

(2011) 11 AHC CK 0369

Allahabad High Court

Case No: Writ Petition No. 6859 (MS) of 2010

Onkar Nath Sarin and Others

APPELLANT

Vs

Sardar Singh Maggu and
Another

RESPONDENT

Date of Decision: Nov. 4, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 7
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 20(2), 20(4), 30(1)

Hon'ble Judges: Narayan Shukla, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Narayan Shukla, J.

Heard Mr. N.K. Seth, learned Senior Advocate assisted by Mr. Vijay Krishna, learned Counsel for the Petitioners as well as Mr. Subhash Vidyarthi, learned Counsel for the Respondent.

2. The Petitioners-Defendants, who are the successors of the original tenants have challenged the judgment and order dated 24th of September, 2009, passed by the Judge, Small Causes Court, Lucknow as well as judgment and order dated 6th of October, 2010, passed by the Additional District Judge, Lucknow.

3. By means of judgment and order dated 24th of September, 2009, passed by the Judge Small Causes Court, Lucknow suit for ejectment of the opposite parties has been decreed exparte, which has been upheld by means of order dated 6th of October, 2010, passed by the court of revision.

4. The dispute relates to the Shop No. 1, situate at Santosh Bhawan, Jagat Narayan Road, Lucknow. The Respondent-Plaintiff is the owner of the shop, which was

originally rented to the father of the Petitioners (Defendants). After his death the tenancy is said to be continued in favour of the Petitioners. In default of making payment of rent in January, 1984 the Respondent issued a notice dated 16.11.1984 for termination of their tenancy as well as payment of arrears of rent, which, according to the Respondent, was served to the Petitioners on 21.11.1984.

5. Though the service of notices upon the Petitioners has been disputed by them, but there is a concurrent finding of the trial court as well as the revisional court regarding service of notice upon them through the registered post alongwith acknowledgment receipt and the same has been certified by the post office concerned, therefore, there is no reason to doubt the service of notice. It is also the case of the Petitioners that the notice was served not upon whole of the Petitioners, if this fact is believed that does not affect the proceeding of the case as they are the co-tenants having the same interest in the property in dispute. Therefore, the notice served upon one of the co-tenants is deemed to be served upon all the tenants.

6. Upon perusal of the facts of the case, I find that at several times the suit instituted by the Petitioners has been dismissed in default or the Miscellaneous applications have been rejected for want of prosecution, but ultimately the Petitioners succeeded to get restored the suit, first time on 16th of March, 1993 and secondly when the suit was again dismissed in default, the Petitioners again succeeded to get it restored on 29th of April, 1994. The story of their deliberate attempt to linger on the proceedings did not come to an end at this stage as again on 29th of January, 1996 they failed to appear before the trial court, on account of which the trial court further proceeded with the case as *exparte*. Further on 8th of March, 1996 when the date was fixed for *exparte* judgment, just on the preceding date i.e. 7th of March, 1996, the Petitioners appeared and moved an application under Order 9 Rule, 7 of the Code of Civil Procedure, which was allowed and they were permitted to raise their arguments. However, again on 7th of November, 1996 an application was moved on their behalf seeking permission to cross examine the Respondent-Plaintiff, which was rejected by the trial court on 31st of March, 1998. Being aggrieved with which a revision being revision No. 194 of 1998 was preferred before the District Judge which also was rejected. Then they challenged the orders passed by the courts below before this Court through writ petition No. 1434 (MS) of 1999, which too was dismissed on 24th of August, 2007.

7. One fact is also necessary to mention here that in a writ petition No. 1434 (MS) of 1999 this Court on 27th of May, 1999 passed an interim order by directing the trial court to decide the application u/s 20(4) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act") and further provided that in the meantime the *exparte* judgment shall not be pronounced.

8. In light of the aforesaid interim order, it is stated on behalf of the Petitioners that the trial court was under obligation to dispose of the said application before

proceeding further with the case, but it has not done so. The said fact has been considered by this Court in the judgment and order dated 24th of August, 2007, passed in writ petition No. 1434 (MS) of 1999 and it has been observed that after moving the application u/s 20(4) of the Act, the Defendants did not participate in the proceeding and finally the court passed the order dated 24th of September, 2009 to proceed exparte, in light of which, at this stage, I do not feel it appropriate to have any discussion over that point.

9. The relevant question for consideration is that "whether the Petitioners followed the terms of Section 20(4) of the Act, or not?"

10. The learned Counsel for the Petitioners placed the order sheet of trial court before me, upon perusal of which I find that on 31st of May, 1993, the case was restored. On 2nd of July, 1993 the trial court passed the following order:

W.S. if any be filed by 7.9.1993 fixed 27.9.1993 for disposal.

11. On 22nd of July, 1993 the court passed the following order:

No W.S. Filed upon the last date.

12. Again in 27th of July, 1993 the next date was fixed on 4th of August, 1993 for filing W.S., but on that date the case was adjourned on the request made on behalf of Petitioners with the order that "let the copy be furnished. W.S. be filed by 18.8.93 fix 18.8.93 for final disposal."

13. On 18th of August, 1993 no proceeding took place. On 19th of August, 1993 the Petitioners' counsel appeared, but due to death of one Advocate he had gone to participate in his funeral. Court also did not proceed and fixed the date on 2nd of September, 1993 for W.S. and final disposal. On 2nd of September, 1993 the Petitioners' counsel appeared and moved an application u/s 20(4) of the Act, against which objection was invited. Thus, upon perusal of the order dated 19th of August, 1993, the date which was fixed for filing W.S. and final disposal, the Petitioners failed to file the W.S., rather on the next date i.e. on 2nd of September, 1993, they moved an application u/s 20(4) of the Act.

14. To appreciate the controversy, Section 20(4) of the Act is reproduced hereunder:

(4) In any suit for eviction on the ground mentioned in Clause (a) of Sub-section (2), if at the first hearing of the suit the tenant unconditionally pays or (tenders to the landlord or deposits in Court) the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under Sub-section (1) of Section 30, the Court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on

that ground:

Provided that nothing in this sub-section shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area.

15. In the explanation given in Section 20(4) itself the term "first hearing" has been explained in the following manner:

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

16. As is evident from the aforesaid provision the tenant has been protected from eviction if he unconditionally pays or tenders to the landlord or deposits in court the entire amount of rent and damages for use and occupation of the building due from him. The term "first hearing of the suit" has been discussed in several judgments, leading one of which is referred herein to understand the law correctly laid down on the point.

17. The purport of the aforesaid explanation has been examined and interpreted by the Hon'ble Supreme Court in the case of Sudershan Devi and Anr. v. Sushila Devi and Anr. reported in 1999 (2) Allahabad Rent Cases page 668. The relevant paragraphs 25, 27 and 28 are reproduced hereunder:

25. We then come to [Advaita Nand Vs. Judge, Small Cause Court, Meerut and Others,](#) There the summons were issued fixing 23.3.1993 for filing written statement and fixing 28.3.1993 for the first hearing. The plaint was not annexed to the summons. Therefore, the tenant filed IA on 28.3.1990 for copy of the hearing. The plaint was supplied on 28.3.90 itself and on that date the Court passed an order directing written statement to be filed in one month (i.e. by 27.4.1990) and fixing 24.7.1990 for final hearing the suit. The deposit was made on 2.5.1990. The High Court referred to the Explanation and held that the date fixed for filing written statement (i.e. 27.4.1990) was the date on which a "step" was to be taken in the suit and that the deposit made on 2.5.1990 was beyond time. But this Court disagreed, and following Siraj Ahmed Siddiqui's case, held that notwithstanding that the summons fixed one date for filing written statement and another latter date for final hearing, the date for "first hearing" was not the date fixed for filing the written statement but it was 24.7.1990. It would be noticed that 24.7.1990 was the revised date for first or final hearing and that was treated as the due date for deposit.

27. Advaita Anand then referred to the ruling of the Allahabad High Court in Sri Nath Aggarwal v. Srinath, 1983 (2) ARC 422, and pointed out that, that ruling was only partly approved in Siraj Ahmad Siddiqui's case to the extent of waiver of summons. But after stating so, this Court in Advaita Anand expressly overruled Srinath Aggarwal to the extent that, that ruling held that the date for filing of the written

statement was a step in the proceeding for purposes of the Explanation.

28. Thus both in Siraj Ahmad Siddiqui and Advaita Anand this Court construed Section 20(4) and the Explanation to say that the date of first hearing of the suit would not be the date fixed for filing the written statement but would be the date proposed for the hearing i.e. the date proposed for applying the Court's mind to determine the points in controversy and to frame issues, if necessary. These decisions are binding on us. Point 1 is decided accordingly.

18. Undoubtedly on 4th of August, 1993 the trial court fixed the next date on 18th of August, 1993 for W.S. and final disposal, but since the learned Counsel for the Petitioners" neither appeared before the court nor filed any W.S., the court further postponed the date for filing the W.S. and for final disposal, but the postponement of date for filing of W.S. and final disposal does not mean that the court did not propose to apply his mind on 19th of August, 1993, rather by fixing the said date for disposal it can be said that definitely the court proposed the said date for application of his mind, but since the Petitioners" counsel did not appear, it postponed the said very date. Thus, the first date of hearing was 19th of August, 1993, on which date no application u/s 20(4) of the Act was filed before the court. Therefore, the Petitioners by filing the said application on the subsequent date are not entitled to seek any protection from eviction. The default from payment of rent after 1996 is admitted. Thus, after considering the facts of the case in light of the law laid down by the Hon"ble Supreme Court, I do not find error in the orders of the court below. Therefore, no interference is warranted. The writ petition is dismissed.