

(2008) 04 AHC CK 0143

Allahabad High Court

Case No: None

Roshni Cold Storage Private
Limited.

APPELLANT

Vs

Ist Additional District Judge and
Others

RESPONDENT

Date of Decision: April 1, 2008

Acts Referred:

- Provincial Small Cause Courts Act, 1887 - Section 25
- Transfer of Property Act, 1882 - Section 106

Hon'ble Judges: Dilip Gupta, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Dilip Gupta, J.

This writ petition has been filed by the plaintiff-landlord for setting aside the order dated 17th May, 1999 passed by the learned Ist Additional District Judge, Bareilly by which the Revision filed by the tenant u/s 25 of the Provincial Small Cause Courts Act, 1887 for setting aside the order passed by the Judge, Small Cause Courts striking off the defence under Order XV Rule 5 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC), was allowed.

2. The facts as they emerge from the records of the writ petition indicate that after the tenancy of the defendant was determined and a demand was made for payment of arrears of rent by the notice sent u/s 106 of the Transfer of Property Act, the petitioner-landlord filed SCC Suit No. 100 of 1996 for ejectment and recovery of arrears of rent. It was asserted in the plaint that the defendant was a monthly tenant of Rs. 300/- of the two shops of which the plaintiff was the landlord; that the rent was not paid by the defendant w.e.f. 1st January, 1996 in spite of several demands; that the notice dated 7th August, 1996 u/s 106 of the Transfer of Property Act was served upon the defendant on 8th August, 1996 but since the premises

were neither vacated nor arrears of rent were paid, the suit was filed.

3. The tenant filed a written statement mentioning therein that the defendant was given the shops on monthly rent of Rs. 200/- in 1981-82 after it was vacated by Ishaq Hussain; that the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 (hereinafter referred to as the "Act") were applicable to the building in dispute since it was constructed in the year 1960 and that there was no relationship of landlord and tenant since the shop had not been allotted to the defendant by the Rent Control & Eviction Officer u/s 16 of the Act.

4. During the pendency of the Suit the landlord filed an application under Order XV Rule 5 CPC with a prayer that the defence of the defendant be struck off as the amount contemplated under Order XV Rule 5 CPC was not deposited. It was stated that neither had the defendant deposited the entire amount admitted by him to be due along with interest at the rate of 9% per annum and nor had the defendant deposited the regular monthly amount due within a week of its accrual throughout the continuation of the suit.

5. The defendant filed his objection to this application. It was not the case taken up by the defendant that he had deposited the aforesaid amount as contemplated under Order XV Rule 5 CPC but what he contended was that there was no relationship of landlord and tenant in the present case since he had come into possession of the premises without any allotment order.

6. The Judge, Small Cause Courts allowed the application filed by the landlord under Order XV Rule 5 CPC. The Revisional Court, however, in view of the Full Bench decision of this Court in *Nutan Kumar and Ors. v. IInd Additional District Judge, Banda and Ors.* 1993 (2) ARC 204 came to the conclusion that there was no relationship of landlord and tenant since the tenant had come into possession of the building without any allotment order. It, accordingly, held that in such a case the provisions of Order XV Rule 5 CPC would not apply and, therefore, the defence could not be struck off.

7. Learned Counsel for the petitioner submitted that in the written statement the defendant had stated that after the shop had been vacated by Ishaq Husain it was let out to the defendant by the plaintiff on a monthly rent of Rs. 200/- but the defendant denied the relationship of landlord and tenant between the parties only because there was no allotment order issued by the Rent Control & Eviction Officer u/s 16(1)(a) of the Act in favour of the defendant. The Revisional Court has accepted this contention of the defendant in view of the decision of the Full Bench of this Court in *Nutan Kumar and Ors.* (supra) but this decision was subsequently reversed by the Supreme Court. He further submitted that in any view of the matter, as the tenant had not deposited the monthly amount due within a week from the date of its accrual throughout the continuation of the suit, the application filed by the plaintiff under Order XV Rule 5 CPC deserves to be allowed.

8. Learned Counsel for the defendant, however, submitted that since there was no relationship of landlord and tenant between the parties, there cannot be any amount admitted by the tenant to be due and, therefore, the provisions of Order XV Rule 5 CPC would not be attracted. He, therefore, submitted that the Revisional committed no illegality in rejecting the application filed by the plaintiff-landlord under Order XV Rule 5 CPC.

9. In the present case it is not in dispute that on the first date of hearing the tenant did not deposit the entire amount admitted by him to be due together with the interest. It is also not in dispute that the monthly amount due was also not deposited within a week from the date of its accrual during the continuation of the suit.

10. In order to appreciate the controversy involved in this petition it would be necessary to place the provisions of Order XV Rule 5 CPC as applicable to the State of U.P. The same are as follows:

Order XV Rule 5 CPC

Striking off defence for failure to deposit admitted rent, etc.-(1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may, subject to the provisions of Sub-rule (2), strike off his defence.

Explanation 1.- The expression "first hearing" means the date for filing written statement for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.

Explanation 2.- The expression "entire amount admitted by him to be due" means the entire gross amount, whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account and the amount, if any, paid to the lessor acknowledged by the lessor in writing signed by him and the amount, if any, deposited in any Court u/s 30 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

Explanation 3.- (1) The expression "monthly amount due" means the amount due every month, whether as rent or compensation for use and occupation at the

admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account.

(2) Before making an order for striking off defence, the Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days of the first hearing or, of the expiry of the week referred to in Sub-section (1), as the case may be.

(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff:

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited:

Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same."

11. On a careful analysis of the provisions of Order XV Rule 5 CPC it is seen that it is divided in two parts. The first part deals with the deposit of the "entire amount admitted by him to be due" together with interest at or before the first hearing of the suit. The second part deals with the deposit of "monthly amount due" which has to be made throughout the continuation of the suit.

12. It is, therefore, clear that Order XV Rule 5 CPC is in two parts. The first part deals with the deposit of the "amount admitted by him to be due" while the second part deals with the "monthly amount due" whether or not the tenant admits any amount to be due. Thus, in a case where the defendant denies the existence of landlord and tenant relationship, he may not be required to deposit the amount admitted to be due at or before the first hearing of the suit but he would still be required to deposit the "monthly amount due" within a week from the date of its accrual throughout the continuation of the suit because such deposit has to be made whether or not he admits any amount to be due.

13. In the present case, the defendant had denied the relationship of landlord and tenant on the ground that there was no allotment order in favour of the defendant. It appears that this defence was taken in view of the decision of the Full Bench of this Court in *Nutan Kumar (supra)* wherein it was held that an agreement of letting by the landlord or occupation by any person of any building without an allotment order is void in view of the provisions of Sections 11, 13, 17 and 31 of the Act. It is for this reason that the defendant asserts that he does not admit that any amount is due and so Order XV Rule 5 CPC is not attracted since under this provision the amount has to be deposited only when he admits that amount is due.

14. It needs to be mentioned that the decision rendered by the Full Bench was reversed by the Supreme Court in *Nutan Kumar and Ors. v. IInd Additional District Judge, and Ors.* 2002 (2) ARC 645 wherein it was observed:

In the case of [Nanakram Vs. Kundalrai](#), the question was whether a lease in violation of statutory provisions was void, it was held that in the absence of any mandatory provision obliging eviction in case of contravention of the provisions of the Act the lease would not be void and the parties would be bound, as between themselves, to observe the conditions of lease. It was held that neither of them could assail the lease in a proceeding between themselves. This authority was in respect of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949, whereunder also the landlord was obliged to intimate a vacancy to the Deputy Commissioner of the District and the Deputy Commissioner could allot or direct the landlord to let the house to any person. The provisions were more or less identical to the provisions of the said Act. This authority has directly dealt with the questions under consideration and answered them.

...

It is, thus, to be seen that the principles laid down in Nanakram's case still hold the field. There is no contrary or conflicting decision or authority. The Full Bench was bound by the Authority in Nanakram's case and could not have taken a contrary view.

...

In this view of the matter the decision of the Full Bench dated 20th May, 1993 cannot be sustained and is set aside. It is held that the law, as laid down in Nanakram's case, still holds the field. Thus unless the statute specifically provides that a contract contrary to the provisions of the statute would be void the contract would remain binding between the parties and could be enforced between the parties themselves.

15. In view of the aforesaid decision of the Supreme Court the contract of tenancy between the plaintiff and the defendant, even in the absence of any allotment order, could be enforced between the parties. Thus, the contention of the defendant that there was no relationship of landlord and tenant between the parties cannot be accepted. In the written statement the defendant clearly admitted that the premises was let out to the defendant on a monthly rent of Rs. 200/-. The defendant was, therefore, required to make the deposit contemplated under the first part of Order XV Rule 5 CPC at or before the first date of hearing of the suit.

16. The Supreme Court in the case of [Atma Ram Vs. Shakuntala Rani](#), had the occasion to examine whether the tenant defaulted in payment of rent if he had not paid or tendered or deposited the rent in the manner required by law and whether the deposit of rent under some other Act could be construed to be a valid deposit. The tenant had sent a money-order remitting the rent but the landlord refused to accept it and, therefore, the tenant deposited the rent for the period from 1st February, 1992 to 31st January, 1995 in January, 1995 under the provisions of the Punjab Relief Indebtedness Act, 1934 (called the ""Punjab Act"). The landlord,

however, sent a notice dated 16th May, 1996 to the tenant to pay arrears of rent. The tenant on 20th July, 1996 deposited the rent for the period February, 1995 to 12th July, 1996 u/s 27 of the Delhi Rent Control Act, 1961 (called the ""Delhi Act"). The arrears of rent from 1st February, 1992 to 31st January, 1995 was not included since the tenant had deposited the same under the Punjab Act. Section 27 of the Delhi Act provides that where the landlord does not accept any rent tendered by the tenant, the tenant may deposit such rent with the Rent Controller in the manner provided for in that section. The landlord then filed an application for eviction of the tenant u/s 14 (1) (a) of the Delhi Act. The Supreme Court after considering a number of its earlier decisions in [Kuldeep Singh Vs. Ganpat Lal and another](#), Jagat Prasad v. Dist. Judge, Kanpur and others [M. Bhaskar Vs. J. Venkatarama Naidu, Represented by his Power of Attorney Holder A. Narayanaswamy Naidu](#), , [Ram Bagas Taparia Vs. Ram Chandra Pal](#), , and [E. Palanisamy Vs. Palanisamy \(D\) by Lrs. and Others](#), observed:

It will thus appear that this Court has consistently taken the view that in the Rent Control legislations if the tenant wishes to take advantage of the beneficial provisions of the Act, he must strictly comply with the requirements of the Act. If any condition precedent is to be fulfilled before the benefit can be claimed, he must strictly comply with that condition. If he fails to do so he cannot take advantage of the benefit conferred by such a provision.

...

The Act, therefore, prescribes what must be done by a tenant if the landlord does not accept the rent tendered by him within the specified period. He is required to deposit the rent in the Court of the Rent Controller giving the necessary particulars as required by Sub-section (2) of Section 27. There is, therefore, a specific provision which provides the procedure to be followed in such a contingency. In view of the specific provisions of the Act it would not be open to a tenant to resort to any other procedure. If the rent is not deposited in the Court of the Rent Controller as required by Section 27 of the Act, and is deposited somewhere else, it shall not be treated as a valid payment/tender of the arrears of rent within the meaning of the Act and consequently the tenant must be held to be in default.

We are, therefore, satisfied that the High Court was right in holding that the appellant had failed to pay/tender arrears of rent for the period 1-2-1992 to 31-1-1995. The deposit made under the provision of the Punjab Act was of no avail in view of the express provision of Section 27 of the Act."

17. The aforesaid decision of the Supreme Court in the case of Atma Ram emphasizes that if the tenant wishes to take advantage of the beneficial provisions of the Rent Control Act, he must strictly comply with the requirements and if any condition precedent is required to be fulfilled before the benefit can be claimed, the tenant must strictly comply with that condition failing which he cannot take

advantage of the benefit conferred by such a provision. It has further been emphasised that the rent must be deposited in the Court where it is required to be deposited under the Act and if it is deposited somewhere else, it shall not be treated as a valid payment/tender of the rent and consequently the tenant must be held to be in default.

18. A Division Bench of this Court in Haider Abbas v. Additional District Judge (Court No. 3) Allahabad and Ors. 2006 (62) ALR 552 while considering the provisions of Order XV Rule 5 CPC and the aforesaid decision of the Supreme Court in Atma Ram observed as follows:

The aforesaid decision of the Supreme Court in the case of Atma Ram (supra) emphasizes that if the tenant wishes to take advantage of the beneficial provisions of the Rent Control Act, he must strictly comply with the requirements and if any condition precedent is required to be fulfilled before the benefit can be claimed, the tenant must strictly comply with that condition failing which he cannot take advantage of the benefit conferred by such a provision. It has further been emphasised that the rent must be deposited in the Court where it is required to be deposited under the Act and if it is deposited somewhere else, it shall not be treated as a valid payment/tender of the rent and consequently the tenant must be held to be in default.

In view of the aforesaid principles of law enunciated by the Supreme Court in the aforesaid case of Atma Ram (supra), it has to be held that the tenant must comply with the requirements of Order XV Rule 5 CPC and make the deposits strictly in accordance with the procedure contained therein. A deposit which is not made in consonance with the aforesaid Rule cannot enure to the benefit of the tenant and, therefore, only that amount can be deducted from the "monthly amount" required to be deposited by the tenant during the pendency of the suit which is specifically mentioned in Explanation 3 to Rule 5 (1) of Order XV CPC.

...

It, therefore, follows that the amount due to be deposited by the tenant throughout the continuation of the suit has to be deposited in the Court where the suit is filed otherwise the Court may strike off the defence of the tenant since the deposits made by the tenant u/s 30 (1) of the Act after the first hearing of the suit cannot be taken into consideration.

19. Thus, the application filed by the landlord under Order XV Rule 5 CPC was liable to be allowed as the defendant had not made the deposit as contemplated under the first part of Order XV Rule 5 CPC.

20. Even otherwise, the defendant was required to deposit the "monthly amount due" throughout the continuation of the suit as contemplated under the second part of Order XV Rule 5 CPC though he may have denied the relationship of landlord

and tenant between the parties because under the second part of Order XV Rule 5 CPC the deposit has to be made whether the defendant admits or does not admit any amount to be due.

21. This is what was observed by this Court in *Smt. Kailash Devi v. IVth Addl. District Judge, Allahabad* and Ors. 1994 (2) ARC 542 wherein it was observed:

The provisions of Order XV, Rule 5 of the CPC as amended in Uttar Pradesh consists of two parts. In the first part the tenant is liable to deposit the entire arrears of rent admittedly due on the date of first hearing alongwith 9% interest thereon. The second part lays down that the deposit has to be made of monthly amount due within a week from the date of accrual through out the continuation of the suit whether or not the defendant admits the amount due. In *Umesh Industries and Anr. v. IXth Addl. District Judge, Ghaziabad* and Ors. 1994 (2) ARC 157, it was held that the tenant was liable to make deposit of monthly rent in time. He cannot take the plea that he was not liable to deposit the amount as the landlord/plaintiff owed money to him. The legislative intent was clear that the monthly amount has to be deposited month to month whether or not the defendant admit any amount to be due. He may not be liable to pay the rent claimed on the date of first hearing, but as regards monthly rent, he has to deposit whether he admits or not within the time prescribed, under Order XV, Rule 5 of the CPC.

22. This Court in *Bal Krishna v. Rama Nand Dixit and Anr.* 2001(1) ACJ 565 also observed:

In the instant case, obligation with regard to the deposit of the entire amount admitted to be due together with interest thereon at the rate of nine per centum, at or before the first hearing of the suit, does not arise inasmuch as the applicant has not admitted any amount to be due. Therefore, the only question which is required to be considered is whether the applicant has incurred penalty of having his defence struck off for non-compliance of the mandate with regard to deposit of the monthly amount due within a week from the date of its accrual regularly during the continuation of the suit.

...

The provisions of Sub-rule (1) of Rule 5 of Order XV of the Code, unmistakably, enjoin upon the defendant in a suit by a lessor for his eviction to regularly deposit the monthly amount due within a week from the date of its accrual throughout continuation of the suit. In the event of default, the Court may, subject to the provisions of Sub-rule (2) of Rule 5 of Order XV of the Code, strike off his defence. The opinion expressed by the learned Single Judge in the case of *Anil Kumar Mahajan v. Ashok Kumar and Anr.* 1990 (2) ARC 189 is not in consonance with the provisions of Rule 5 of Order XV of the Code inasmuch as the Explanation (3) to Sub-rule (1) of Rule 5 of Order XV of the Code clearly forbids any deduction from "the monthly amount due", except the taxes, if any, paid to a local authority, in

respect of the building on lessor's account. It is rather per incuriam, and cannot lend support to the contention of the learned Counsel for the applicant.

23. In *Ram Kumar Singh v. IIIrd Additional District Judge, Ghaziabad and Ors.* 2003 (1) ARC 214 this Court also observed:

I have considered the submission made by the learned Counsel for the petitioner, and I find myself unable to accept the same. As noted above, the second part of Order XV, Rule 5 (1) of the CPC provides that whether or not the defendant admits any amount to be due, he must regularly deposit throughout the continuance of the suit the monthly amount due within a period of one week from the date of its accrual. Therefore, this provisions shows that the defendant must deposit the monthly amount due regularly throughout the continuance of the suit. Such monthly deposit is required to be made within a week from the date of its accrual. It is, thus, evident that the defendant is bound to ensure compliance of the provisions of Order XV, Rule 5(1) of the CPC throughout the continuance of the suit. In the event of any default by the defendant in compliance with the provisions of Order XV, Rule 5(1) of the Code of Civil Procedure, the defence of the defendant may be struck off by the Court as the monthly deposit is required to be made throughout the continuance of the suit.

...

Thus, the petitioner, in any case, did not make any monthly deposit after May, 1993 as per the requirements of Order XV, Rule 5 of the Code of Civil Procedure. Hence, the defence of the petitioner was rightly struck off by the said order dated 13.7.2001.

24. This decision was subsequently followed by this Court in *Kailash Shukla v. Additional District Judge, and Ors.* 2004(1) ARC 615.

25. In the present case it is an admitted fact that even the second part of Order XV Rule 5 CPC was not complied with by the defendant.

26. As noticed hereinabove, the tenant has to comply with the requirements of Order XV Rule 5 CPC and make the deposits strictly in accordance with the procedure contained therein. The mandatory requirements of Order XV Rule 5 CPC were not complied with by the tenant and, therefore, the application filed by the plaintiff-landlord under Order XV Rule 5 CPC was liable to be allowed. The Revisional Court fell in error in rejecting the said application.

27. The judgment and order dated 17th May, 1999 passed by the Revisional Court, therefore, deserves to be set aside and is, accordingly, set aside. The application filed by the landlord under Order XV Rule 5 CPC is allowed.

28. The writ petition, therefore, succeeds and is allowed. There shall be no order as to costs.