

(1997) 07 AHC CK 0194

Allahabad High Court

Case No: C.M.W.P. No. 32175 of 1994

Ram Prasad

APPELLANT

Vs

Panna Lal and Another

RESPONDENT

Date of Decision: July 21, 1997**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 22, Order 41 Rule 27
- Provincial Small Cause Courts Act, 1887 - Section 17, 25
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 30, 30(1)

Citation: (1997) AWC 302 Supp**Hon'ble Judges:** Sudhir Narain, J**Bench:** Single Bench**Advocate:** B.N. Agrawal, for the Appellant;**Final Decision:** Allowed

Judgement

Sudhir Narain, J.

This writ petition is directed against the judgment dated 28.7.1994, allowing the revision and remanding the case to the Judge, Small Causes Court.

2. The facts in brief are that the Petitioner filed S.C.C. Suit No. 2 of 1992 against Respondent No. 1 for recovery of arrears of rent, ejectment and damages for use and occupation of house No. 23/1 Mohalla Talaiya, Jhansi, on the allegation that Respondent No. 1 was tenant on monthly rent of Rs. 100. He failed to pay rent since 20.1.1990. A notice dated 18.11.1991 was sent demanding arrears of rent and terminating his tenancy. The tenant-Respondent did not comply with the notice.

3. Respondent No. 1 filed written statement stating that the rent of the disputed premises was Rs. 50 per month and not Rs. 100 per month as alleged by the Plaintiff. The Plaintiff refused to accept the rent and thereafter he deposited the

amount in Court u/s 30(1) of U.P. Act No. 13 of 1972, Both the parties led evidence in the case. The Judge, Small Causes Court recorded finding that the rate of rent was Rs. 100 per month and it was due since 20.1.1990. The tenant failed to prove that the landlord had refused to accept the rent and the deposit u/s 30 cannot be treated as valid. The suit for recovery of rent was decreed but the suit for ejectment was dismissed on the ground that the notice sent by the Plaintiff-Petitioner was invalid inasmuch as it did not correctly describe the property in dispute. The Petitioner filed Revision No. 57 of 1994 against the decree of the Judge, Small Causes Court by which he dismissed the suit in respect of the relief of ejectment claimed by the Petitioner. Respondent No. 1 filed cross-objection in respect of the decree for recovery of arrears of rent. Respondent No. 1 allowed the revision and the cross-objection and remanded the case to the Judge, Small Causes Court for deciding the case afresh keeping in view the observations made in the order and further directing the parties to lead evidence in the case by the impugned order dated 28.7.1994.

4. Respondent No. 1 exercising the power of revision u/s 25 of the Provincial Small Causes Court Act, has set aside the finding recorded by the Judge, Small Causes Court on the question of rate of rent. He took the view that the Judge, Small Causes Court relied upon the rent note dated 20.7.1984 which was not duly proved by the witnesses. The scribe belonged to the same caste of the Plaintiff and he was not fully literate. Respondent No. 1 failed to take into consideration that the deed was proved by the Plaintiff as well as by the attesting witness Ranjit Pal and their statements were believed by the Judge, Small Causes Court. It was a matter of assessment of evidence. The Defendant had taken the premises in question on rent in the year 1984 and it is admitted that the tenant had paid the rent up to 19.1.1990. The trial court believed the statement that the rent was paid at the rate of Rs. 100 per month. Respondent No. 2 was not justified in setting aside the said finding of the Judge, Small Causes Court.

5. Secondly, the revisional court has directed the parties to lead fresh evidence without recording any finding that the parties were deprived of opportunity to lead any evidence before the Judge, Small Causes Court. There was no other circumstance to indicate that the parties were entitled to lead fresh evidence, on any of the grounds mentioned under Order XLI, Rule 27, CPC In absence of any averment that the parties were either precluded from leading any evidence before the trial court or they discovered any new evidence which were not in their knowledge, the parties to the suit were not entitled to lead evidence afresh in the case.

6. One of the points is, whether the opposite party in a revision u/s 25 of Small Causes Court Act, can file a cross-objection challenging a part of decree which was against him but did not file challenge by filing a revision. A party is entitled to file cross-objection under Order XLI, Rule 22, CPC when an appeal is filed by any party to

the suit. Order XLI of the CPC is not applicable to the proceedings under the Provincial Small Causes Court Act. Section 17 of the Provincial Small Causes Court Act provides that the procedure prescribed in Code of Civil Procedure, shall save in so far as otherwise provided by the Code or by the Act, be the procedure followed in Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits. Clause (b) of Order L of the CPC excludes applicability of Orders XLI to XLV, CPC to the suits filed in the court of Judge, Small Causes. The right to file an appeal, revision or cross-objection is a substantive right under law. It is not a matter of procedure. Where a decree is passed by the Judge, Small Causes Court, the party has a right to challenge the same by filing a revision before the appropriate court u/s 25 of the Provincial Small Causes Court Act. There is no provision under the Small Causes Court Act which permits a party to file cross-objection against a party of decree which has not been challenged by the applicant in revision. It is not a case where a person is challenging only a part of the finding though the order has been passed in his favour, wherein it can be urged that though the order has been passed in his favour but a particular finding is against him, he can raise objection against such a finding. It is a case where a part of decree has been passed on a finding and that decree has not been challenged.

7. The Plaintiff had filed a suit for recovery of arrears of rent on the allegation that the rate of rent was Rs. 100 per month. The suit was decreed for recovery of rent at the rate of Rs. 100 per month. This part of the decree was operating against the Defendant. He could have filed revision against it. The suit was not dismissed on the ground that the rate of rent was incorrect. The cross-objection filed by Respondent No. 1 against the decree for recovery of arrears of rent was not maintainable.

8. Learned Counsel for the Respondent has placed reliance upon the decision [Gulabchand Ramchand Jain Vs. Noorbeg Umarbeg Mirza](#), wherein it was held that where the trial court has negatived the claim of the landlord on one ground but has decreed suit on another ground and on an appeal being filed the tenant can file cross-objection on the principle laid down under Order XLI, Rule 22 of the Code of Civil Procedure. It was not a case where the provisions of Provincial Small Causes Court Act were applicable, where the applicability of Order XLI is excluded. The principle of Order XLI, Rule 22 can be applicable only where an appeal is provided against an order and the principle laid down under Order XLI is not applicable. In case, however, a cross-objection has been filed by a party against a decree, it can be treated as a revision by the Court subject to the limitation and payment of court fees.

9. In the result, the writ petition is allowed, Order dated 28.7.1994 is hereby quashed and Respondent No. 1 is directed to decide the revision afresh keeping in view the observations made above and in accordance with law.

The parties shall bear their own costs.