Smt. Raj Purwar Vs Smt. Roma Chaudhary and Others

Court: Allahabad High Court

Date of Decision: May 9, 1997

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 15 Rule 5
Transfer of Property Act, 1882 â€" Section 108
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 â€" Section 15, 7(1)

Citation: (1997) AWC 234 Supp

Hon'ble Judges: Sudhir Narain, J

Bench: Single Bench

Advocate: B.N. Agarwal, for the Appellant;

Final Decision: Dismissed

Judgement

Sudhir Narain, J.
This writ petition is directed against the order dated 12.2.1997 passed by the Judge, Small Causes Court, Jhansi,

Respondent No. 2, striking off the defence of the Petitioner, and the order dated 9.4.1997 passed by Respondent No. 3 dismissing the revision of

the Petitioner against the aforesaid order.

2. The facts of the case, in brief, are that Respondent No. 1 is owner of Premises No. 103 Inside Sainyar Gate Jhansi. Shri B. N. Purwar,

husband of the Petitioner, was tenant of the disputed premises. Respondent No. 1 filed Suit No. 22 of 1989 in the Court Judge Small Causes,

Jhansi against B. N. Purwar, husband of the Petitioner, for recovery of arrears of rent, ejectment and damages on the allegations that he was tenant

of the disputed premises on monthly rent of Rs. 420. He failed to pay rent since 1.10.1987. A notice dated 21.4.1989 was sent to him demanding

arrears of rent and terminating the tenancy. The notice was received by him on 25.4.1989 but inspite of its service, he did not comply with it.

During the pendency of the suit, B. N. Purwar died. After his death, the landlord filed substitution application impleading his widow Smt. Raj

Purwar-Petitioner and his two sons, namely Pranay Purwar and Ritesh Purwar.

3. The Petitioner filed written statement on 25th March, 1995 stating that B. N. Purwar had vacated the accommodation in January, 1986, i.e.,

long before the filing of the suit. As the accommodation had been vacated, there was no relationship of landlord and tenant. The landlord after

getting possession of the premises, let out to Purshottam Purwar, advocate. B. N. Purwar having vacated the accommodation, was not liable to

pay any rent.

4. Respondent No. 1 filed application to strike off defence of the Petitioner as the Petitioner failed to deposit the rent in accordance with the

provisions of Order XV, Rule 5, of Code of Civil Procedure. The Petitioner filed objection stating that there was no relationship of landlord and

tenant and after delivering the possession to the landlord, he was not liable to pay any rent.

5. Respondent No. 2 recorded finding that version of the Petitioner that Shri B. N. Purwar, her husband had vacated the accommodation in

January, 1986, was totally false, and the relationship of landlord and tenant between the parties continued to exist. The defence of the Petitioner

was struck off by order dated 12.2.1997. Aggrieved thereby, the Petitioner filed revision and Respondent No. 3 has dismissed the revision by

order dated 9.4.1997.

6. Shri B. N Agrawal, learned Counsel for the Petitioner, contended that the tenant is liable to deposit the rent only when the relationship of

landlord and tenant exists between the parties concerned and secondly, when the liability to pay the rent is admitted.

7. It is a question of fact in each case as to whether the relationship of landlord and tenant exists or not, and liability to pay the rent is admitted by

the tenant or not. The version of the Petitioner was that B. N. Purwar vacated the accommodation in January, 1986. The Petitioner failed to

establish that the possession of the disputed accommodation was delivered to the landlord. Shri B. N. Purwar was party in the suit. The Plaintiff

had filed suit on 1.8.1989. B. N. Purwar had filed written statement on 21.4.1991. In Para 15 of his written statement, he had stated that he had

vacated the disputed premises in January, 1986 and delivered the possession to the landlord. There is nothing to show that he had intimated the

vacancy to the landlord or District Magistrate or at the time of alleged delivery of possession, he obtained any document in proof of the fact that he

had delivered the possession. Respondents 2 and 3 did not believe this version of the Petitioner.

8. It is next contended that after delivery of possession to the landlord, the accommodation in question was let out to Purshottam Purwar,

advocate, brother of the Petitioner. This fact has not been proved. The tenant had not intimated the vacancy to the District Magistrate u/s 15 of

U.P. Act No. 13 of 1972. Purshottam Purwar is an advocate. He did not apply for any allotment in regard to the premises in question. There is,

otherwise, no cogent evidence to establish that there was relationship of landlord and tenant between Respondent No. 1 and Purshottam Purwar.

9. Purshottam Purwar filed application for his impleadment as a party in the suit. Respondent No. 2 rejected the said application. He filed Revision

No. 171 of 1995. The revision was dismissed on 4.4.1996.

10. A tenant is bound to put the landlord in possession of the demised property after determination of lease as provided u/s 108(q) of the Transfer

of Property Act. In Padmavati v. P.L. Vacher 1966 ALJ 688, wherein the allotment order was passed by the District Magistrate in favour of

another person, the plea of tenant that he was not liable to pay rent after such allotment, was repelled and it was held that his liability continues to

pay rent, till he delivers possession to the landlord. He is not relieved of his obligation u/s 108(q) of the Transfer of Property Act by vacating the

accommodation and informing the District Magistrate as required u/s 7(1)(b) of the U.P. Act No. 3 of 1947.

11. The learned Counsel for the Petitioner has plated reliance upon the decision of Lakhan Lad v. Lakshmi Pustakalaya 1979 ARC 86, wherein it

has been held that where the tenant asserts in written statement that no amount was due. his defence cannot be struck off. In Thakur Prasad alias

Bhola Nath v. Gur Prasad 1979 ARC 195, it has been held that tenant is to deposit the rent under Order XV, Rule 5 of Code of Civil Procedure,

when he himself admits to be a tenant. The legal proposition is not in controversy. On the facts of the present case, it has been found that the

Petitioner was a tenant and is liable to pay the rent as tenancy continued. The liability to pay the rent is denied only on the ground that tenant had

vacated the accommodation in January, 1986. The courts below recorded concurrent finding that the tenant never delivered possession of the

disputed accommodation to the landlord and his liability to pay the rent continued.

12. The last submission of the learned Counsel for the Petitioner is that the defence has been struck off after the close of the evidence led by

landlord-Respondent. He has placed reliance upon the decision, Ladly Prasad Vs. Ram Shah Billa and Others, . In this case, the order of learned

single Judge was set aside where by the time was extended to deposit the amount under Order XV, Rule 5 of Code of Civil Procedure. In Para 4

of the said decision, observation has been made that Order XV, Rule 5 comes into play anterior to the stage when the parties examine their

witnesses. In Bal Krishna v. Ramanand Dixit and Anr. 1996 (2) AWC 1023, one of the questions referred to the Division Bench was whether an

application can be filed to strike off the defence after close of the evidence of the Plaintiff. It was held that even after the close of Plaintiffs

evidence, the court shall have power to strike off the defence. In Para 22 of the aforesaid judgment reads as under:

However, as discussed above, our precise answer to the question referred to us is that in view of the provisions of Rule 5 of Order XV of the

Code, where the Defendant commits default, in making the deposit of the monthly amount due, during the continuation of the suit, even after the

closure of the evidence of the Plaintiff, the Court shall have power to strike off defence, and to consider the application made by the landlord under

Order XV, Rule 5, CPC and decide the same on merits.

13. In view of the above, there is no merit in this writ petition and it is accordingly dismissed.