

S. Chand and Co. Vs II Addl. District Judge, Lucknow and Others

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Nov. 6, 1984

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 115

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 â€” Section 30

Citation: AIR 1986 All 26 : (1985) AWC 84

Hon'ble Judges: S. Saghir Ahmad, J

Bench: Single Bench

Advocate: Vijai Krishna, for the Appellant; B.C. Agrawal, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S. Saghir Ahmad, J.

This is a petition under Article 226 of the Constitution.

2. The petitioner is the tenant of opposite parties 3 to 5 (hereinafter referred to as landlords) in respect of premises No. 1779 (first floor) Gwynne

Road, Lucknow. It appears that a notice dated 8-9-1980 was sent by the landlords to the petitioner demanding arrears of rent from him. The

tenancy of the petitioner was also terminated by the said notice which was served upon the petitioner on 10-9-1980. It appears that in compliance

of the demand made in the said notice, the petitioner sent a cheque for Rs. 2808/- being the rent for the period from 1-4-1980 to 30-9-1980 on

25-9-1980 which was refused. This was followed by rent for the month of October, 1980 which was sent by Money Order on 7-10-1980 but it

was also refused. On the expiry of the period of notice, a suit for the eviction of the petitioner was filed by the landlords in the Court of the District

Judge, Lucknow on 14-10-1980 which was registered as SC. Suit No. 58 of 1980. It is still pending, having in the meantime been transferred to

the Court of Vth Addl. District Judge, Lucknow.

3. On 4-10-1980 petitioner filed an application in the Court of Munsif North, Lucknow, for permission to deposit the rent in Court u/s 30(1) of the

U. P. Urban Buildings "Regulation of Letting, Rent & Eviction Act, 1972 for short, Act) on the ground that the rent when tendered to the landlords

through the cheque and the Money Order was refused by them. This application was registered as Misc. Case No. 258 of 1980 against which the

landlords filed objections in which it was, inter alia, pleaded that a regular suit for eviction of the petitioner had already been filed on the ground of

default and, therefore, there was no occasion to allow the petitioner to deposit the rent in Court particularly as his tenancy had been terminated by

notice dated 8-9-1980 and he was no longer a tenant. The learned Munsif by his order dated 19-4-1982 rejected the application on the ground

that a suit for eviction had already been filed against the petitioner and it was not possible to allow the petitioner to deposit the rent u/s 30 of the

Act.

4. The petitioner challenged this order in a revision filed in the Court of the District Judge, Lucknow u/s 115 of the Civil P. C. which was dismissed

on 25-9-1982 as not maintainable on the basis of a decision of this Court in Ram Bharosey Lal v. The Munsif, Agra 1980 ARC 427.

5. The petitioner has now come to this Court.

6. Learned counsel for the petitioner has contended that the order passed by a Munsif u/s 30 of the Act is revisable u/s 115 of the Civil P. C. as

the Munsif essentially functions as a Civil Court subordinate to the District Judge and, therefore, the petitioner's revision could not have been

dismissed as not maintainable. Learned counsel for the Landlords has, on the other hand contended, that in dismissing the revision, the learned

Addl. District Judge had merely followed the decision of this Court in Ram Bharosey Lal's case 1980 ARC 427 (supra) and, therefore, the error

not being apparent on the face of the record, the writ petition is liable to be dismissed.

7. I may at the very outset point out that the decision in Ram Bharosey Lal's case (supra) was based on a concession made by the counsel in that

case that a revision against an order passed u/s 30 of the Act was not maintainable. The decision is, therefore, not of a persuasive or binding value

and on a consideration of the whole gamut of the legal position. I have no hesitation in saying that the revision was maintainable and it could not

have been rejected on the ground that the order of the Munsif was not revisable u/s 115 of the Civil P. C.

8. Section 30 of the Act provides as under :

30(1). If any person claiming to be a tenant of building tenders any amount as rent in respect of a building to its alleged landlord and the landlord

refuses to accept the same then the former may deposit such amount in the prescribed manner and continue to deposit any rent until the landlord in

the meantime signifies by notice in writing to the tenant his willingness to accept it.

(2) Where any bona fide doubt or dispute has arisen as to the person who is entitled to receive any rent in respect of any building, the tenant may

likewise deposit the rent stating the circumstances under which such deposit is made and may until such doubt has been removed or such dispute

has been settled by the decision of any competent Court or by settlement between the parties, continue to deposit the rent that may subsequently

become due in respect of such building.

(3) The deposit referred to in Sub-section (1), or Sub-section (2) shall be made in the Court of the Munsif having jurisdiction.

(4) On any deposit being made under Sub-section (1), the Court shall cause a notice of the deposit to be served on the alleged landlord, and the

amount of deposit may be withdrawn by that person on application made by him to the Court in that behalf.

(5) On a deposit being made under Sub-section (2) the Court shall cause notice of the deposit to be served on the person or persons concerned

and hold the amount of the deposit for the benefit of the person who may be found entitled to it by a settlement between the parties and the same

shall be payable to such person.

(6) In respect of a deposit made as aforesaid it shall be deemed that the person depositing it has paid it on the date of such deposit to the person in

whose favour it is deposited in the case referred to in Sub-section (1) or to the landlord in the case referred to in Sub-section (2).

9. Procedure for making the deposit of rent in Court has been prescribed in Rule 21 which is quoted below :

21 Deposit of rent (Section 30)

(1) Any person desirous of depositing rent u/s 30 shall apply in Form E. The application shall be accompanied by as many copies thereof as there

are opposite parties and also the process fee and notices in Form F

(2) The deposit shall be made under the head "P-Deposits and Advances-II-Deposits not bearing interest-C-other deposit accounts(B)

Departmental and Judicial Deposits-Civil-Deposits-Civil Court's Deposits.

(3) On such deposit being made, the Court shall cause notice of the deposit to be served on the opposite-party along with a copy of the

application.

(4) Where a notice of the deposit is returned unserved, the Court shall fix a date on or before which the applicant shall deposit fresh process fee

and notices in Form F If within the time so allowed or within such extended time as the Court may grant, the applicant fails to take steps as above,

the application shall be rejected and the amount deposited shall be refunded to the applicant.

(5) In the case of continuance of deposit of rent for any subsequent period, fresh application shall not be necessary. But process fee and the notice

in Form F shall accompany every deposit.

10. According to Sub-section (3) of Section 30 the deposit is to be made in the Court of Munsif having jurisdiction. The words ""Court of the

Munsif"" and the further words ""having jurisdiction"" clearly indicate a regular Court contemplated by the Bengal, Agra and Assam Civil Courts Act

A perusal of Sub-section (1) of Section 30 further indicates that under Sub-section (1) rent can be deposited in Court on its being refused by the

landlord. The following conditions are contemplated to exist before the rent can be deposited in Court.

(i) There should be a building contemplated and governed by the provisions of the Act

(ii) The rent should be in respect of the said building.

(iii) It should have been tendered to the landlord; and

(iv) The landlord should have refused to accept the rent during the continuance or subsistence of the tenancy

11. Similarly, under Sub-section (12) a tenant can deposit the rent in Court if a bona fide doubt or dispute has arisen as to the person who was

entitled to receive the rent. Under Sub-section (1), the tenant can continue to deposit the rent in Court until the landlord signifies in writing his

willingness to accept it. Under Sub-section (2) subsequent deposits can be made till the doubt has been removed or dispute has been settled by

the decision of a competent Court or by settlement between the parties.

12. Form E which is the form prescribed under Rule 21 for making a deposit in the Court contains the following sentence in the beginning.

Applicant prays for permission to deposit the rent of the building as per particulars furnished below

13. This contemplates a permission of the Court for making the deposits. Notice of the application is issued to the landlord under Sub-section (4)

of Section 30 read with Sub-rules (3) and (4) of Rule 21. The necessary process fee and copies of the application as also notice in Form F are

also to be filed along with an application in Form E. Sub-rule (4) of Rule 21 further provides that if the notice issued to the landlord is returned

unserved, the tenant shall deposit fresh process fee and notice in Form F. It further provides that on tenant's failure to take steps, the application

shall be rejected. These Statutory provisions, therefore, definitely provide for the allowing of the application as also its rejection. These provisions

further contemplate that on an application being moved, the Munsif, before issuing notice to the landlord, shall first satisfy himself, prima facie, of

the ground on which the rent was sought to be deposited in court i.e. about the existence of jurisdictional facts. If after issue of the notice to the

landlord, the latter files objection, then the Munsif shall have to decide the question relating to the jurisdictional facts, although the order passed by

the Munsif will not operate as res judicata and it will be open to the Court trying a regular suit for the eviction of the tenant to examine the

circumstances in which the deposits were made u/s 30 and whether such deposits were at all validly made. These are essentially the functions of a

Court. The Munsif, therefore, while acting u/s 30 acts as a regular Court and not as a persona designata.

14. Since the Court of Munsif is a Court subordinate to the Court of the District Judge, a revision u/s 115 of the Civil P. C. (as amended in U. P.

would lie against an order passed by the Munsif u/s 30 of the Act.

15. I may in this connection point out that under various provisions of U. P. (Temporary) Control of Rent and Eviction i Act III of 1947) which has

since been replaced by the present Act, the Munsif had to perform various functions, as for example, the rent could be deposited in Court u/s 7-C

in the circumstances identical to those mentioned in Section 30 of the present Act; the Munsif could direct eviction of a tenant under certain

circumstances u/s 7-B, the Munsif could also pass an order for necessary repairs etc. and adjustment of rent u/s 7-E. The question whether the

Munsif while acting u/s 7-E functions as a Court or persona designata or that a revision u/s 115 of the CPC would lie against an order passed by

him under that section was considered by a Full Bench of this Court in Chatur Mohan and Others Vs. Ram Behari Dixit, . This Full Bench decision

was followed in a subsequent decision of this Court in J, Itay v. S.L. Thakral 1968 ALJ 1020.

16. Learned counsel for the opposite parties has cited a decision of this Court in Smt. Shakuntala Devi v. IVth Addl. District Judge, Meerut 1981

ARC 262 : (1981 ALJ 336) and has contended that the revision was not maintainable. The revision in that case was filed against an interlocutory

order passed by the Prescribed Authority u/s 21 of the Act. The Prescribed Authority was held to act as persona designata and not as a Court.

The decision is, therefore, not applicable to the facts of this case.

17. In view of the above discussion, I am clearly of the opinion that an order passed by the Munsif u/s 30 of the Act is amenable to the revisional

jurisdiction of the District Judge u/s 115 of the Civil P. C. and the learned Addl. District Judge was, therefore, not justified in rejecting the revision

in the instant case as not maintainable.

18. Learned counsel for the Landlords (opposite parties 3 to 5) has, however, contended that since the deposit was sought to be made by the

petitioner after the expiry of the period of one month from the date of receipt of notice of demand/termination of tenancy dated 8-9-80 and since a

suit for eviction of the petitioner had already been filed in the Court of the District Judge, the petitioner was rightly not allowed to deposit the rent in

Court. This is a question which relates to the merits of the case which were not considered or examined by the learned Addl. District Judge, who

dismissed the revision on the ground that it was not maintainable u/s 115 of the Civil P. C. I have left these questions to be decided by him.

19. I accordingly allow the writ petition and quash the judgment and order dated 25-9-1982 passed by II Addl. District Judge, Lucknow,

contained in annexure No. 4. The case is remanded to the II Addl. District Judge, Lucknow to dispose of the revision on merits in accordance with

law and in the light of the observations made above. There will be no order as to costs.