

(2005) 07 AHC CK 0117

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 10768 of 1989

Nand Kishore Tyagi

APPELLANT

Vs

IInd A.D.J.Bijnore & Ors.

RESPONDENT

Date of Decision: July 22, 2005

Acts Referred:

- Provincial Small Cause Courts Act, 1887 - Section 25

Hon'ble Judges: S.U.Khan, J

Final Decision: Disposed Of

Judgement

S.U. Khan, J.

This is a strange case. Both the Courts below found that when the notice, demanding the rent was issued by landlordrespondent tenantpetitioner was not defaulter even for a single month still suit for eviction has been decreed on the ground that tenant was not entitled to the benefit of Section 20 (4) as tenant's son had acquired another house.

2. Suit giving rise to the present writ petition was a writ filed by landlordrespondents 3 to 5 (Om Prakash and others) against tenant, original petitioner, Nand Kishore Tyagi since deceased and survived by legal representatives. The suit was registered as SCC Suit No. 5 of 1984 on the file of JSCC/Munsif, Bijnor. The suit for eviction and for recovery of arrears of rent at the rate of Rs. 25 per month including electricity charges w.e.f. 11 1984 was decreed on 2151985. Against the said judgment and decree tenantpetitioner filed SCC Revision No. 27 of 1985 which was dismissed by 2nd A.D.J. Bijnor on 1541989 hence, this writ petition.

3. Landlords had also filed SCC Revision No. 29 of 1985 against the findings recorded against them by the JSCC. Both the revisions were heard together and disposed of by the common judgment dated 1541989 landlord's revision was also dismissed.

4. Plaintiff claimed in the plaint that tenant had not paid the rent since 881977. Notice of termination of tenancy and demand of rent was served on 211984. This

fact is mentioned in the writ petition and in the judgment of the Revisional Court on page 29 of the paper book also that ♦the plaintiffs served, a composite notice of demand and ejectment dated 211984 of the defendant.♦

5. The defendant stated that he had paid rent till 31121983 meaning thereby that on the date of notice there was not a single month's default. Both the Courts below accepted the version of the tenant regarding payment till 31.12 1983. Trial Court in view of the said finding decreed the suit for recovery of the arrears of rent only w.e.f. 111984. The Revisional Court also agreed with the said finding of the trial Court.

6. The tenant by way of abundant precaution had also deposited the entire arrears of rent as wrongly claimed by the plaintiff on the first date of hearing for claiming the benefit of Section 20 (4) of the Act. By virtue of proviso to the aforesaid subsection if tenant or any of his family members has acquired another house then he cannot claim protection of Section 20 (4) of the Act. However, as tenant was not defaulter when notice demanding the rent was given to him by the landlord hence suit could not be decreed on the ground of default. By virtue of Section 20 (2) (a), suit on the ground of default can be filed and decreed only when tenant is in arrears of rent for more than three months and has not paid the same in spite of notice of demand. If at the time of notice of demand tenant is not in arrears of rent then there arises no question of decreeing the suit on the ground of default. In view of this, deposit made by the tenant was wholly redundant. There was no occasion for the Courts below to consider the applicability of Section 20 (4) of the Act or its proviso after recording the finding that tenant was not defaulter when notice was given. Deposit of rent under Section 20 (4) of the Act was superfluous. Last but one sentence of last but one paragraph of the Revisional Court judgment before operative portion (on page 36 of the paper book) is quoted below:

♦Therefore, the defendant was not entitled to the benefit of Section 20 (4) of the Act, since the defendant was in arrears of rent since 111984 and as such he committed default in payment of rent and therefore, he was liable to be evicted from the premises in dispute.♦

7. As notice demanding rent was given on 211984 hence, at that time there was no default.

8. Accordingly, writ petition is allowed. Both the impugned judgments, decree and order are set aside. Suit of the plaintiff for eviction is dismissed.

9. I have held in Khursheeda v. A.D.J., Allahabad, 2004(2) JCLR 452 (All) : 2004 (54) ALR 177 : 2004 (13) AIC 42 (Alld.), that while granting relief to the tenant against eviction in respect of building covered by Rent Regulation Act writ Court is empowered to enhance the rent to a reasonable extent. Rent of Rs. 25 per month including electricity charges is virtually no rent. Accordingly, it is directed that w.e.f. July, 2005 tenantpetitioner shall pay rent to landlord respondents at the rate of Rs. 350 per

month apart from electricity charges. Electricity charges shall be paid for the actual consumption of electricity by the tenant.