

(2001) 01 AHC CK 0042

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 10997 of 1980

Snehlata and Others

APPELLANT

Vs

IV Addl. Distt.Judge,Agra and
OthersRESPONDENT

Date of Decision: Jan. 17, 2001**Acts Referred:**

- Provincial Small Cause Courts Act, 1887 - Section 25

Hon'ble Judges: O.P.Garg, J**Final Decision:** Allowed

Judgement

O. P. Garg, J.

This writ petition arises out of a S.C.C. suit No. 633 of 1971, which was instituted in the Court of learned Judge, Small Causes Courtrespondent No. 2 for ejectment of the petitioners from premises No. 10/74, Katra Madari Khan, Agra and for arrears of rent. According to the plaintiffs, Smt. Snehlata petitioner No. 1 was a tenant of a portion of the premises, in dispute, at a monthly rent of Rs. 36/. The accommodation in her possession consisted of a room in the upper floor of the disputed building; she surreptitiously occupied the other portions of the premises; she got the entire portion allotted in her name from the Rent Control and Eviction Officer by allotment order dated 561969 giving rise to further litigation and the ancestor of the contesting respondents namely, Moolchand treated the petitioner No. I as tenant of the entire portions in her occupation. The plaintiffrespondents accordingly amended the plaint. They demanded rent from the petitioners through noticed dated 871970 from May 1969 to June 1970 and determined her tenancy in respect of the portion in her possession. Despite service of the aforesaid notice, the petitioner failed to pay the arrears of rent and to vacate the premises in her possession. Thereafter, another notice dated 1351971 was served upon the petitioner No. 1 terminating her tenancy and on failure of the petitioner to pay the arrears of rent and vacate the premises, in her possession the suit was instituted.

2. The suit was contested by the petitioner No. 1. She denied the plaint allegations. According to her, she was tenant of the entire house at a monthly rent of Rs. 36/-; the suit was bad for mis joinder of causes of action and multifariousness and the notice to quit was invalid and stood waived after the acceptance of rent by the contesting respondents.

3. Learned Judge, Small Causes Court Agra respondent No. 2 dismissed the aforesaid suit by this order dated 28/10/1976, contained in Annexure 3 to the petition, holding that the notice dated 8/7/1970 stood waived by acceptance of rent after service of the notice and that the notice dated 13/5/1971 could not be treated as a notice of demand and termination of tenancy. It was further held that the notice dated 13/5/1971 could not be a notice under Section 106 of the Transfer of Property Act and, therefore, it could not be said that any default was committed. Respondent Nos. 3 to 9 challenged the aforesaid order by means of a revision petition before the learned District Judge, Agra which was transferred to the Court of learned IV Additional District Judge, Agra respondent No. 1. Ultimately, the revision was allowed on 15/10/1980, a copy of which is Annexure 4 to the petition, and in this manner, the suit stood decreed for ejectment as well as for arrears of rent. Aggrieved the petitioners have come before this Court by means of the present petition under Article 226 of the Constitution of India, praying that the impugned order dated 15/10/1980 passed by respondent No. 1 be quashed and the respondents be commanded not to give effect to the aforesaid order.

4. Heard Sri B.D. Madhyan, learned counsel for the petitioners. No one appeared on behalf of the contesting respondents despite revision of the list.

5. Sri Madhyan vehemently urged that admittedly, the petitioner is tenant of house No. 10/74, situate in Mohalla Katra Madari Khan, Agra. The landlord served upon the petitioners a notice on 8/7/1970 demanding arrears of rent for May 1969 to June 1970 and in response thereof, the petitioners duly remitted the entire rent amounting to Rs. 468/- on 8/8/1970, which was accepted by the landlord respondent, as such, the notice stood waived. So far notice dated 13/5/1971 is concerned, Sri Madhyan urged that since the arrears of rent had already been remitted, there was no question to take cognizance of the subsequent notice. The judgment rendered by the trial Court is just and legal who passed the order after appraisal of evidence on record. The impugned order passed by the respondent No. 1 is unsustainable in law, inasmuch as, it is preposterous. According to the revisional Court, that in spite of payment of rent, the first notice did not stand waived as rent was due for 14 months, and rent was paid for 13 months. The petitioner, in fact, on receipt of the first notice paid the amount which was duly accepted without protest by the landlord respondent, and, therefore, the notice stood waived and finding to the contrary recorded by the revisional Court is illegal.

6. There is substance in the argument of Sri Madhyan. If the notice demanded rent for 14 months, and the petitioner had paid rent only for 13 months, the proper

course for the landlords was to refuse the payment. They should not have accepted the rent deposited by the petitioners. The rent was accepted without a single word of protest. The judgment of the trial Court is well reasoned and it has recorded a finding of fact that the notice stands waived on account of deposit of arrears of rent. This finding of fact has been reversed by the revisional Court on tenuous ground.

7. The writ petition, therefore, succeeds and is allowed. The judgment and order dated 15/10/1980 passed by respondent No. 1, Annexure 4 to the writ petition is hereby quashed. If any amount towards rent is still due, the petitioners shall deposit the same with the respondents within 15 days from today. The parties shall bear their own costs. Petition allowed.