

(2011) 12 AHC CK 0459

In the Allahabad High Court

Case No : Civil Revision No. 378 of 1997

Ajay Krishna Upadhyaya and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Presidency Small Cause Courts Act, 1882 — Section 25
Transfer of Property Act, 1882 — Section 106

Citation : (2011) 12 AHC CK 0459

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Prakash Krishna, J.—The present revision has been filed u/s 25 of the Small Cause Courts Act and is directed against the judgment and decree dated 3rd September, 1997 passed by the Additional District Judge (Special Judge), Allahabad exercising the power of Judge Small Cause Court whereby the SCC Suit No. 14 of 1995 has been dismissed.

2. The plaintiffs-landlords instituted SCC Suit No. 14 of 1995 against defendants-opposite parties herein for recovery of arrears of rent, damages and ejectment of the defendants from premises in question on the ground that premises in question was let out to the defendants on monthly rent of Rs.230/-initially. The rate of rent was enhanced to Rs.2900/-per month by the Prescribed Authority under the provisions of U.P. Act No. 13 of 1972. The tenancy has been terminated by serving a combined notice under Sections 80 of the C.P.C. and 106 of the Transfer of Property Act.

3. The suit was contested by the defendants. Relationship of landlord and tenant between the parties was not disputed. In the written statement, fact that the rent was enhanced to Rs.2,900/-was also admitted. A plea was that part of arrears of rent is time barred was also raised. The benefit of Section 20(4) of the

U.P. Act No. 13 of 1972 was claimed.

4. Parties led evidence in support of their respective cases. Issues were struck by the trial court and the suit was dismissed primarily on the ground that the defendants have deposited the requisite amount as required u/s 20(4) of the U.P. Act No. 13 of 1972. Consequently, the decree for eviction was denied.

5. Challenging the aforesaid judgment and decree, the present revision u/s 25 of the Provincial of Small Cause Courts Act has been filed.

6. Ms. Vatsala, Advocate holding brief of Mr. Siddarth, learned counsel for the applicants submits that there is an error in the order under revision. The rate of rent was admittedly Rs.2,900/-. In view of Section 2(1)(g) of the U.P. Act No. 13 of 1972, the building in question is exempted from operation of the U.P. Act No. 13 of 1972 and therefore benefit of Section 20(4) could not have been extended to the defendants-tenants.

7. In reply, learned standing counsel for the State of U.P., on the other hand, submits that initially rate of rent was Rs.230/-per month, therefore, provisions of U.P. Act No. 13 of 2 1972 will apply, notwithstanding the fact that it was subsequently enhanced to Rs.2,900/-per month.

8. Considered the respective submissions of the learned counsel for the parties and perused the record.

9. Only small controversy as to whether the provisions of U.P. Act No. 13 of 1972 are applicable with the building in question or not is involved in the present revision. Section 2 of the Act provides exemption to certain buildings. Its clause (g) reads as follows:

any building whose monthly rent exceeds two thousand rupees.

10. The aforesaid clause (g) was inserted by U.P. Act No. 5 of 1995 w.e.f. 26th September, 1994. The suit giving rise to the present revision was instituted in the year 1995 i.e. after the aforesaid amendment. In view of the admitted fact that on the date when the suit was instituted, rate of rent was Rs.2,900/-, the building in question will be exempt from operation of the U.P. Act No. 13 of 1972. This being so, the benefit as envisaged u/s 20(4) of the Act could not have been given to the defendants-tenants. The court below thus, committed an error of law in extending the benefit of Section 20(4) of the Act. The said provision would not be available to the tenant, as the Act is not applicable to the building in question. The judgment of the court below therefore, cannot be allowed to stand.

11. There is another error in the order of the court below. The court below has dismissed the suit in its entirety. If the court below was extending the benefit of Section 20(4) of the Act at least, the decree for recovery of arrears of rent, damages etc. should have been passed.

12. In the result, the revision succeeds and is allowed.

13. The suit stands decreed with costs. At the end, learned standing counsel prayed that some reasonable time be given to vacate the disputed accommodation to which learned counsel for the applicants has no objection.

14. The defendants-tenants are granted time upto 30th June, 2012 to vacate the disputed accommodation. They shall deposit the entire arrears of rents and damages after adjusting the amount, if any, already deposited for the period upto 30th June, 2012 within a period of one month from today before trial court.