

(1975) 01 AHC CK 0017

Allahabad High Court

Case No: Second Appeal No. 1015 of 1971

Sri Ram Charan Das

APPELLANT

Vs

Pyare Lal

RESPONDENT

Date of Decision: Jan. 3, 1975**Acts Referred:**

- Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Section 3

Citation: AIR 1975 All 280 : (1975) AWC 10**Hon'ble Judges:** Satish Chandra, J; Gopi Nath, J**Bench:** Division Bench**Advocate:** G.P. Bhargava and A.N. Bhargava, for the Appellant; Girdhar Malviya, for the Respondent**Final Decision:** Dismissed

Judgement

1. This is a defendant's appeal. It arises out of a suit for ejectment of the appellant from a shop and for recovery of Rs. 9/- as arrears of rent. The claim for ejectment was made on the ground that the plaintiff-respondent had obtained a permission u/s 3 of the U. P. (Temporary) Control of Rent and Eviction Act, 1947, hereinafter referred to as the Act, for instituting a suit for ejectment against the appellant.

2. The suit was resisted on a variety of grounds, one of them being that no valid permission u/s 3 of the Act existed at the time the suit was filed. Since that is the only question argued in this appeal we give the facts with reference to that question, above.

3. The plaintiff-respondent applied for permission u/s 3 of the Act which was granted by the Rent Control and Eviction Officer on 11-3-1966. The defendant filed a revision against that order and the Commissioner passed a stay order dated March 30, 1966. The stay order was served on the respondent's wife by refusal on 6-4-1966. The suit giving rise to the present appeal was filed on 25th April. 1966. The revision was ultimately dismissed and a representation to the State Government u/s

7-F also failed during the pendency of the suit proceedings. A writ petition against the order of the State Government was also dismissed and the permission granted thus became final. The suit was decreed by the learned Munsif on the finding that the permission granted to the plaintiff-respondent having been upheld throughout a decree for ejectment could be passed on the basis of that permission notwithstanding that the suit was filed at a time when a stay order passed, by the Commissioner was operating. Recovery of arrears was also decreed as prayed by the plaintiff-respondent.

4. On appeal the lower Appellate Court affirmed the decree and held that the permission u/s 3, granted by the Rent Control and Eviction Officer, having been upheld up to the stage of the High Court, the suit filed on that basis could not be held to be defective on the ground of a stay order passed by the Commissioner, when the revision was ultimately dismissed and the stay order discharged during the suit proceedings. The final order passed in the revision, according to the learned Judge, rendered the suit proceedings valid in law even though they were started at a time when the stay order was operating. The court below further held that the permission having been upheld upto the stage of the High Court, the decree could not be challenged on the ground that the suit was not maintainable, having been filed without a valid permission.

5. Aggrieved, the defendant-appellant has filed the above appeal. The only point urged before us was that the suit, as filed, was not maintainable, in that, it was instituted at a time when a stay order was operating in respect of the permission granted u/s 3 of the Act. The appeal was heard by a learned Single Judge. Learned Counsel for the appellant, relying on *Ram Prakash Agnihotri v. State of U. P.* 1970 All LJ 11 contended that the decree passed in the suit was erroneous, in that the suit was filed during the continuance of a stay order in respect of the permission granted u/s 3 of the Act. The learned Single Judge referred the case to a larger Bench as in his opinion the decision in *Ram Prakash Agnihotri* (supra) required reconsideration, in view of the observations made in [Purshottam Das Vs. Smt. Raj Mani Devi](#), . In *Ram Prakash Agnihotri*'s case (supra) a representation u/s 7-F of the Act was dis-missed by the State Government on the ground that a suit having already been filed on permission the proceedings had become infructuous. This order was quashed by this Court on a writ petition on the ground that the suit was not properly filed as the permission had been suspended when the suit was instituted. The State Government accordingly erred in rejecting the representation as having become infructuous. The case is distinguishable on facts.

6. The question involved in the instant case is as to the effect of the final order passed in revision upholding the permission, on the suit already instituted. In [Shyam Lal Vs. State of Uttar Pradesh, Lucknow and Others](#), Bench of this Court has held that orders of stay or injunction are interim orders that merge in final orders passed in the proceedings. The result brought about by the interim order becomes

non est in the eye of law if final order grants no relief. In this view of the matter it seems to us that the interim stay became non est and lost all the efficacy, the Commissioner having upheld the permission which became effective from the date it was passed.

7. In [Purshottam Das Vs. Smt. Raj Mani Devi](#), a suit was instituted by a landlord for ejectment of his tenant on a permission granted by Rent Control and Eviction Officer. The permission was revoked by the Commissioner. That order was set aside by the State Government with the result that the permission granted by the Rent Control and Eviction Officer, revived. Their Lordships of the Supreme Court in these circumstances held that on the date the suit was decreed there was a valid permission in existence to sustain the decree for ejectment.

8. In the instant case the Commissioner as well as the State Government having upheld the permission during the proceedings of the suit, a valid permission was in existence at the time the decree for ejectment was passed. The stay order merged in the final order passed in the revision and became non est. The order of permission took effect from the date it was passed. The decree for ejectment was accordingly valid in law.

9. The appeal fails and is dismissed with costs.