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(2013) 2 ADJ 312 : (2013) 3 ALJ 12

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 52749 of 1999

Smt. S. Ravis	APPELLANT
Vs	
Judge Small Cause Courts and Others	RESPONDENT

Date of Decision: Nov. 23, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 5 Rule 1, Order 5 Rule 5
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 20, 20(4), 30(1), 38

Citation: (2013) 2 ADJ 312 : (2013) 3 ALJ 12

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Advocate: A.D. Saunders, for the Appellant; Komal Mehrotra, M.A. Qadeer, Rajesh Tandon and Shamim Ahmad, for the Respondent

Final Decision: Dismissed

Judgement

Sudhir Agarwal, J.
Heard Sri A.D. Saunders, learned counsel for the petitioner and Sri M.A. Qadeer, Senior Advocate, assisted by Sri Shamim Ahmad, Advocate for the respondents. The suit filed by petitioner for ejectment of respondent No. 3 from accommodation in question has been decreed partly to the extent of recovery of arrears of rent by permitting landlord to withdraw the amount deposited by respondent-tenant u/s 20(4) of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act, 1972") but the suit for the relief of ejectment has been dismissed vide order dated 14.10.1996 and the said order has been confirmed by dismissing petitioner"s revision vide judgment dated 23.9.1999.

2. Learned counsel for the petitioner submitted that there was no deposit on first date of hearing. The amount paid u/s 30(1) of Act, 1972 after issuance of notice could not be

given due credit u/s 20(4) of Act, 1972 and therefore, impugned orders are liable to be set aside.

3. The submissions, as advanced, if considered vis a vis facts of the case, are thoroughly misconceived.

4. Section 20(4) of Act, 1972 itself provides that amount, which a tenant would deposit at the first date of hearing of the suit should be computed after deducting therefrom any amount already deposited by him u/s 30(1) of Act, 1972. Therefore, the amount deposited by tenant u/s 30(1) has to be given due credit for finding out whether there is compliance of Section 20(4) or not. It is not the case of petitioner that after deducting such amount, still deposit made by tenant does not satisfy requirement of Section 20(4) of Act, 1972.

5. The petitioner''s counsel submitted that deposit was not made on the first date of hearing, inasmuch as, suit was filed on 31.5.1988 in which 3rd August, 1988 was the date fixed for filing written statement and 10th August, 1988 was the date fixed for hearing. The deposit was made by tenant on 4.8.1988 and therefore it cannot be said that the said amount was deposited on the first date of hearing.

6. The question as to what would be the first date of hearing of the suit in the light of the explanation in Section 20 has been considered by this Court time and again. The expression "first hearing" has been explained in Section 20(4) Explanation (a) and reads as under:

the expression "first hearing" means the first date for any step or proceeding mentioned in the summons served on the defendant.

7. This expression has been considered by Apex Court in Ved Prakash Wadhwa Vs. Vishwa Mohan, . It was held that the date of first hearing would not be before a date fixed for preliminary examination of parties and framing of issues. Similar was the view taken in an earlier judgment also in Advaita Nand Vs. Judge, Small Cause Court, Meerut and Others, .

8. A three-Judge Bench of Apex Court also considered this issue in Siraj Ahmad Siddiqui Vs. Shri Prem Nath Kapoor, and said as under

The date of first hearing of a suit under the Code is ordinarily understood to be the date on which the Court proposes to apply its mind to the contentions in the pleadings of the parties to the suit and in the documents filed by them for the purpose of framing the issues to be decided in the suit. Does the definition of the expression "first hearing" for the purposes of Section 20(4) mean something different? The "step or proceedings mentioned in the summons" referred to in the definition should we think, be construed to be a step or proceeding to be taken by the Court for it is, after all, a "hearing" that is the subject-matter of the definition, unless there be something compelling in the said Act to indicate otherwise; and we do not find in the said Act any such compelling provision.

Further, it is not possible to construe the expression "first date for any step or proceeding" to mean the step of filing the written statement, though the date for that purpose may be mentioned in the summons, for the reason that, as set out earlier, it is permissible under the Code for the defendant to file a written statement even thereafter but prior to the first hearing when the Court takes up the case, since there is nothing in the said Act which conflicts with the provisions of the Code in this behalf. We are of the view, therefore, that the date of first hearing as defined in the said Act is the date on which the Court proposes to apply its mind to determine the points in controversy between the parties to the suit and to frame issues, if necessary.

9. Again it was considered in Sudershan Devi and Another Vs. Sushila Devi and Another, and held that the date fixed for hearing of the matter is the date of first hearing and not the date fixed for filing of written statement. The Court observed that emphasis in the relevant provision is on the word "hearing". The Court also relied on its earlier decision in Ved Prakash Wadhwa (supra).

10. The matter again came to be considered in Mam Chand Pal Vs. Shanti Agarwal, . Therein the suit was filed on 5.12.1988 and summons were issued fixing 19th January, 1989 for filing of written statement and 27th January, 1989 for hearing. The defendant was not served. The order was passed for service of notice on the defendant by publication fixing 3.7.1989 for hearing. By mistake in the publication, the date of hearing was shown as 26.4.1989 instead of 3.7.1989. On 26.4.1989, Presiding Officer was not available having proceeded for training. The case was thereafter adjourned to 11.5.1989 and further gone on adjournment for one or the other reasons on several dates. The Court held that in the present case 26th April, 1989 would not be regarded as "first date of hearing" since on that date the Presiding Officer was not available. In para 7 the Court said, "where the Court itself is not available it could not be treated as the date of first hearing".

11. In Ashok Kumar and Others Vs. Rishi Ram and Others, , the Court noticed distinction between the phraseology in Order XV, Rule 5 C.P.C. and Explanation (a) to sub-section (4) of Section 20 of Act, 1972 and in para 8, said:

Rule 1 of Order V speaks of issue of summons. When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day specified therein. Rule 2 thereof enjoins that the summons shall be accompanied by a copy of the plaint or, if so permitted, by a concise statement. Rule 5 of Order V says that the Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit which shall be noted in the summons. However, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit. It may be apt to notice here that Sub-section (3) of Section 20 of the Act was deleted in U.P. Civil Laws Amendment Act, 1972 with effect from September 20, 1972 and Rule 5 was inserted in Order XV of the CPC which deals with disposal of the suit at the first hearing. Explanation 1 to Rule 5 of Order XV defines

the expression "first hearing" to mean the date for filing written statement or for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned. But the said expression, as noticed above, is defined in Clause (1) of Explanation to sub-section (4) of Section 20. Section 38 of the U.P. Act says that the provisions of the said Act shall have effect notwithstanding anything inconsistent therewith contained in the Transfer of Property Act or in Code of Civil Procedure, therefore, the definition contained in Clause (a) of Explanation to sub-section (4) of Section 20 of the Act will prevail over the definition contained in Rule 5 of Order XV of the CPC as applicable to the State of U.P. It is too evident to miss that in contra-distinction to the "filing of written statement" mentioned in the definition of the said expression contained in Rule 5 of Order XV, the language employed in Clause (a) of the Explanation to Section 20(4) of the U.P. Act, refers to the "first date for any step or proceeding mentioned in the summons served on the defendant". In our view those words mean the first date when the Court proposes to apply its mind to identify the controversy the suit and that stage arises after the defendant is afforded an opportunity to file his written statement.

(emphasis added)

12. In para 12 of the judgment in Ashok Kumar (supra), considering the above observation and also relying on its earlier decisions in Sudershan Devi (supra), Advaita Nand (supra) and Siraj Ahmad Siddiqui (supra), the Court said:

Now adverting to the facts of the case on hand it has been noticed above that the suit was posted on May. 20.1980 for final disposal but that date cannot be treated as the first hearing of the suit as the Court granted time till July 25, 1980 to the tenant for filing written statement. On July 25, 1980 time was extended for filing written statement and the suit was again adjourned for final disposal to October 10, 1980. Inasmuch as after giving due opportunity to file written statement the suit was posted for final disposal on October 10, 1980 it was that date which ought to be considered as the date fixed by the Court for application of its mind to the facts of this case to identify the controversy between the parties and as such the date of first hearing of the suit.

13. It also held that once the date of "first hearing" is determined and thereafter the case is adjourned, the date of first hearing of the suit would not change on every adjournment of the suit for final hearing.

14. Thus the effective date of first hearing of the suit should be, when the Court proposed to apply its mind. Therefore it would be the date fixed earliest for final disposal/hearing and not adjourned for reasons attributable to the defendant-tenant. There are certain decisions of this Court also and I need not to burden this judgment giving in detail all such judgments except of making reference to some of those hereto i.e. Mohd. Salim alias Salim Uddin Vs. 4th Addl. District Judge, Allahabad and others, , Har Prasad v. Ist A.D.J., Etah, 2004 (56) ALR 460, Jai Ram Doss v. IInd Additional District Judge, Jhansi and

others, 2004(57) ALR 233, Chaturbhuj Pandey v. VIA. D.J., Kanpur and others, 2005 (60) ALR 697, Hira Lal and Others Vs. Ram Das, and Saadat Ali v. J.S.C.C., Moradabad and others, 2006 (2) ARC 208.

15. Considering the above authorities and exposition of law laid down therein, this Court in Civil Misc. Writ petition No. 19834 of 2003 (Sri Om Prakash v. Sri Anil Kumar) decided on 30.10.2012 held as to what shall be the first date of hearing and in para 19 of the judgment it said as under:

19. In the present case the written statement was filed on 25.7.1995 whereafter 24.8.1995 was fixed as the date for first hearing but on that date there was some holiday and the matter was taken up on 25.8.1995 which, in my view, should have been the first date of hearing. All deposits made thereon, or till that date are liable to be given due credit to find out whether there is compliance of requirement of Section 20(4) of Act, 1972 or not.

16. In the present case when I apply the aforesaid dictum, I find that deposit made on 4.8.1988 satisfy requirement of deposit made on the first date of hearing of the suit. In fact in appears that dispute raised by petitioner was regarding rate of rent and his entire, claim of non-compliance of Section 20(4) was founded on the ground that monthly rent was Rs. 240/- per month while the Courts below have determined monthly rent at Rs. 40/- per month and this is a: finding of fact in respect whereto nothing has been shown perverse or contrary to record.

17. I, therefore, find no reason to interfere with the impugned judgment. The writ petition therefore lacks merit. Dismissed. Interim order, if any, stands vacated.