

Mukesh Gupta Vs Vidit Kalsi

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: May 29, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 10 Rule 2, Order 14 Rule 1, Order 14 Rule 1(5), Order 14 Rule 3, Order 20 Rule 4
Provincial Small Cause Courts Act, 1887 – Section 17(1)

Citation: (2014) 8 ADJ 733 : (2014) 6 ALJ 540

Hon'ble Judges: Shabihul Hasnain, J

Bench: Single Bench

Advocate: Ratan Kant Sharma, Advocate for the Appellant; Arif Khan, Aslam Khan and B.K. Saksena, Advocate for the Respondent

Judgement

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Shabihul Hasnain, J.

Heard Sri Ratan Kant Sharma, learned counsel for the revisionist and Sri Mohd. Arif Khan, Sr. Advocate, assisted

by Sri Mohd. Aslam Khan as well as Sri B.K. Saksena, for the respondent. This is defendant's revision arising out of the judgment and order dated

11.3.2013 passed by Special Judge (P.C. Act), Lucknow, whereby the suit filed by the respondent-plaintiff for arrears of rent, damages and

ejectment, was decreed.

2. The case has been argued by the respected counsel at great length and it consumed almost half of the day of the Court.

3. In this revision, although number of grounds have been taken to challenge the impugned order dated 11.3.2013 passed in S.C.C. case No. 94

of 2010, but the main emphasis was laid on the fact that the Court below did not frame point of determination or issues and decided the case. It

has been argued and prayed that the suit be dismissed on the ground of it being violative of Order XX Rule 4 of the C.P.C.

4. Before coming to the provision of Order XX Rule 4 of the C.P.C. and analyzing the same, it would be necessary to narrate the facts of the case

as summarily as possible, which is given below:

5. Briefly stated the case of the respondent-plaintiff before the trial Court was that he is the owner of House No. 967/11 HIG, Indira Nagar,

Lucknow on the basis of sale-deed executed by Avas evam Vikas Parishad in his favour. The revisionist-defendant is the tenant of the said

premises since September, 2001 @ Rs. 4500/- per month, which falls due on 7th of each month as per agreement of rent, which continued up to

December, 2005. Since January, 2006 the rent was increased to Rs. 5500/- per month. It has been averred that after April, 2006 neither rent has

been paid nor water tax and other payable has been deposited by the respondent. In order to harass the plaintiff, the defendant had instituted a suit

against the plaintiff seeking a decree for injunction restraining the plaintiff from dispossessing the defendant from the property forcibly. Thus, the

plaintiff was forced to send a notice of demand and ejection, which was served on the defendant on 27.7.2010, whereby the defendant was

required to pay entire arrears of rent(r) Rs. 5500/- w.e.f. 1.4.2006 and to deliver the vacant possession of the premises to the plaintiff. Since the

defendant did not comply with the same in spite of service, hence the suit was filed by the plaintiff for ejectment and arrears of rent and damages.

6. The defendant filed his written statement in his defence, against which the application filed by the plaintiff was allowed and defence of the

revisionist was struck off vide order dated 21.12.2011, but he did not prefer any revision nor challenged the order anywhere. That order has

attained finality. In the present revision, even this ground has not been taken.

7. Now coming back to the main objection/argument of the revisionist, I find that Order XX Rules 4 & 5 of the C.P.C. provides as under:

4. Judgment of Small Cause Courts.--(1) Judgments of a Court of Small Causes need not contain more than the points for determination and the

decision thereon.

(2) Judgments of other Courts.--Judgment of other Courts shall contain a concise statement of the case, the points for determination, the decision

thereon, and the reason for such decision.

5. Court to state its decision on each issue.--In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons

therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

8. Mr. Ratan Kant Sharma has heavily relied upon the case of Akhil Kumar Jain Vs. Smt. Shard Adevi and Others, , arising out of Civil Revision

No. 184 of 2011 decided on April 21, 2011, by Hon"ble Single Judge of Allahabad High Court. In para-7 of this judgment, his Lordship has

opined:

In view of the above, I am of the view that the issue should be framed before proceeding with the case and the view of the Court below that it is

not mandatory to frame issues in the SCC case is not correct. In the result, the revision is allowed and the order dated 28th March, 2011 is set

aside. The Court below is directed to frame the issue and proceed accordingly.

9. In the aforementioned judgment, his Lordship has relied upon the judgment of the Apex Court in the case of Rameshwar Dayal Vs. Banda

(Dead) through his Lrs. and Another, . Since the aforesaid case has been cited later on in number of cases, by the High Court. It will be necessary

to examine the case of Rameshwar Dayal v. Banda (dead) through his Legal Representatives and another (supra), with deeper interest. The case

has been decided by Hon"ble Supreme Court, arising out of Civil Appeal No. 140 of 1993 on 13th January, 1993. To understand the ratio of the

judgment, it will be expedient to quote small portion of the judgment as given in para-16 to 20 of the report, as under :

16. The next question is whether the decision of the Small Cause Court is binding on the respondent-Banda. In order to be binding, the order of

the Court disposing of the suit must amount to a decree. Section 2(2) of Code of Civil Procedure (the Code) defines decree as follows:

(2) "Decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the right of

the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final.

17. The definition of "Order" given in Section 2(14) of the Code is as follows:

(14) "Order" means the formal expression of any decision of a Civil Court which is not a decree.

However, neither the order nor the decree should be confused with judgment" which is defined by Section 2(9) of the Code as ""the statement

given by the judge of the grounds of a decree or order"". The definitions of decree, order and judgment given in the Code shows that decree or

order as the case may be, can come into existence only if there is an adjudication on the relevant issues, which conclusively determines the right of

the parties.

18. We have already pointed out earlier that the Small Cause Court has not even noticed the matter in controversy between the appellant and the

respondent, and consequently, there has been no adjudication or decision on the said matters. There is thus no "formal expression of adjudication

conclusively determining the right of the parties with regard to the matters in controversy in the suit.

19. It must be remembered in this connection that Rules 4(1) and 5 of Order 20 of the Code are applicable to the judgments of the Small Cause

Court. The Rules are as follows:

4. Judgments of Small Cause Courts.--(1) judgments of a Court of Small Causes need not contain more than the points for determination and the

decision thereon.

(2) Judgments of other Courts.--Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision

thereon and the reasons for such decision.

(5) Court to state its decision on each issue.--In suits in which issues have been framed, the Court shall state its finding or decision, with the

reasons therefor, upon each separate issue, unless the finding upon any one or more of the issue is sufficient for the decision of the suit.

Points for determination"" referred to in Rule 4(1) are obviously nothing but Issues" contemplated by Rules 1 and 3 of Order 14 of the Code. The

present decision of the Small Cause Court which has not even stated the points for determination and given finding thereon, is obviously not a

judgment within the meaning of Section 2(9) of the code. Since the matters were in controversy between the parties, it is only a judgment which

could have given rise to a decree. The so-called decision on the Small Cause Court, therefore, does not amount to a decree within the meaning of

Section 2(2) read with Section 2(9) and Rule 4(1) and 5 of Order 20 of the Code.

20. It is not disputed that in view of the provisions of Section 17(1) of the provincial Small Cause Court Act, the Code is applicable to Small

Cause Court except where it is otherwise provided either by the Code or the said Act. Apart from Rules 4(1) and 5 of Order 20 of the Code, on

this count also, it was obligatory for the Small Cause Court, in the present case, to state the point for determination and give its finding or decision

on each of the said points. Hence the present decision of the Small Cause Court is not a judgment and a decree in the eye of law and is, therefore,

non est as far as the respondent is concerned.

10. This Court is in respectful agreement with the law laid down in Rameshwar Dayal v. Banda (dead) through his Legal Representatives and

another (supra), but wants to add here that the circumstances were different in Rameshwar Dayal's case, where judgment under challenge

contained in two paragraphs only; one containing prayer and the next containing operative part of the judgment in few lines, in which there was no

reference of written statement or to the question of title to the immovable suit property incidentally involved. Thus the Court found that there was

no formal expression of adjudication. In that situation, the Court has laid emphasis that judge ought to have decided the matter consciously and not

cursorily. Even in the light of the Rameshwar Dayal's case, the judgment and order passed by S.C.C. Judge, in the present case, does not deserve

any interference and it qualifies the test of Rameshwar Dayal's case (supra).

11. Sri Ratan Kant Sharma has also relied upon the judgment of this Court in the matter of Pratap Raj Singh v. Shiv Nath Khanna, decided by

Hon"ble Single Judge at Lucknow in Civil Revision No. 31 of 1982 decided on September 29, 1983. He emphasizes that even where there is ex

parte decree, it has been held by the Courts that Judge, SCC Court, must define points of determination. Para-2 of the judgment lays down as

under:

In order to resolve this controversy, reference has to be made to certain decisions of this Court. In Ram Nath Rulsi Ram v. Salig Ram, AIR 933

All 399, this Court observed that an order passed by the Court of Small Causes is amendable to the jurisdiction of higher Court under Section 25

of the U.P. Small Cause Courts Act in order to find out whether there has been a decision in accordance with law, it is necessary for the revising

Court to be satisfied that the judge, Small Cause Court has come to the decision judicially. This Court held that if the judge did not determine all

the issues and there is nothing on record to indicate that the Judge has considered all issues, there is no proper trial and the revising Court has the

jurisdiction to interfere with the judgment and decree in exercise of its revisional jurisdiction. Reliance was placed by this Court on earlier decision

of this Court in which it was held that the Judge Small Cause Court must indicate in his judgment that he has applied his judicious mind to the case.

In the instant case, the trial Court has only referred to the evidence of the plaintiff and has not discussed how the plaintiffs case is proved by the

evidence so led. In Krishna Fine Art Printers Vs. Ram Chandra Sharma, , this again reiterated the view taken in Ram Nath Tulsi Ram v. Salig Ram

(Supra). On behalf of the opposite parties, a number of decisions rendered by other High Courts were cited which had taken rather a strict view of

the provisions of Order XX, Rule 4 of the Code of Civil Procedure. Having regard to the view expressed by this Court in the aforesaid decisions,

it is obvious that the decision rendered by the trial Court is incorrect as it does not give a reasoned judgment and does not comply with the

requirements of Order XX Rule 4 of the Code of Civil Procedure.

12. Yet another case of Abdul Wadood Vs. XIVth Additional District Judge and Others, , arising out of Civil Misc. Writ Petition No. 27964 of

1998 decided on July 18, 2002 has been placed. He says that facts of this case are almost identical to that of the present case. Even where

defence has been struck off, provision of Order XX rule 4 and 5 ought to be complied with. Para-3 of the judgment is quoted below for ready

reference:

Admittedly, since the petitioner has not complied with the provisions of Rule 5, Order XV of Code of Civil Procedure, their defence is struck off.

The grievance of the petitioner as submitted by the petitioner is that even in the cases where defence has been struck off, the petitioner cannot be

denied the opportunity to cross-examine the witnesses led by plaintiff-landlord and also cannot be denied the opportunity to argue the matter by

striking off the witnesses. The defence under Rule 5, Order XV of Code of Civil Procedure only restricts the tenant by adducing any evidence.

From the perusal of the order after trial Court as well as the revisional Court, it is clear that the petitioner has not been afforded opportunity to

cross-examine the evidence nor the petitioner has been heard in the matter of defence without adducing any evidence against the arguments

advanced on behalf of the plaintiff-landlord.

13. Similar view has been expressed by Hon"ble Single Judge of the Allahabad High Court, in the matter of Commissioner of Income Tax Vs.

Surendra Singh Pahwa and others, . In rather a lengthy paragraph No. 5 of this judgment, the law laid down in the case of Rameshwar Dayal v.

Banda (dead) through his Legal Representatives and another (supra), has been re-affirmed in a more lucid manner.

14. Mohd. Arif Khan, on the other hand, has stressed that the judgment of the SCC Court, is well defined and reasoned order. The matter has

been dealt with from every possible angle. The arguments advanced by the parties, have been answered in great detail on the basis of material

available on record. Since the defence was struck off, hence no written statement was filed and there was no occasion to formulate the points for

determination as is required under Order 14 Rule 1(5), which is quoted below:

1(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statement, if any, and after examination under rule 2 of

Order X and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and

shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

15. In para-18 of Rameshwar Dayal's case (supra) emphasis has been laid down on the cursory approach of S.C.C. Court. In the present case

controversy between the appellant and the respondents has been clearly defined and answered satisfactory. It cannot be said that the present

judgment can fall in the category of the case mentioned in para-18 (supra). In the present case, the right between the parties has been conclusively

determined.

16. In the case of Atar Singh and others Vs. District Judge, Jhansi and others, , his Lordship in para-10 of the report, laid down as under:

The revisional Court may set aside the decision of a Judge, Small Causes Court which is not in accordance with the provisions of O.XX R. 4,

C.P.C. but such judgment cannot be said to be without jurisdiction and a nullity merely because the judgment is not in accordance with the

provisions of O.XX R. 4, C.P.C. There is a distinction between a decree which is a nullity and a decree which is not according to law. A decree is

nullity when the Court lacks inherent jurisdiction to pass a decree or it is against a dead person or passed against some substantive provisions of

law which prohibits passing of a decree but a decree which is not according to law cannot itself be treated as a nullity. This is clear from the

decision of the Supreme Court in Kiran Singh and Others Vs. Chaman Paswan and Others, . In Seth Hiralal Patni Vs. Sri Kali Nath, , their

Lordships of the Supreme Court observed (at p. 200):

The validity of a decree can be challenged in execution proceedings only on the ground that the Court which passed the decree was lacking in

inherent jurisdiction in the sense that it could not have ceased of the case because the subject-matter was wholly foreign to its jurisdiction or that

the defendant was dead at the time the suit had been instituted, or decree passed, or some such other ground which could have the effect of

rendering the Court entirely lacking in jurisdiction in respect of the subject-matter of the suit or over the parties to it. But in the instant case there

was no such inherent lack of jurisdiction.

17. Thus this Court finds that the decree in the present case, cannot be termed as nullity as has been argued by the opposite parties.

18. In Sayeda Akhtar Vs. Abdul Ahad, , Hon"ble Supreme Court in para-10 of the judgment has observed thus:

Furthermore, as indicated herein before, the plaintiff sought for a decree for eviction against the defendant also on the ground of commission of

nuisance. It is true that the trial Court did not frame any specific issue therefor but a bare perusal of the judgment passed by the learned trial Court

will clearly demonstrate that the parties were aware thereabout and not only adduced evidence in that behalf but also advanced their respective

submissions in relation thereto. The Court of appeal formulated two specific questions for determination of the appeal, one of them being:

Whether the appellant had created nuisance in the premises in question?

It was held:

On the point of nuisance, though, no issue was framed by the lower Court, yet it is clear on the basis of relevant pleadings and evidence produced

that the parties were well familiar with the existence of the said issues. Under the circumstances, in face of the want of framing of issues, prejudice

was not caused nor were the proceedings vitiated, it is not proper to remand the case back in view of the decision of the Supreme Court in

Nedunuri Kameswaramma v. Sampati Subba Rao.

(emphasis supplied)

19. In Kannan (dead) by Lrs. and Others Vs. V.S. Pandurangam (dead) by Lrs. and Others, , their Lordship in para-9, 10 and 11 laid down as

follows:

9. Learned counsel for the appellant has shown as several decisions of this Court where the judgments of the High Court in Second Appeal were

set aside on the ground that no substantial question of law had been framed by the High Court as required by Second 100(4) CPC. In our opinion

these decisions cannot be said to have laid down any absolute proposition of law that whenever a second appeal is decided by the High Court

without formulating a substantial question of law that judgment must necessarily be set aside. In our opinion, the judgment of the High Court should

not be set aside on this ground alone if no prejudice had been caused to the appellant before us on this account.

10. In the present case both the parties knew that the question involved was whether the defendant (appellant) in this case had been able to prove

his title by adverse possession. Hence the non framing of a substantial question of law in this case did not prejudice the appellant at all before the

High Court.

11. By a series of decisions of this Court it has been settled that omission to frame an issue as required under Order XIV, Rule 1 CPC would not

vitate the trial of a suit where the parties went to trial fully knowing the rival case and led evidence in support of their respective contentions and to

further contentions of the other side vide Nedunuri Kameswaramma Vs. Sampati Subba Rao, .

20. In the matter of G. Amalorpavam and Others Vs. R.C. Diocese of Madurai and Others, of the report, their Lordship has ruled as under:

The question whether in a particular case there has been substantial compliance with the provisions of Order 41 Rule 31 CPC has to be

determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it

wholly void, and may be ignored if there has been substantial compliance with it and the second appellate Court is in a position to ascertain the

findings of the lower appellate Court. It is no doubt desirable that the appellate Court should comply with all the requirements of Order 41 Rule 31

CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not

thereby suffered, that would be sufficient. Where the appellate Court has considered the entire evidence on record and discussed the same in

detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate Court there is

substantial compliance with the provisions of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of

determination. Where there is an honest endeavour on the part of the lower appellate Court to consider the controversy between the parties and

there is proper appraisal of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on

both sides is clearly manifest by the perusal of the judgment of the lower appellate Court, it would be a valid judgment even though it does not

contain the points for determination. The object of the rule in making it incumbent upon the appellate Court to frame points for determination and to

cite reasons for decision is to focus attention of the Court on the rival contentions which arise for determination and also to provide litigant parties

opportunity in understanding the ground upon which the decision is founded with a view to enable them to know basis of the decision and if so

considered appropriate and so advised to avail the remedy of second appeal conferred by Section 100 CPC.

21. In the matter of Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF), of the judgment, it has been held as under:

18. In view of our discussions made herein above, we are, therefore, unable to agree with the learned Senior Counsel for the appellant Mr. Gupta

that the High Court was not justified in holding that the findings of the first appellate Court were in compliance with Order 41 CPC. That apart, the

learned Senior Counsel for the appellant Mr. Gupta could not satisfy us or even point out the specific issue, which in his opinion, had been left to

be addressed by the first appellate Court. In view of the discussions made, herein above, we are, therefore, of the view that no ground was made

out by the appellant to set aside the judgment of the High Court on the question whether the judgment of the first appellate Court was liable to be

set aside for non-compliance with the mandatory provisions of Order 41 CPC.

22. The controversy giving rise to filing of the S.C.C. suit by the respondent-plaintiff for arrears of rent, damages and ejectment of the house in

dispute rests upon the facts that the respondent-plaintiff in this case is the owner on the basis of the registered sale-deed of the house in question,

which was registered on 25.3.2003, copy of which has been filed in the suit, alleging that the the defendant-revisionist was the tenant from

September, 2001 @ Rs. 4500/-, which fell due on 7th of each month. It was agreed between the parties that the rent of the house in question up

to March, 2005 will be Rs. 4500/- and thereafter rent will be enhanced as Rs. 5500/-. Since 2005, the defendant did not pay the rent, therefore, a

notice dated 17.7.2010 was sent to the defendant, which was duly served on him. Even then neither the rent was deposited/paid nor the defendant

replied to the notice. More so, after institution of the suit, when the defendant did not deposit the arrears of rent on the first date of his appearance,

therefore, vide order dated 21.12.2011, the defence of the defendant was struck off. It has been claimed by the plaintiff that there is arrears of rent

pending with the defendant since the year 2006.

23. I have thoroughly scrutinized the judgment of the S.C.C. Court decreeing the suit for ejectment and payment of arrears of rent and damages.

As said above, when the defendant did not deposit the arrears of rent on the first date of his appearance and subsequently also, therefore, vide

order dated 21.12.2011, the defence of the defendant was struck off. In support of his case, plaintiff Vidit Kalsi examined himself as P.W. 1. He

has filed documentary evidence, including paper No. c-52/1 original sale-deed of the house in question, in support of his case. He was cross-

examined and supported the case as set up in the plaint.

24. On the basis of the evidence on record and the statement of the plaintiff in his cross-examination, it has been found established by the Judge,

SCC that firstly the father of the plaintiff namely Roshan Lal Kalsi was the allottee of the house in question from U.P. Avas and Vikas Parishad and

the defendant was the tenant in the house in question and it is not in dispute that since the defendant defaulted the payment of rent, it was Rs.

5500/- per month. Therefore, the sole controversy involved in the suit was that the defendant did not pay the rent and he also defaulted in making

the payment thereof on the very first date of his appearance in the suit. The S.C.C Court found that on the basis of the sale-deed paper No. 52

C/2, the name of the plaintiff Vidit Kalsi has been entered in the record of Avas Evam Vikas Parishad and he is owner of the house in question.

Plaintiff has succeeded in proving that the notice has been sufficiently served on the defendant and the defendant did not reply thereto and also has

not paid the rent. Even the defendant did not pay the agreed rent on the first date of his appearance fixed in the suit. Thus, the defendant is liable to

be ejected from the house in question with costs.

25. In Atar Singh and others v. District Judge, Jhansi and others (supra), it has been clearly laid down that there is a distinction between a decree

which is a nullity and a decree which is not according to law. A decree is nullity when the Court lacks inherent jurisdiction to pass a decree or it is

against a dead person or passed against some substantive provisions of law which prohibits passing of a decree. While relying upon the decision in

Kiran Singh and Others Vs. Chaman Paswan and Others, , as well as Seth Hiralal Patni Vs. Sri Kali Nath, , the Court further laid emphasis on the

observations of Hon"ble Supreme Court that the validity of a decree can be challenged in execution proceedings only on the ground that the Court

which passed the decree was lacking in inherent jurisdiction in the sense that it could not have ceased of the case because the subject-matter was

wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted, or decree passed, or some such other

ground which could have the effect of rendering the Court entirely lacking in jurisdiction in respect of the subject-matter of the suit or over the

parties to it.

26. This Court finds that in the instant case there was no such inherent lack of jurisdiction. Therefore, the decree in the present case, cannot be

termed as nullity as has been argued by the opposite parties.

27. One more aspect of the case is necessary to be pointed out at this stage, lest it escapes out attention later.

28. It has to be kept in mind that this revision has come up against the order passed under the Provisional Small Cause Courts Act and the

yardstick are slightly different while deciding the revision?

29. To elucidate the position, it will also be interesting to note that the present Small Causes Courts Act No. 9 of 1987 was enacted with the

primary object to provide for the needy people justice within the minimum possible period and definitely without the delay known in the

administration of justice. The procedure of summary trial of suits by Small Cause Courts after doing away with the several provisions of the Code

of Civil Procedure has been adopted accordingly. It will be noted that later amendment affected in the said Act, were made to make the Act as

simple in procedure and administrative matters as possible in order to provide for the complete and efficient working of the Small Cause Courts

under the Act. In Abdul Majid Vs. Bedyadhar Saran Das, , dealing with the matter of Small Cause suit, laid down emphasis on the speedy justice

in the matter as under:

.....If there is any value in the work of the Small Cause Court, it is that speedy justice is done and the parties get an early decision on the matter in

dispute between them.

30. In the present case, the plaintiff sought for a decree for ejectment on the ground of non payment of rent as well as arrears of rent. It is true that

the trial Court did not frame any specific issue, but on perusal of the judgment of the Court below it will clearly demonstrate that the parties were

aware of the controversy involved. The plaintiff in this case was cross-examined. Since the defendant has not deposited the rent on the first date of

his appearance before the Court, his defence was struck of, and he was allowed to argue the matter. It appears that no prejudice has been caused

since the sole question of payment of rent, deposit of rent on the first date of his appearance and ejectment from the house in question, has

sufficiently been dealt with on the basis of the evidence oral and documentary on record. In the present face of the situation, in my opinion, the

judgment and decree passed by the S.C.C. Court cannot be set aside on this ground alone as no prejudice appears to have been caused to the

appellant in the matter. The said omission, if any, would not vitiate the trial of the suit where the parties appeared in the case fully knowing the rival

claims and defendant appeared in the case, filed written statement, although his defence was struck off, as said above and also cross-examined the

plaintiff and parties advanced their arguments in the suit filed for arrears of rent, damages and ejectment, which has rightly been decreed against the

defendant.

31. In view of the above discussions, this Court is of the opinion that that there is nothing on record to upset the findings of fact recorded by the

Court below. Thus, this revision has no force and is liable to be rejected. The S.C.C. Revision is rejected.