(2005) 05 AHC CK 0281

Allahabad High Court

Case No: C.M.W.P. No. 4657 of 1995

Ajai Kumar and Others		APPELLANT
	Vs	
Munna Lal and Others		RESPONDENT

Date of Decision: May 26, 2005

Acts Referred:

- Constitution of India, 1950 - Article 226
- Provincial Small Cause Courts Act, 1887 - Section 25
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 20(4)

Citation: (2005) 4 AWC 3728

Hon'ble Judges: Vikram Nath, J

Bench: Single Bench

Advocate: Atul Dayal, K.M. Dayal and K.K. Dubey, for the Appellant; Ramendra Asthana, C.S.C., for the Respondent

Final Decision: Dismissed

Judgement

Vikram Nath, J.

This writ petition has been filed by the landlord against the judgment and order dated 24.11.1994, passed by respondent No. 4, whereby the Revision No. 74 of 1987 filed by the tenant was allowed and the matter was remanded to the trial court only for deciding afresh the issue relating to service of notice and the finding on the other issues recorded by the trial court with regard to default in payment of rent and with regard to sub-tenancy were affirmed.

2. Petitioners are the owner and landlord of premises No. 99/12, Civil Lines, Lalitpur, of which opposite party No. 1, Munna Lal was a tenant at monthly rent of Rs. 30 per month. It is alleged that Munna Lal sublet the premises in dispute in favour of respondent No. 2 Sewa Ram. On the ground of default as well as subletting, the petitioner filed a suit for recovery of arrears of rent and ejectment, after giving

notice as contemplated under law. This was registered as Suit No. 24 of 1981 in the Court of the Judge, Small Causes Court, Lalitpur. The respondent No. 2 Sewa Ram did not contest the suit and the case had preceded ex parte against him. The respondent No. 1 Munna Lal contested the suit and filed his written statement inter alia alleging that no valid notice had been served upon him ; that he has deposited the rent u/s 20 (4) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short referred to as the Act) and further there was no subletting by him. Initially the trial court dismissed the suit vide judgment dated 10.7.1985, however upon revision the matter was remanded vide judgment dated 17.8.1987 and the trial court was directed to proceed with the matter afresh in accordance with law.

3. The trial court, after remand vide judgment dated 18.11.1987 held that firstly, there was default of more than 4 months rent by the tenant, secondly, the respondent No. 1 had sublet the premises in dispute to respondent No. 2 and thirdly, notice had been validly served by refusal, and fourthly, as the tenant has not made deposits as required under law he was not. entitled to protection from ejectment u/s 20 (4) of the Act. On these findings the trial court decreed the suit.

4. Aggrieved by the same, Munna Lal, respondent No. 1 filed revision, which was registered as Revision No. 24 of 1987. The revisional court affirmed the findings of the trial court with regard to default in payment of rent, subletting by respondent No. 1 in favour of respondent No. 2 and non-availability of the protection u/s 20 (4) of the Act to the tenant, however, it remanded the matter on the issue relating to service of notice as it was not satisfied with the finding recorded by the trial court. Aggrieved by the said order of remand the landlord has filed the present writ petition.

5. I have heard Sri K. K. Dubey, learned Counsel for the petitioner and Sri Ramendra Asthana, learned Counsel for the respondents.

6. To my mind the petitioner was ill-advised in filing this writ petition against the order of remand and that to where all the findings except one had been affirmed by the revisional court and the only question left open to be decided was with regard to service of notice on the tenant. In case, the petitioner had acceeded to the remand order, which was passed in 1995, 10 years back by now the matter would have been finally thrashed out. Even today, if the writ petition is allowed, the maximum relief which can be granted to the petitioner would be to direct the revisional court to decide the said issue itself.

7. The contention of the learned Counsel for the petitioner is that since the material was available on record before the revisional court, it ought to have recorded the finding with regard to service of notice itself. The learned Counsel for the petitioner has relied upon the following three judgments :

(i) Ved Pal Malik v. Sukumar Chandra Jain 1985 ARC (1) 536, relevant is paras 3 and 4.

(ii) Ali Hasan Saifi Vs. Satish Kumar, relevant is para 12.

(iii) Kailash Chandra and another Vs. IIIrd Additional District Judge, Jalaun and others, , relevant is para 19.

8. In these judgments it was held that the revisional court could look into the evidence and record its own finding on the question of fact. Learned counsel for the petitioner has further contended that even this Court could examine the evidence and record a finding in (he matter with regard to service of notice on the tenant respondent. The petitioner has placed on record the evidence with regard to service of notice by means of supplementary-affidavit. I am not inclined to accept this contention as this Court in exercise of its jurisdiction under Article 226 of the Constitution will not appreciate evidence and record interfere with findings of fact recorded by courts below.

9. It has been further argued by the learned Counsel for the petitioner that the revisional court only considered the fact that the notice elated 5.11.1980, was subsequent to the money order dated 20.9.1980 and, therefore, the reliance by the trial court on the money order coupon mentioning with regard to the notice could not be possible ; and at the same time it ignored the other evidence like statement of witnesses etc. which the trial court had relied with regard to service of notice, and, therefore, the impugned order is vitiated.

10. On the other hand, learned Counsel for the respondent has contended that the order of the revisional court is perfectly valid. The revisional court, while exercising powers u/s 25 of the Provincial Small Causes Courts Act, 1887 (in short referred to as 1887, Act) could not record finding of fact itself and where it was satisfied that the approach of the trial court was not correct in recording the finding the only course open to it was to remit the matter back to the trial court for afresh decision on the issue. In support of the same the learned Counsel for the respondent has relied upon the judgment in the case of Laxmi Kishore v. Har Prasad 1981 ARC 545, wherein Division Bench of this Court has laid down, the scope of Section 25 of the 1887 Act and the guidelines to be followed by the revisional court in exercise of powers. The said Division Bench judgment in the case of Laxmi Kishore (supra) still holds to be good law and is still followed. Even in the judgments relied upon by the petitioner reference has been made to the judgment in the case of Laxmi Kishore (supra). The Division Bench in the case of Laxmi Kishore (supra) has laid down as follows ;

"But, if it finds that a particular finding of fact is vitiated by an error of law, it has a power to pass such order as the justice of the case requires, but it has no jurisdiction to reassess or reappraise the evidence in order to determine an issue of fact for itself. If it cannot dispose of the case adequately without a finding on a particular issue of fact, it should send the case back after laying down proper guidelines. It cannot enter into the evidence, assess it and determine an issue of

fact."

11. Having considered the rival submissions made by the parties and also the judgment in the case of Laxmi Kishore (supra), I am of the view that the revisional court rightly declined to record the finding on the question of service of notice it being a question of fact and rightly remanded the matter to the trial court to decide the said issue afresh. There is no infirmity in the judgment of the revisional court and it does not warrant any interference under Article 226 of the Constitution.

12. The petition lacks merit and is, accordingly dismissed. However, as the matter has been pending for substantially long time the trial court may decide the matter expediliously preferably within a period of 4 months from the date of production of certified copy of the order.