

(2007) 01 AHC CK 0215

Allahabad High Court

Case No: C.M.W.P. No. 2537 of 2007

Dr. Shamim Ahmad

APPELLANT

Vs

Shiv Nath Khandelwal

RESPONDENT

Date of Decision: Jan. 16, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13, 34, 35A, 35B
- Limitation Act, 1963 - Section 5
- Provincial Small Cause Courts Act, 1887 - Section 17(1)
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 15(1), 17, 17(2), 30

Citation: (2008) 5 AWC 5032

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: Lallan Verma, for the Appellant; S.P. Pandey and S.K. Mishra, for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.

Heard learned Counsel for the Petitioner and perused the record.

2. This writ petition has been directed against the orders dated 10.10.2006, passed by the District Judge, Mau in Civil Revision No. 34 of 2006 and dated 13.3.2006 passed by Judge, Small Causes Court/Civil Judge (J.D.) Mau in Misc. Case No. 207 of 1999.

3. The case of the Petitioner is that Smt. Kishan Dei Devi, mother of Respondent let out a shop situated in New Krishna Market Sindi Colony Mohalla Nyaz Mohammad Pura, Mau Nath Bhanjan, district Mau on 1.6.1983 to the Petitioner on a monthly rent of Rs. 110 and that she had taken Rs. 2,500 as advance towards rent.

4. The rent was thereafter enhanced to Rs. 125 w.e.f. 1.8.1983 and the Petitioner was served with a notice dated 3.1.1996 by the landlord with regard to payment of house tax and water tax, etc.
5. It appears that as water tax and house tax was not paid by the Petitioner-tenant, the landlord by another notice dated 11.12.1998 terminated the tenancy of the Petitioner and also instituted Suit No. 1 of 1996. The plaint was subsequently amended by the landlord. Thereafter, statement of Plaintiff-landlord was recorded on 16.1.1999. The aforesaid suit was decreed ex parte by the trial court vide judgment dated 19.2.1999 and in pursuance thereof, Execution Case No. 13 of 1999 was filed against the Petitioner.
6. It is submitted by the counsel for the Petitioner that the Petitioner came to know about the execution proceedings only on 28.8.1999 and thereafter he got inspected S.C.C. Suit No. 1 of 1996 through his counsel on 1.9.1999. Thereupon, he moved application dated 21.9.1999 for setting aside the ex parte decree dated 19.2.1999 alongwith an application u/s 5 of the Limitation Act for condonation of delay. The application aforesaid was registered as Case No. 207 of 1999.
7. It is also submitted by the counsel for the Petitioner that the Petitioner moved application dated 10.11.2000 before the court below for passing tender for accepting the amount of Rs. 4,000 deposited in Misc. Case No. 76 of 1998 u/s 30 of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act No. XIII of 1972") as security towards the decretal amount.
8. The trial court summoned the record of Misc. Case No. 76 of 1998 and vide order dated 20.1.2001 fixed 17.2.2001 for hearing of Case No. 207 of 1999. The application of the Petitioner moved by him u/s 5 of the Limitation Act was dismissed vide order dated 13.3.2006 by the trial court.
9. Aggrieved by dismissal of his Case No. 207 of 1999, thereafter the Petitioner preferred Revision No. 34 of 2006 against the order dated 13.3.2006 together with an application (paper No. 11-C) for permission to deposit the entire decretal amount which too was rejected by the revisional court vide order dated 23.9.2006. Ultimately, vide judgment dated 10.10.2006 passed by the District Judge, Mau, the revision has also been dismissed.
10. The Petitioner aggrieved by the judgment dated 10.10.2006 has invoked the writ jurisdiction by means of the instant writ petition challenging the aforesaid orders dated 10.10.2006, passed by the District Judge, Mau in Civil Revision No. 34 of 2006, Dr. Shamim Ahmad v. Shiv Nath Prasad and order of Judge Small Causes Court/Civil Judge, Mau dated 13.3.2006 passed in Misc. Case No. 207 of 1999, Dr. Shamim Ahmad v. Shiv Nath Prasad and the ex parte decree dated 19.2.1999 passed in Suit No. 1 of 1996, Shiv Nath v. Dr. Shamim Ahmad.

11. Counsel for the Petitioner contended that the decree dated 19.2.1999 was procured by practising fraud on Court, as such, decree ought to have been set aside. According to him, the ex parte decree for ejectment of the Petitioner was passed without any notice of the amended plaint on the Petitioner. He vehemently urged that the impugned orders are illegal, arbitrary and without appreciation of evidence on record, and they are liable to be quashed.

12. A perusal of impugned judgment passed by the revisional court reveals that the revisional court has considered the provision of Section 17(1) of the Provincial Small Causes Court Act which provides that where the District Magistrate receives an intimation u/s 15(1) of U. P. Act No. XIII of 1972 in respect of vacancy of a building, an allotment order in respect of that building shall be made and communicated to the landlord within 21 days from the date of receipt of such intimation and that where no such order is so made, the landlord may intimate to the District Magistrate the name of any person of his choice. Consequent upon receipt of the intimation of the name of the tenant, the District Magistrate in these circumstances shall allot the building in favour of the person so intimated by the landlord.

13. Section 17(2) of U. P. Act No. XIII of 1972 further protects the right of the landlord to nominate if the remaining part of the building is in possession of the landlord. Thus, Section 17 of U. P. Act No. XIII of 1972 applies to both where the tenant has ceased to occupy or was expected to vacate and also applies even in case where vacancy has not occurred.

14. From the perusal of Section 17 of U. P. Act No. XIII of 1972 it is apparent that the provisions of this Section are mandatory in nature and binding. The tenant has to deposit the decretal amount along with application, which could not have been deposited due to certain reasons.

15. However, in the instant case, the revisionist-Defendant neither deposited the decretal amount in cash nor moved any application for security. When he realized this mistake of not depositing the decretal amount in cash, he moved an application that the amount of Rs. 4,000 deposited by him in Misc. Case No. 76 of 1998 u/s 30 of U. P. Act No. XIII of 1972 may be accepted as security money. This application was moved by the Petitioner after a period of one year of filing the revision.

16. The court below further held that not only the application was moved after one year but also no deposit in cash was made as envisaged under the aforesaid law rather the Defendant-revisionist (Petitioner in the instant case) prayed for adjustment of the aforesaid amount deposited by him u/s 30 of U. P. Act No. XIII of 1972 in Misc. Case No. 76 of 1998 which had been deposited during the pendency of the application filed by him under Order IX, Rule 13 of the Code of Civil Procedure. The Court has given a categorical finding that the Petitioner had, in his application averred that the amount deposited by him towards rent from April, 1998 to December, 2000 has been adjusted whereas he submitted his application under

Order IX, Rule 13, Code of CPC on 21.1.1999. Hence, in fact, there was no amount deposited by him u/s 30 of U. P. Act No. XIII of 1972 which he could have averred or prayed for as security. The order of the court below is as under:

17. From the above, it is apparent that the revisional court has recorded cogent reasons for dismissing the revision of the Petitioner. Moreover, if any amount is due it has to be deposited before the trial court on the first date of hearing. Admittedly, the Petitioner had moved an application in this regard in revision, therefore, his application was wholly misconceived and against the provisions of law.

18. As regards notice, the Court has recorded categorical finding that the Defendant-revisionist (Petitioner) had been sent the notice of the application and in his objection he had stated that the application of the Petitioner is not maintainable which shows that the Petitioner had full knowledge of the order dated 19.2.1999 and that he had himself received the summons and signed in token of receipt thereof. The Court has observed that the revisionist-applicant had not deposited the decretal amount as such, his application was not maintainable. The relevant findings in this regard are as under:

19. There is no infirmity or illegality in the impugned orders warranting interference in writ jurisdiction.

20. Accordingly, the writ petition is dismissed.

Costs:

21. So far as cost is concerned, Hon"ble the Apex Court in [Salem Advocate Bar Association, Tamil Nadu Vs. Union of India \(UOI\)](#), has held that-

So far as awarding of costs at the time of judgment is concerned, awarding of costs must be treated generally as mandatory inasmuch as the liberal attitude of the Courts in directing the parties to bear their own costs had led the parties to file a number of frivolous cases in the Courts or to raise frivolous and unnecessary issues. Costs should invariably follow the event. Where a party succeeds ultimately on one issue or point but loses on number of other issues or points, which were unnecessarily raised. Costs must be appropriately apportioned. Special reasons must be assigned if costs are not being awarded. Costs should be assessed according to rule in force. If any of the parties has unreasonably protracted the proceedings, the Judge should consider exercising discretion to impose exemplary costs after taking into account the expense incurred for the purpose of attendance on the adjourned dates.

22. Thus, from the law laid down by the Hon"ble Apex Court in the aforesaid case of Salem Advocate Bar Association (supra), it is apparent that non-payment of cost is an exception for which special reasons have to be given by the Court and that in normal circumstances cost has to be awarded on the party according to the issue decided in favour of the party which were unnecessarily raised. The cost so imposed

should be in accordance with rules and if the proceedings are unnecessarily protracted or adjournments have been sought it is upon the discretion of the Judge to impose exemplary cost taking also into account the circumstances etc. for the purpose of adjournment.

23. Following the ratio laid down in Salem Advocate Bar Association (supra), this Court in Civil Misc. Writ Petition No. 48752 of 2006, Nizamuddin v. Shakoor Ahmadafter considering provisions of Rule 9 of Chapter XXII and Rule 11 of Chapter XXI of the High Court Rules, 1951 and provisions of Sections 34, 35A and 35B of the Code of CPC has held that while awarding interest on a party by non-payment of principal amount or any dues should also be considered by the Court and not only interest but penal interest may also be awarded.

24. Since it is a frivolous petition, the cost is to be deterrent and exemplary. In the facts and circumstances of the case, it is directed that apart from payment of arrears of rent, if any, the Petitioner will also pay cost of Rs. 5,000 (Rupees five thousand) which shall be deposited by the Petitioner before District Judge, Mau within two months from today. The arrears of rent as well as the cost so deposited can be withdrawn by the Respondent-landlord without furnishing any security within two months from the date of deposit. In case the Petitioner fails to make payment of the aforesaid amount, the same shall be recoverable as arrears of land revenue.