courtkutchehry.com

Company : Sol Infotech Pvt. Ltd.

Website : www.courtkutchehry.com

Printed For :

Date : 24/08/2025

Nathuram, Iron Merchant Vs Vinay Kumar Gupta and Others

Court: Allahabad High Court

Date of Decision: Feb. 7, 2011

Acts Referred: Transfer of Property Act, 1882 â€" Section 106

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.
Heard learned Counsel for the petitioner and perused the record.

2. Backdrop of the case is that SCC suit No. 17 of 1984, u/s 20(2)(a) of U.P. Act No. 13 of 1972, was filed by landlord late Satya Narain

against the petitioner tenant for a decree of arrears of rent and eviction from the shop in dispute situated Chamanganj, Kasba Phaphund, Pergana

Auraiya, district Etawah. The plaint allegation was that petitioner was tenant of the aforesaid shop at the rate of Rs. 30/-per month and he had

been defaulter of rent with effect from 1.4.1978 which he was liable to pay as well as damages for the use and occupation of the same. A notice

dated 1.10.1983 was served upon the petitioner on 6.10.1983 and was also replied by him vide his letter dated 7.11.183. It appears that another

notice dated 26.12.1983 was also served upon the petitioner reiterating termination of his tenancy. This notice is said to have been addressed to

the counsel of petitioner Sri Chandra Prakash Gupta, Advocate, civil courts, Etawah.

3. The petitioner contested the suit by filing his written statement inter alia that there was no arrears of rent due upon him in view of the fact that

landlord Respondent had entered into an agreement with the petitioner for sale of the shop in question in the year 1978 and that he was in

possession of the property as owner in view of part performance of the agreement of sale.

4. The suit was decided by Civil Judge(Senior Division) Etawah by means of judgment and decree dated 5.2.2008. It may be pointed out here that

petitioner has not filed decree with the present petition.

5. Learned Counsel for the petitioner has canvassed two points before the Court, (i) that second notice dated 26.12.1983 served upon

petitioner"s counsel Sri Chandra Prakash Gupta, cannot be termed as a valid notice terminating tenancy of the petitioner, and (ii) that petitioner had

become landlord of the property on part performance of the agreement for sale, and as such neither any rent was due not was he liable to pay

damages to the erstwhile landlord.

6. According to the counsel for petitioner, the trial court had framed issue but has failed to consider the effect of non service of the notice upon the

petitioner. It is stated that while deciding issue No. 3 with regard to validity of the notice, the trial court has committed an illegality while deeming

service of notice upon his Advocate as sufficient service upon the petitioner. He submits that counsel of the petitioner Sri Chandra Prakash

Gupta,in the civil courts, Etawah was not authorised by the petitioner to receive or send notices on his behalf and that burden lay upon the landlord

Respondent to demonstrate that he was authorised as the petitioner cannot lead a negative evidence, as such service of second notice dated

26.12.1983 cannot be deemed to be sufficient service upon the petitioner through his counsel.

7. Apart from the above contentions, counsel for the petitioner has also relied upon Order XX Rule 12 (a)(b) and (b-a),Code of Civil Procedure,

which provides thus:

12. Decree for possession and mesne profits-(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne

profits, the Court may pass a decree-

(a) for the possession of the property,

(b) for the rent which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;

(b-a) for the mesne profits or directing an inquiry as to such mesne profits.

8. A plain reading of the aforesaid provision relied upon by the counsel for petitioner would show that the court has power to direct for payment of

arrears of rent and mesne profits also even prior to the date of institution of the suit and for this purpose, it may or may not require any inquiry to

be conducted.

9. He then argued that he has been instructed by his client not to press this petition and to seek some reasonable time to vacate the shop in

question, as such the petitioner may be granted some time to vacate the premises in question.

10. As regards the first contention of the counsel for petitioner is concerned, it is admitted by the counsel for petitioner that first notice dated

1.10.1983 was served upon him on 6.10.1983 and the second notice dated 26.10.1983 sent to the petitioner through his counsel Sri Chandra

Prakash Gupta,Advocate was served upon the counsel, who according to the petitioner, was not authorised to receive or send notice on his

behalf.

11. It is therefore not in dispute that the first notice terminating tenancy of the petitioner was served upon the petitioner himself. It appears that a

second notice sent to the petitioner"s counsel informing him about termination of tenancy of the petitioner was sent as an abundant caution and it

will not waive of the first notice of termination of tenancy dated 1.10.1983. The findings of the courts below in this context that first notice was a

valid one and had been served upon the petitioner terminating his tenancy, cannot be faulted with. Even if it is assumed that second notice was not

valid, it would not in any manner better the case of the petitioner as the courts below have recorded a categorical finding of fact that both the

notices were replied by the petitioner through his counsel Sri Chandra Prakash Gupta, hence it cannot be said that second notice was not served

upon him and was invalid. The court below has decided issue No. 3 in suit No. 17 of 1984 thus:

fopkj.kh; fcUnq la- & 3

bl fcUnq ij izfroknh ds fo}ku vf/koDrk }kjk eq[; rdZ ;g fn;k x;k fd oknh us tks f}rh; uksfVl fn- 28- 12- 83 izsf""kr fd;k x;k mldh dksbZ O;fDrxr

rkehy izfroknh ij ugha gS rFkk u gh mDr uksfVl izfroknh ds uke ls izsf""kr fd;k x;k gS A i{kdkjksa ds e/; ;g fufoZokn gS fd oknh us tks izFke

uksfVl fn- 1- 10- 83 ftls lwph 65 x ds :i esa nkf[ky fd;k x;k gS A ftldk tokc izfroknh us fn- 7- 11- 83 dks vius vf/koDrk Jh pUnz xqIr,MoksdsV

ds ek/;e ls fnyk;k x;k tks i=koyh ij dkxt la- 69 x ds :i esa nkf[ky gSA oknh us f}rh; uksfVl fn- 28- 12- 83 izfroknh dks mlds lq;ksX; vf/koDrk Jh

pUnz izdk"k xqIr,MoksdsV ds ek/;e ls izsf""kr fd;k tks 67 x ls nkf[ky gS rFkk bl uksfVl dh ikorh ij izfroknh ds lq;ksX; vf/koDrk Jh pUnz izdk"k

xqIr ds gLrk{kj vafdr gS A bl f}rh; uksfVl dk Hkh tokc izfroknh dh vksj ls mlds bUgha lq;ksX; vf/koDrk Jh pUnz izdk"k xqIr }kjk fn- 3- 2- 84

dks izsf""kr fd;k x;k tks ewy :i ls 70 x ls oknh us nkf[ky fd;k gS A ;gka ;g mYys[kuh; gS fd izfroknh us tks lwph 88 x izLrqr dh gS mldk izi- la- & 5

A dkxt la- & 93 x blh tokc dh dkcZu izfr gS vFkkZr izfroknh dh vksj ls oknh ds nksuksa uksfVlksa dk tokc dh dkcZu izfr gS vFkkZr izfroknh dh

vksj ls oknh ds nksuksa uksfVlksa dk tokc fn;k x;k gS ftlds vk/kkj ij izfroknh ds fo}ku vf/koDrk ds bl rF; esa dksbZ cy ugha gS fd f}rh; uksfVl

dk izfroknh ij O;fDrxr rkehy u gksus ds dkj.k mls fof/kd uksfVl ugha ekuk tk ldrk gS of.kZr rF;ksa ls ;g Li""V gS fd nksuksa uksfVlksa dk tokc

izfroknh ij O;fDrxr rkehy u gksus ds dkj.k mls fof/kd uksfVl ugha ekuk tk ldrk gS of.kZr rF;ksa ls ;g Li""V gS fd nksuksa uksfVlksa dk tokc

izfroknh dh vksj ls mls lq;ksX; vfÃ¯Â¿Â½koDrk Jh pUnz izdk''k xqIr A,MoksdsV }kjk gh fn;k x;k ftlls oknh }kjk izf""kr uksfVl fn- 28- 12- 83,d fof/kd

uksfVl gS A vr% fopkj.kh; fcUnq la- & 3 Hkh oknh ds i{k esa fuLrkfjr fd;k tkrk gS A

12. So far as the second contention that the petitioner had become landlord as he had advanced some money as part performance of the

agreement of sale is concerned, suffice it to say that petitioner would not become landlord of the property until and unless transactioin for the

agreement is brought to conclusion by a registered sale deed in favour of the petitioner. The courts below have come to the conclusion that status

of the petitioner remained that of a tenant and he has not deposited the rent of the shop in dispute since 1.4.1978. In this regard, issue No. 1 and 2

have been decided by the trial court thus:

fopkj.kh; fcUnq la- & 1

tgka rd fookfnr nqdku ds lEcU/k esa oknh rFkk izfroknh ds e/; Hkw&Lokeh o fdjk;snkj dk lEcU/k LFkkfir gksus dk iz''u gS rks ;g Lohd`r rF; gS

fd izfroknh us dfFkr eqgk;nko; fn- 26- 4- 89 ds vk/kkj ij fookfnr nqdku ds lEcU/k esa lafonk ds fof''k""V vuqikyu gsrq ewyokn la- 12 @ 85 ;ksftr

fd;k x;k tks fu.kZ; o fMÃ¯Â¿Â½h fn- 29- 4- 89 ls vkKIr fd; x;k ftlds fo:) lR;ujk;u us flfoy vihy la- 57 @ 89 ;ksftr dh rFkk vihy fu.kZ; fn- 13- 4- 90 ls

Lohd`r gqbZ rFkk voj U;k;ky; ds fu.kZ; o fMÃ¯Â¿Â½h dks vikLr fd;k x;k A vihy esa ikfjr fu.kZ; ds fo:) ukFkwjke us ekuuh; mPp U;k;ky; esa f}rh;

vihy la- 1355 @ 90 nkf[ky dh xbZ ftlesa ikfjr fu.kZ; fn- 4- 10- 04 ls voj U;k;ky; ds fu.kZ; dks vikLr fd;s tkus dh lhek rd izFke vihy ds fu.kZ; o

fMÃ¯Â¿Â½h dks iq""V fd;k x;k vFkkZr f}rh; vihy esa ikfjr fu.kZ; ls ;g vafre :i ls fuLrkfjr gks pqdk gS fd fookfnr Hkwfe dk Lokeh oknh gS rFkk

izfroknh dfFkr eqgk;nko; ds vk/kkj ij fookfnr Hkwfe ds lEcU/k esa LokfeRo dk dksbZ vf/kdkj izkIr ugha fd;k gS A ;gka ;g mYys[kuh; gS fd

izfroknh }kjk vius mRrj i= 60 d dks f}rh; vihy esa fu.kZ; ikfjr gksus ds i''pkr fn- 30- 3- 06 dks izLrqr fd;k x;k gS rFkk fn- 30- 3- 06 dks Hkh

izfroknh }kjk viuk mRrj i= esa iqu% mUgha vk/kkjksa dks fy;k x;k gS ftudk vafre fuLrkjk ekuuh; mPp U;k;ky; }kjk fd;k tk pqdk gS A izfroknh

us vius mRrj i= esa dfFkr eqgk;nko; ds iwoZ fookfnr nqdku esa Lo;a dks oknh dh vksj ls 30 @ & :i;s izfrekg dk fdjk;snkj gksuk Lohdkj fd;k gS

rFkk dfr eqgk;nko; ds vk/kkj ij izfroknh dks mfYyf[kr izFke vihy rFkk f}rh; vihy ls LoRo dk dksbZ vf/kdkj izkIr gksuk ugha ekuk x;k gS A vr%

dfFkr eqgk;nko; ls iwoZ dh Lohd`r fLFkfr ds vuqlkj oknh o izfroknh ds e/;,d ek= Hkw&Lokeh rFkk fdjk;snkj dk gh lEcU/k LFkkfir gS A vr%

izFke fopkj.kh; fcUnq oknh ds i{k esa fuLrkfjr fd;k tkrk gS A

fopkj.kh; fcUnq la- & 2

oknh ds vuqlkj izfroknh ij fn- 1- 4- 78 ls fdjk;k cdk;k gS ftldh iqf""V izfroknh }kjk vius mRrj i= ds izLrj & 9 esa fd;s x;s bl vfHkdFku ls Hkh gksrh

gS fd izfroknh fn- 15- 3- 78 ls cgSfl;r ekfyd fookfnr nqdku ij dkfct n[khy gks x;k vFkkZr~ fn- 1- 4- 78 ls izfroknh }kjk oknh dks dksbZ fdjk;k

vnk ugha fd;k x;k A izfroknh }kjk i=koyh ij Hkh dksbZ fdjk;k vnk dus lEcU/kh izek.k nkf[ky ugha fd;k gS rFkk Mh- MCyw- & 1 ds :i esa

ijhf{kr izfroknh us Lo;a ;g Lohdkj fd;k gS fd eSaus ekpZ 1978 ds ckn ls vkt rd dksbZ /kujkf"k Hkou ekfyd dks ugha nh gS A vr% mijksDr ls ;g

lkfcr gks tkrk gS fd izfroknh }kjk oknh dks fookfnr nqdku dk dksbZ fdjk;k fn- 1- 4- 78 ls vnk ugha fd;k gS A vr% fopkj.kh; fcUnq la- & 2 Hkh

oknh ds i{k esa fuLrkfjr fd;k tkrk gS A

13. As regards the question of mesne profits is concerned, the court below in issue No. 5 has recorded a finding of fact that petitioner tenant had

not deposited rent with effect from 1.4.1978 though his tenancy had been terminated by notice u/s 106 of the Transfer of Property Act, and as

such the landlord was found entitled for arrears of rent upto 30.1.1984 i.e. date of filing of the suit. The court below has also found the landlord

Respondent entitled to rent at the rate of Rs. 30/-per month prior to December, 1980, thereafter from January 1981 to December 1990 at the rate

of Rs. 100/-per month, from January 1991 to December 2000 at the rate of Rs. 200/-per month and from January 2001 till the date of handing

over possession at the rate of Rs. 300/-per month. Issue No. 5 decided by the trial court reads thus:

fopkj.kh; fcUnq la- & 6

mijksDr of.kZr rF;ksa rFkk fopspuk ls ;g lkfcr gS fd izfroknh }kjk fn- 1- 4- 78 ls oknh dks dksbZ fdjk;k vnk ugha fd;k gS rFkk oknh }kjk

izfroknh dh fdjk;snkjh uksfVl fn- 28- 12- 83 ls lekIr dh xbZ gS ftlls oknh mDr uksfVl esa nh xbZ vof/k fn- 30- 1- 84 rd ''ks""k fdjk;k rFkk mDr ds

i''pkr gtkZ Lrsekyh o n[ky ikus dk vf/kdkjh gS A tgka rd fn- 1- 2- 84 ls dCtk n[ky izkIr gksus rd gtkZ Lrsekyh fnyk;s tkus dk iz''u gS rks U;k;ky;

de er esa ekg fnlEcu & 1980 rd iwoZ fdjk;s dh nj 30 @ & #- izfrekg ds fglkc ls rFkk ekg tuojh & 1981 ls ekg fnlEcj & 1990 rd 100 @ & #-

izfrekg dh nj ls ekg tuojh 1991 ls ekg fnEcj & 2000 rd 200 @ & #- izfrekg dh nj ls rFkk ekg tuojh 2001 ls dCtk n[ky izkIr gksus rd 300 @ &

#i;s izfrekg dh nj ls fnyk;k tkuk U;k;ksfpr o U;k;laxr gS rn~uqlkj nkok oknh lO;; fMÃ¯Â¿Â½h fd;s tkus ;ksX; gS A

14. The findings of the trial court in suit have been confirmed by the revisional court in revision No. 7 of 2008 by judgment and order dated

28.10.2010.

15. Admittedly, the petitioner has not paid any rent as is also apparent from his written statement merely because he claims to have advanced some

money in part performance of the agreement of sale. This fact cannot be lost sight of that he was in arrears of rent since the year 1978 and his

tenancy had been terminated by a valid notice served upon him as has been recorded by the trial court and affirmed by the revisional court by their

respective judgment and orders. He might have paid some money towards arrears of rent.

16. The alternate contention of the counsel for petitioner at this stage that he does not want to press this petition, therefore, the Court may grant

some time to him to vacate the shop in dispute, is accepted.

17. As this Court has also found that there is no illegality or infirmity in the orders impugned, the writ petition is accordingly dismissed. The decree

of the court below for arrears of rent and mesne profits may be executed. The petitioner shall hand over vacant peaceful possession of the shop in

question to the landlord within a period of four months from today. No order as to costs.