
(1977) 08 AHC CK 0032

Allahabad High Court

Case No: Civil Revision No. 267 of 1976

S.D. Saigal

APPELLANT

Vs

Smt. Vidya Vijan

RESPONDENT

Date of Decision: Aug. 2, 1977

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 5
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 39

Citation: AIR 1978 All 82

Hon'ble Judges: Yashoda Nandan, J

Bench: Single Bench

Advocate: T.P. Asthana, G.D. Srivastava and Wazir Chand Ahooja, for the Appellant; L.P. Nathani and H.S. Bisht, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Yashoda Nandan, J.

This is an application in revision filed by the defendant in a suit for his eviction from the shop in dispute for recovery of arrears of rent and damages for use and occupation pendente lite and future and certain other reliefs, The suit was initially instituted by Chandi Ram Bulaki Ram Vijan, who died during the pendency of the suit and opposite party Smt. Vidya Vijan was brought on record as his heir and legal representative. The learned Judge of the court of small causes to whom the suit was transferred after coming into force of the U. P. Civil Laws (Amendment) Act, 1972 decreed the suit. The applicant preferred a revision u/s 25 of the Provincial Small Cause Courts Act which was dismissed by the learned District Judge, Dehradun. In both the courts, it was contended, as it has been contended before me, that the defendant-applicant was entitled to the benefit of Section 39 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act,

1972 and since he had made the requisite deposit within the time allowed by law, a decree for his ejectment could not be passed. The contention was repelled by the trial court as well as the court below.

2. To appreciate the argument of the learned counsel appearing on behalf of the applicant, it is necessary to set out certain relevant dates. The suit was instituted in the court of the learned Mnsif on the 23rd of February, 1966. On the 16th of Sept. 1972, the U.P. Civil Laws (Amendment) Act (U. P. Act No. 37 of 1972) came into force and on the 27th Nov.. 1972, the suit was transferred to the learned judge of the court of small causes. In the meanwhile the original plaintiff had died on the 23rd of Dec., 1970 while the suit was still pending in the court of the learned Munsif. On the 9th of March, 1971, the opposite party applied for being substituted in place of the deceased plaintiff and prayed for being brought on record as his heir and legal representative.

On the 11th of May, 1973 by which time the suit had already been transferred to the court of the learned Judge of small causes, the opposite party was ordered to be brought on record as heir and legal representative of the deceased plaintiff: Learned counsel appearing on behalf of the applicant has brought to my notice that during the pendency of the suit between the 30th April, 1967 and the 14th April, 1973 the defendant-applicant had deposited in the trial court an amount of Rs. 13,240/- towards the arrears of rent and damages for use and occupation etc., payable in respect of the premises forming subject matter of the suit. Learned counsel further stated that on the 11th of May, 1973 when the opposite party was substituted in consequence of an order under Order 22 Rule 5 of the Civil P. C. as heir and legal representative of the deceased plaintiff, an amount of Rupees 11,559.50 p. alone was due on account of the amounts contemplated by Section 39 of U. P. Act XIII of 1972 (hereinafter referred to as the Act).

It was contended by learned counsel for the applicant that since the original plaintiff had died on 23rd Dec. 1970 and there was no plaintiff in the suit till the 11th of May, 1973 when the opposite party was substituted as heir and legal representative of the deceased the original plaintiff, the suit was not properly constituted and consequently no suit was pending till the 11th of May, 1973 within the meaning of Section 39 of the Act. He went on to urge that since no suit was pending on the 15th of July, 1972 because there was no plaintiff in the suit on that date, the applicant was entitled to make the deposits envisaged by Section 39 of the Act within one month of the 11th of May, 1973 when he must have appeared and acquired knowledge of the suit since it was on that date that he became a party to that suit. It was urged that by the 14th of April, 1973 which was nearly a month prior to the 11th of May, 1973, the defendant applicant had already deposited in court an amount exceeding what he was required to do in compliance with Section 39 of the Act and consequently the courts below acted illegally and without jurisdiction in not relieving him from the liability of ejectment from the disputed premises.

3. The contention is wholly unsound and must be rejected. Section 39 of the Act runs as follows :--

"39. Pending suits for eviction relating to buildings brought under regulation for the first time.--In any suit for eviction of a tenant from any building to which the old Act did not apply, pending on the date of commencement of this Act, where the tenant within one month from such date of commencement or from the date of his knowledge of the pendency of the suit, whichever be later, deposits in the court before which the suit is pending, the entire amount of rent and damages for use and occupation (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's full cost of the suit, no decree for eviction shall be passed except on any of the grounds mentioned in the proviso to Sub-section (1) or in Clauses (g) to (h) of Sub-section (2) of Section 20, and the parties shall be entitled to make necessary amendment in their pleadings and to adduce additional evidence where necessary:

Provided that a tenant, the rent payable by whom does not exceed twenty-five rupees per month, need not deposit any interest as aforesaid."

4. This provision of law is for the benefit of tenants who are parties to a suit for eviction from any building to which U.P. Act III of 1947 did not apply and which was pending on the date of the commencement of the Act. The Act came into force on the 15th of July, 1972 and that is consequently the date of commencement of the Act. Unless on the 15th of July, 1972 the suit giving rise to the present revision was pending, the applicant could not be entitled to the benefit of Section 39 of the Act. It is only when a suit for eviction of the applicant was pending on the 15th July, 1972 in respect of a building to which U. P. Act III of 1947 did not apply, that deposits of the amounts envisaged by Section 39 of the Act would relieve the applicant from the liability of eviction. The period of time within which the deposits have to be made, as provided for in Section 39, becomes relevant only if the basic condition that the suit was pending on the date of the commencement of the Act is satisfied. If the contention of the learned counsel for the applicant were to be accepted and it were to be held that on the 15th of July, 1972 the original plaintiff having died and his heir and legal representative not been brought on record, there was no suit pending on that date, the result would be that any deposits made by the applicant of the character contemplated by Section 39 would not be of any benefit to the applicant and operate so as to prevent his being ejected from the disputed premises by means of a decree.

5. In any case, the contention of the learned counsel for the applicant that on the 15th of July, 1972 the suit giving rise to the present revision was not pending is wholly untenable. As soon as Chandi Ram Bulaki Ram Vijan, who had initially instituted the suit, died Smt. Vidya Vijan, his heir and legal representative, stepped into his shoes and succeeded to all his rights and liabilities including the right to continue the suit against the applicant. The order passed by the court under Order 22, Rule 5 of Civil P. C. merely recognised that right. Between the 23rd of Dec., 1970 when Chandi Ram Bulaki Ram Vijan died and the 9th of March, 1971 (sic) when opposite party was brought on record as his heir and legal representative, though the suit continued to remain pending, it was lying dormant, in a

state of suspense. The suit which had been commenced on the 23rd of February, 1966 had not come to an end because of the death of Chandi Ram Bulaki Ram Vijan on the 23rd of Dec., 1970. The substitution of the opposite party as the heir and legal representative of Chandi Ram Bulaki Ram Vijan on the 11th May, 1973 related back to the date of the death on 23rd Dec., 1970 because there is no escape from the fact that the opposite party became entitled to pursue the suit to its conclusion not because of the order of the court but because of the fact that she was heir and legal representative and stepped into the shoes of the deceased immediately on his death.

6. According to Strouds Judicial Dictionary, 4th Edn., "a legal proceeding is "pending" as soon as commenced and until it is concluded i.e., so long as the court having original cognizance of it can make an order on the matters in issue, or to be dealt with, therein." This definition of the word "pending" found approval by the Supreme Court in [Asgarali Nazarali Singaporawalla Vs. The State of Bombay](#), . In [Lt. Col. S.K. Kashyap and Another Vs. The State of Rajasthan](#), it was held that "the word "pending" will ordinarily mean that the matter is not concluded and the Court which has cognizance of it can make an order on the matter in issue. The test is whether any proceedings can be taken in the cause before the Court or tribunal where it is said to be pending. The answer is that until the case is concluded it is pending."

7. Applying the test prescribed by the Supreme Court in the aforesaid two decisions, it is obvious that the suit did not terminate on the death of Chandi Ram Bulaki Ram Vijan, as already stated, till the 11th of May, 1973 when the opposite party was brought on the record. The principle that a suit remains pending even though a party thereto has died during the period his heir and legal representative was not brought on record has been well recognised. In *Nallakumara Goundan v. Pappayi Animal* (AIR 1945 Mad 219) the view was taken that the doctrine of *lis pendens* applied to alienations made before the son was brought on record but subsequent to his father's death as *lis* continued even after the death of the father against his legal representative, at any rate, until the time for bringing the legal representative expired. These observations were made by the Madras High Court while considering the question as to whether Section 52 of the Transfer of Property Act applied to a transfer effected by the son of the defendant during the period intervening his father's death and he himself being brought on record as his heir and legal representative.

8. The same legal principle has been followed by the Bombay High Court in [Krishnaji Pandharinath Vs. Anusayabai and Another](#), . The question that arose for consideration before the Bombay High Court was as to whether a sale effected by a defendant in a suit after its dismissal for non-payment of the process fee but before its restoration under Order 9 Rule 2 Civil P. C. was affected by Section 52 of the T. P. Act, Shah, J. as he then was, held that "if after the dismissal of a suit and before an appeal is presented, the "lis" continues so as to prevent the defendant from transferring the property to the prejudice of the plaintiff, I fail to see any reason for holding that between the date of the dismissal of the suit under Order IX Rule 2 of the Civil P. C. and the date of its restoration, the "lis"

does not continue."

9. The decisions of this Court in Satya Prakash v. Trilok Chand (1975 All WC 105), Suraj Bhan Verma v. Hari Om (1976 AH LJ 264) and Balwant Singh Talwar v. Balanand (1976 All LJ 218) are concerned with the scope of Section 39 read with Section 40 of the Act and all these three cases have applied the same legal principle.

10. For the reason given, I find no force in this revision which is hereby dismissed with cost to the opposite party. Interim order dated 1-11-1976 is hereby vacated. The record of the case will be sent down to the trial court at a very early date.