

(2010) 10 AHC CK 0183**Allahabad High Court****Case No:** Civil Revision No. 485 of 2010

Kallan

APPELLANT

Vs

Hemant Sahay

RESPONDENT

Date of Decision: Oct. 5, 2010**Acts Referred:**

- Provincial Small Cause Courts Act, 1887 - Section 25

Hon'ble Judges: Prakash Krishna, J**Final Decision:** Dismissed**Judgement**

Prakash Krishna, J.

Heard Shri Deepak Kumar Jaiswal, learned counsel for the applicant and Shri Kshitij Shailendra, learned counsel for plaintiff opposite party. The present revision has been filed under Section 25 of the Provincial Small Causes Court Act against the judgment and decree dated 9th August, 2010 passed in S.C.C. Suit No. 13 of 2008, whereby the court below has decreed the suit for recovery of arrears of rent, damages, house tax and ejectment of the defendant tenant applicant herein.

2. The suit was instituted on the pleas inter alia that there is relation of landlord and tenant between the parties and the tenancy has been determined by the notice dated 27th July, 2007 which was served on the defendant tenant on 28th July, 2007. The defendant tenant is in arrears of rent since July, 2003. The said suit was contested by denying the arrears of rent.

3. The trial court has decreed the suit after recording a finding that the defendant tenant is in arrears of rent since July, 2003. It has also been found that the defendant tenant has not deposited the requisite amount on the first date of hearing to avail the benefit of Section 20 subclause 4 of the provision of U.P. Act No. 13 of 1972. The written statement was filed on 6th January, 2009 and the money was not deposited along with the written statement but it was deposited after more than one year on 26th May, 2010. Further finding is that the said amount is short. The

court below has found that neither money was deposited on the first date of hearing nor the defendant tenant was not made the requisite deposit as required under Section 20 subclause 4 of the provision of U.P. Act No. 13 of 1972.

4. Learned counsel for the applicant submits that it was due to default of the counsel to calculate the correct amount due. He further submits that a notice was given on 27th July, 2007. Thereafter, a correction notice was given on 9th October, 2007 and therefore, the defendant tenant has been misled in making the payment. Both the above submissions are devoid of any substance. The defendant tenant cannot escape to perform his part to comply with the letters of law on the ground that it was fault of the counsel. Even otherwise also except making a general statement, there is no material on record to show that the defendant tenant was not correctly advised by his counsel. The defendant tenant cannot be permitted to take shelter of the counsel's advise for his fault.

5. So far as the second point is concerned, the applicant has not enclosed a copy of the correction notice. Shri Kshitij Shailendra learned counsel for opposite party submits that by the subsequent correction notice, the rate of rent was demanded at enhance rent. The defendant has not paid even the original rent nor the enhance rent and therefore, default as found by the trial court is established and the said finding cannot be vitiated by giving the correction notice subsequently.

6. No other point was pressed.

7. The present revision lacks merit and is dismissed accordingly.

Time to vacate the disputed accommodation on or before 31st December, 2010, subject to the following conditions, is granted:

(1) The applicant shall deposit the entire arrears of rents and damages @ Rs.405/ per month (for the time being) after adjusting the amount, if any, already deposited for the period upto 31 December, 2010 within a period of one month from today before the trial court.

(2) Within the period of one month, the applicant shall file an undertaking on affidavit before the trial court that he will vacate the disputed accommodation on or before 31st December, 2010 and shall hand over its peaceful vacant possession to the plaintiff landlord without creating any third party interest.

8. In case of default in compliance of either of the conditions stipulated above, the time granted shall stand vacated automatically. If he fails to vacate the disputed accommodation on or before 31st December, 2010, he shall be liable to pay the damages at the rate of Rs.2000/ per month from 1 January, 2011 till actual date of vacation.