
(1995) 04 SC CK 0027

In the Supreme Court Of India

Case No : Civil Appeal No. 4166 of 1955 (Arising out of SLP (C) No. 13838/94)

Advaita Nand

APPELLANT

Vs

Judge, Small Cause Court, Meerut and Others

RESPONDENT

Date of Decision : 04-04-1995

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(4)

Citation : (1995) 5 JT 573 : (1995) 2 SCALE 610 : (1995) 3 SCC 407 : (1995) 2 UJ 139

Hon'ble Judges : Sujata V. Manohar, J; S. C. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.C. Agrawal, J.—Leave granted.

2. This appeal by the tenant arises out of a suit for eviction filed by respondent No. 3 on the ground of default in payment of rent under the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as 'the Act'). The said suit was filed in the court of Judge, Small Causes Court, Meerut on January 9, 1990. Summons were issued fixing March 20, 1990 as the date for filing the written statement and March 28, 1990 was the date fixed for final hearing of the case in the court. It appears that the copy of the plaint was not annexed with the summons served on the appellant. The appellant, therefore, moved an application before the Court on March 28, 1990 praying for supply of copy of the plaint. The said copy was supplied to the appellant only on March 28, 1990 and on that day the court passed an order directing that the written statement be filed within one month and July 24, 1990 was fixed as the date for final hearing of the case. On May 2, 1990 the appellant deposited the entire amount of rent that was due and claimed protection from eviction u/s 20(4) of the Act. The Judge, Small Causes Court, however, held that the appellant was not entitled to the benefit of Section 20(4) of the Act because

the date of first hearing was April 27, 1990 and the arrears of rent were deposited on May 2, 1990 i.e. after April 27, 1990. By his judgment dated October 14, 1993, the Judge, Small Causes Court, therefore, decreed the suit and passed an order for ejection against the appellant. The revision petition filed by the appellant against the said decree was dismissed by the Additional District and Sessions Judge, Meerut by judgment dated May 24, 1994 and the writ petition filed by the appellant was dismissed by the Allahabad High Court by judgment dated July 7, 1994. Hence this appeal.

3. The short question which falls for consideration is whether the appellant is entitled to avail the benefit of Section 20(4) of the Act. The said provision, as amended by U.P. Act 28 of 1976, provides as follows:

(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 :

XX XX XX XX Explanation. - For the purposes of this Sub-section -

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

4. The Explanation was inserted in Section 20(4) by the Amendment Act of 1976. Dealing with the provisions of Section 20(4), as they stood prior to the amendment of 1976, this Court in Ved Prakash Wadhwa Vs. Vishwa Mohan, , construing the expression "first hearing of the suit", has held :

We may however add that the expression "at the first hearing of the suit" is also to be found in Order 10, Rule 1, Order 14, Rule 1(5) and Order 15, Rule 1 of the CPC. These provisions indicate that "the first hearing of the suit" can never be earlier than the date fixed for the preliminary examination of the parties (Order 10, Rule 1) and the settlement of issues [Order 14, Rule 1(5)].

5. The provisions of Section 20(4), as amended by the Amendment Act of 1976, whereby the Explanation was inserted in Section 20(4), were considered by this Court in Siraj Ahmad Siddiqui Vs. Shri Prem Nath Kapoor, , wherein it has been held :

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 proceeding 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.

6. Shri Satish Chandra, the learned senior counsel appearing for the respondents, has, however, urged that the Explanation that was inserted in Section 20(4) by the Amendment Act of 1976 has not been given due consideration by this Court in *Siraj Ahmad Siddiqui* (supra). The learned Counsel has invited our attention to the Full Bench decision of the Allahabad High Court in *Sia Ram v. District Judge, Kheri and Ors.* 1984 (1) All. R C 410, wherein after referring to the decision of this Court in *Ved Prakash Wadhwa* (supra) it was held that the law laid down in the said case has been changed by the legislature by inserting the Explanation in Section 20(4) and as a result it is only the date mentioned in the summons and not any adjourned date that should be treated as the date of first hearing.

7. We are unable to uphold the said contention. We find that in *Siraj Ahmad Siddiqui* (supra) this Court took note of the Explanation and has observed that it was not possible to construe the words "first date for any step or proceeding", which were contained in the Explanation, 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 it is permissible under the CPC for the defendant to file a written statement even thereafter but prior to the first hearing when the court takes up the case. It cannot, therefore, be said that the Explanation to Section 20(4) was not given due consideration by this Court in *Siraj Ahmad Siddiqui* (supra). The said decision shows that even after the insertion of the Explanation the expression "first hearing of the suit" in Section 20(4) means 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.

8. Shri Satish Chandra sought to distinguish the decision in *Siraj Ahmad Siddiqui* (supra) on the ground that in that case the court was dealing with an ordinary civil suit governed by the provisions of the CPC requiring framing of issues

whereas in the present case the suit was filed before the Judge, Small Causes Court and issues are not required to be framed for the trial of such a suit. This difference in procedure, in our opinion, is of no consequence. Even though issues are not required to be framed and a date is fixed for the purpose of final hearing of the suit filed before the Small Causes Court but for the purpose of such suit also first hearing of the suit would mean the date on which the court proposes to apply its mind i.e. the date fixed for final hearing of the suit and it cannot be the date fixed for filing of the written statement.

9. Applying the law laid down in *Siraj Ahmad Siddiqui (supra)* it must be held that the first date of hearing of the suit was July 24, 1990 which was the date for final hearing fixed on March 28, 1990 and the courts below have erred in proceeding on the basis that the date of first hearing was April 27, 1990. Since the arrears of rent were deposited on May 2, 1990 before July 24, 1990, the date of first hearing, the appellant was entitled to avail the protection of Section 20(4) of the Act.

10. The High Court has placed reliance on the decision of this Court in *Sri Nath Agrawal Vs. Sri Nath*, , on the view that the said decision has been affirmed by this Court. In *Sri Nath Agarwal (supra)* the defendant was allowed one month's further time for filing written statement and the amount of rent was deposited after the expiry of the time allowed for filing the written statement and it was held that the defendant could not avail the benefit of Section 20(4). In taking this view the High Court has not correctly appreciated the decision of this Court. After referring to the judgment in *Sri Nath Agarwal (supra)* this Court has observed :

We are in agreement with the ratio of the judgment insofar as it says that when time is fixed by the court for the filing of the written statement and the hearing, these dates bind the defendant, regardless of the service of the summons, and compliance with the provisions of Section 20(4) of the said Act must be judged upon the basis of the dates so fixed.

11. The aforesaid observations would show that this Court has agreed with the ratio of the judgment in *Sri Nath Agarwal (supra)* only to the extent that when time is fixed by the court for the filing of the written statement and the hearing, these dates bind the defendant, regardless of the service of the summons and that the compliance with the provisions of Section 20(4) of the Act must be judged upon the basis of the dates so fixed. The said observations cannot be construed to mean that the court has approved the said decision insofar it holds that compliance with the provisions of Section 20(4) of the Act was required to be made within the period of one month allowed by the court for the filing of the written statement.

12. We are, therefore, unable to agree with the High Court that the appellant was not entitled to the protection of Section 20(4) of the Act. In our opinion, the protection of the said section must be extended to the appellant and if so

extended the decree for eviction could not be passed against him.

13. The appeal is, therefore, allowed, the judgment of the High Court dated July 7, 1994 is set aside and the Writ Petition No. 20672 of 1994 filed by the appellant is allowed and as a result the judgment and decree dated October 14, 1993 passed by the Judge, Small Causes Court, decreeing the suit for eviction as well as the judgment dated May 30, 1994 passed by the Additional District Judge, Meerut are set aside. No order as to costs.