

(2013) 04 AHC CK 0311

Allahabad High Court

Case No: C.R. No. 10 of 2013

Om Prakash Tripathi

APPELLANT

Vs

Ramesh Kumar Hemrajani

RESPONDENT

Date of Decision: April 18, 2013**Citation:** (2013) 98 ALR 566 : (2013) 5 AWC 5033**Hon'ble Judges:** Sibghat Ullah Khan, J**Bench:** Single Bench**Advocate:** S.S. Upadhyay and R.A. Upadhyay, for the Appellant; Anil Kumar Srivastava and M.D. Singh Shekhar, for the Respondent**Final Decision:** Dismissed

Judgement

Sibghat Ullah Khan, J.

Heard learned counsel for the parties. This is tenant's revision directed against judgment and decree dated 22.10.2012 passed by Judge Small Causes Court/Additional District Judge, Court No. 5. Kanpur Nagar in Ramesh Kumar Hemrajani v. Om Prakash Tripathi, SCC Suit No. 80 of 2009. The suit had been filed by landlord-respondent for eviction of tenant applicant from the tenanted premises in dispute consisting of three rooms, verandah and other amenities situate at Jawahar Nagar, Kanpur Nagar rent of which was Rs. 240 per month. Landlord did a fantastic thing. He gave notice dated 17.3.2008 and enhanced the rent to Rs. 5,700 per month prospectively. In the plaint rent at the old rate of Rs. 250 per month was sought to be recovered from 23.1.1987 to 29.2.2008 and with effect from 1.3.2008 at the rate of Rs. 5,700 per month. Court below rightly held that by giving notice rent could not be enhanced. Thereafter through notice dated 22.5.2008 tenancy was terminated. In reply to the notice tenant sent money order of Rs. 29,500. Rent from 23.1.1987 to 22.2.2008 at the rate of Rs. 250 per month comes to Rs. 66,225.

2. The tenant pleaded that he was depositing the rent in a case u/s 30 of U.P. Act No. 13 of 1972, Om Prakash Tripathi v. Smt. Bhagwani Devi, Misc. Case No. 266/70 of 1987. Rent in the said case was deposited from 23.1.1987 to 22.8.2001. In the suit

giving rise to the instant revision tenant deposited Rs. 7,080.

3. Initially Smt. Bhagwani Devi was the landlady. After her death her son the respondent became the landlord. Tenant asserted that after the death of original landlady Bhagwani Devi, the respondent and his sisters gave a notice on 16.9.2000 and by that time in the case u/s 30 of U.P. Act No. 13 of 1972 the tenant had deposited Rs. 41,250. The major deposit u/s 30 of the Act was made on 30.4.2000 of Rs. 33,000. Until 12.10.1988 only Rs. 5,000 had been deposited.

4. Smt. Bhagwani Devi died on 1.1.1997.

5. Plaintiff respondent also asserted that from 1988 till 2000 no amount was deposited by the tenant u/s 30 of the Act.

6. If in a case u/s 30 of U.P. Act No. 13 of 1972 deposit is made after the death of the landlady without impleading her legal representatives, it cannot be treated to be valid deposit for the reason that legal representatives of the landlord cannot withdraw the said amount unless they are substituted. (In the case u/s 30 respondent was not substituted). I have taken this view in [Smt. Rafeeqan and Others Vs. Jia-ul-Nabi and Others](#) .

7. Learned counsel for the petitioner has cited an authority of this Court in [Smt. Vimla Devi and Another Vs. The District Judge and Others](#) . In the said authority it was held that in case deposit was made u/s 30(2) of the Act then even after death of landlord the deposit might be treated to be valid for the reason that until decision of competent court no one is entitled to withdraw the said amount. However, the said principle cannot apply to deposit u/s 30(1) of U.P. Act No. 13 of 1972 or Section 7C(a) of the old Rent Control Act, i.e., U.P. Act No. 13 of 1947.

8. Accordingly, the deposit of rent made u/s 30 of the Act in 2000 and 2001 total Rs. 38,750 without impleading the respondent landlord as party therein was not legal and the said deposit cannot be held to be payment of rent to the landlord. Landlord cannot withdraw the said amount as he is not the party in the said case.

9. Accordingly, I do not find any error in the impugned judgment and decree. Revision is, therefore, dismissed.

10. Tenant-applicant is granted six month's time to vacate provided that:

(1) Within one month from today tenant files an undertaking before the J.S.C.C. to the effect that on or before the expiry of aforesaid period of six months he will willingly vacate and handover possession of the property in dispute to the landlord-respondent.

(2) For this period of six months, which has been granted to the tenant-petitioner to vacate, he is required to pay Rs. 18,000 (at the rate of Rs. 3,000 per month) as rent/damages for use and occupation. This amount shall also be deposited within one month before the J.S.C.C. and shall immediately be paid to the

landlord-respondent.

(3) Within one month from today tenant shall deposit entire decretal amount due till date before J.S.C.C. for immediate payment to landlord-respondent.

11. In case of default in compliance of any of these conditions tenant-petitioner shall be evicted through process of Court after one month and shall be liable to pay damages at the rate of Rs. 5,000 per month since after one month till the date of actual vacation. Similarly, if after filing the aforesaid undertaking and depositing decretal amount and Rs. 18,000 the accommodation in dispute is not vacated on the expiry of six months then damages for use and occupation shall be payable at the rate of Rs. 5,000 per month since after six months till actual vacation. It is needless to add that this direction is in addition to the right of the landlord to file contempt petition for violation of undertaking and execution application.