conclusion that it was only a lease for a period of 11 months and the contention of the learned Counsel for the

tenant revisionist cannot be accepted. I hold that the assertion to the effect that the suit was premature, is without any basis since the Act No. 13 of

1972 was not applicable. The landlord was entitled to terminate the tenancy after serving a notice under Section 106 of the Transfer of Property

Act which has been done in the present case. The arguments to the contrary are not accepted.

18. Sri Goyal has tried to assail the finding regarding the date of completion of the building and has argued that under the Explanation 1 (c) of

Section 2 (2) of U.P. Act No. 13 of 1972 it was essential that the Court should have recorded findings about existing construction as well as new

construction before it came to a conclusion that it was incumbent on the Judge Small Causes Court to decide that substantial additions made to the

existing building was a minor repair or it could be deemed to be a new construction so as to exclude the application of Act No. 13 of 1972. The

Court below came to a conclusion without there being any evidence in support thereof. Counsel has placed paragraph 3 of the plaint as well as the

statement of PW1 to show that no evidence was adduced regarding the fact that the constructions were minor construction or substantial

construction.

19. I have perused the judgment and as well as previous judgment passed in the instant revision by this Court. The findings to the effect that the

building was constructed on 141978, was not challenged when the revision was argued and the judgment was delivered on 24102004. It was

challenged in the Apex Court and the case was remitted only for the reason that there are other questions which arise for consideration in the civil

revision. It is, therefore, not open to the Counsel for the revisionist to start afresh argument on this question. Besides, I cannot loose sight of the

fact that it is a finding of fact arrived at by the Court below which cannot be interfered in exercise of revisional jurisdiction. I am conscious of the

fact that this is a revision under Section 25 of the Provincial Small Causes Court Act but this alone would not entitle this Court to reassess the

evidence and upset a finding of fact. It is also to be noted that while recording the findings on the question as to whether the building was new

building or an old building, it was taken into consideration that previously the building was assessed at the rental value of Rs. 330 per annum,

subsequently after the new construction, the value was enhanced to Rs. 22,800 w.e.f. 14 1978. This was done taking into notice of substantial

additions made to the existing building. This was earlier let out to one Satish Chandra Jain for residential purposes and after he vacated, major

additions and alterations have been made and it was converted into commercial building and was let out to the tenant for commercial purposes.

The trial Court took into consideration the oral evidence as well as documentary evidence that was placed before the Judge Small Causes Court. I

do not find any illegality whatsoever in the impugned judgment which calls for interference. This Court could interfere under Section 25 Judge Small

Causes Court only, in the event learned Counsel could establish that the findings of the trial Court was perverse and not sustainable in law.

Admittedly the building in question is subject to assessment of municipal taxes and date of construction will be assessed on the basis of assessment

as well as other factors and evidence to be taken into consideration, which has admittedly been done by the trial Court and this Court at the time

when this civil revision was decided on 2482004. Since the findings of the trial Court regarding the date of construction of the building was

confirmed in civil revision and upheld by the Apex Court, I am of the view that it cannot be reopened in this second innings. The Apex Court has

only remitted the case to consider the other points which were not canvassed when the revision was decided previously.

20. In the facts and circumstances, what has been discussed above, I do not find it a fit case for interference. The judgment dated 20th October,

1987 is absolutely a legal. The decree for eviction and arrears of rent are confirmed. The civil revision is accordingly dismissed.

21. After the judgment was delivered, a request was made by Sri Manish Goyal, learned Counsel for the revisionist for some time to vacate the

premises in question.

22. On the request of the learned Counsel for the revisionist, six months'' time is allowed to vacate the premises in question subject to filing of an

undertaking before the Court concerned within three weeks from today.

Revision dismissed.