
(1996) 04 AHC CK 0088
In the Allahabad High Court
Case No : Civil Revision No. 71 of 1983

Bata India Ltd.

APPELLANT

Vs

Bimal Chand Jain

RESPONDENT

Date of Decision : 26-04-1996

Acts Referred:

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

Citation : (1996) 04 AHC CK 0088

Hon'ble Judges : A.K.Banerji, J

Final Decision : Dismissed

Judgement

A.K. Banerji, J.—The aforesaid revision under Section 25 of the Provincial Small Cause Courts Act has been filed against the judgment and decree dated 11111992 passed by the Additional District Judge (Special Judge), Rampur in J.S.C. Suit No. 11 of 1982.

2. The facts in brief are that the defendant is a tenant of a shop in Bazar Safdarganj, Rampur, of which the plaintiff is the landlord. The plaintiff had initially filed Suit No. 175 of 1971 against the defendant which was decreed by the trial Court on 24 31972. Civil Appeal No. 9 of 1972 was preferred against the said decree by the tenant. During the pendency of the appeal, a compromise was arrived at between the parties and it was agreed that the plaintiff would let out the shop to the defendant for a period of 10 years beginning from 141972 at a monthly rent of Rs. 400 and the plaintiff would construct a room on the first floor and after the construction of the room, it would be let out to the defendant at a monthly rent of Rs. 100. It was also agreed that after the expiry of 10 years, if the lessee so desired a new lease could be executed for a period of 5 years on the terms mutually agreed between the parties. The compromise was reduced to writing and signed by the parties and filed before the Court. The District Judge decided the appeal in terms of the compromise and it was ordered that the compromise would form part of the decree.

3. A lease deed was executed thereafter by the defendant in favour of the plaintiff based on the compromise and it was mentioned therein that the same was being executed in terms of the compromise. It contained all the said terms mentioned in the compromise deed. It is not disputed that in pursuance of the said agreement the plaintiff constructed a room on the first floor and let it out to the defendant at a monthly rent of Rs. 100. Thus, the entire shop came into the tenancy of the defendant at Rs. 500 per month. Before the expiry of the period of 10 years, the parties entered into correspondence regarding the terms for a fresh lease for another 5 years. However, as the terms could not be mutually settled, the plaintiff sent a registered notice dated 24/2/1982 to the defendant terminating the tenancy and requiring the defendant to hand over the vacant possession to the plaintiff on completion of period of tenancy i.e. 31/3/1982 on the expiry of 30 days from the service of notice. Since, the defendant did not comply with the same, the plaintiff filed suit No. 11 of 1982 before the Small Cause Court, Rampur praying for a decree of ejectment against the defendant and recovery of damage for use and occupation amounting to Rs. 3050 @ Rs. 50 per day from 14/1/1982 to 31/5/1982 and pendente lite and further damages @ Rs. 500 per day from 16/1/1992 till the ejectment.

4. The suit was contested by the defendant by filing a written statement. The trial Court framed the points for determination and on a consideration of the evidence on record decreed the suit for ejectment and recovery of Rs. 1000 with proportionate costs and pendente lite and future damages @ Rs. 500 per month. Aggrieved against the said decree, the defendant has filed the present revision before this Court.

5. I have heard Sri Radhey Shyam and Sri R.S. Saxena, learned Counsel for the defendant/applicant and Sri A.S. Saran, learned Counsel for the plaintiff opposite party. I have also perused the record of this case.

6. The main contention of the learned Counsel for the defendant applicant is that the plaintiff's suit was barred by Section 20(1) of the Act and Court below has manifestly erred in decreeing the suit by applying the proviso to Section 20 (1) of the Act. It has been contended that the Civil Appeal 9 of 1972 was decided in terms of compromise vide the order dated 9/4/1972 and a lease deed was executed on 26/6/1972, whereby, the defendant's tenancy was for a fixed term of 10 years initially with an option of renewal of 5 years. The U.P. Act No. 13 of 1972 (the "Act" in short) was enforced w.e.f. 15/7/1972 and the Act being prospective in nature, the terms of the lease deed 26/6/1972 could not be looked into and the status of the defendant was as a month to month tenant. Since none of the grounds mentioned under Section 20 (2) of the Act was made out against the defendant, the plaintiff's suit was not maintainable. In support of his submissions, the learned Counsel for the applicant has placed reliance upon a decision of this Court in the case of Shri Gandhi Ashram, Meerut v. Shri Ram Gupta, 1983 (1) ARC 366.

7. The short question which therefore arises in the present case is whether the

proviso to Section 20 (1) of the U.P. Act No. 13 of 1972 applies to the facts of the present case. For appreciating the submission made by the learned Counsel, it would be appropriate to notice the provisions of Section 20 (1) and the proviso thereto, which reads as follows:

20. Bar of suit for eviction of tenant except on specified grounds. (1) Save as provided in subsection (2), no suit shall be instituted for the eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner:

Provided that nothing in this subsection shall bar a suit for the eviction of a tenant on the determination of his tenancy by efflux of time where the tenancy for a fixed term was entered into by or in pursuance of a compromise or adjustment arrived at with reference to a suit, appeal, revision or execution proceeding, which is either recorded in Court or otherwise reduced to writing and signed by the tenant.

8. It will be noticed from the above that though subsection (1) of Section 10 lays down that no suit shall be instituted for the eviction of a tenant notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit, the proviso carves out an exception to the cases where the tenancy for a fixed time was entered into by or in pursuance of a compromise or adjustment arrived at with reference to a suit, appeal, revision or execution proceeding, which is either recorded in Court or otherwise reduced to writing and signed by the tenant. It will be noticed from the facts of the present case that admittedly a compromise was arrived at between the parties during the pendency of the Civil Appeal No. 9 of 1972, which was reduced to writing and signed by both the parties and filed before the Court praying that the same may be treated to be a part of decree. On the said application, the District Judge passed an order which is quoted below:

Appeal decided in terms of compromise 13A1 which shall form part of the decree. The lower Court decree is modified accordingly. Paragraphs 1 and 7 shall constitute the operative portion of the decree.

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9. Subsequent thereto in terms of the compromise a fresh lease was executed by the defendant on 26.6.1972 in favour of the plaintiff and lord, in which it was specified that in terms of the compromise entered into between the parties in Civil Appeal No. 9 of 1972, the lessee is entering into a lease with the lessor for a period of 10 years with an option for a new lease for another 5 years on such terms as are agreed between the parties. The lessee shall hold the premises mentioned in the schedule for a period of 10 years commencing from 14.1.1972 at a monthly rent of Rs. 400 plus all taxes as per the terms of compromise and shall also pay a rent of Rs. 100 per month plus taxes to the lessor as per the

terms of compromise after completion of the first floor of the demised premises and deliver its possession to the lessee. In case the lessee was desirous to take a new lease of the premises after expiration of the term of 10 years, then at least one month before the expiration of the said period signify such intention by notice in writing to the lessor and the lessor shall at or before the expiration of the said term execute at the cost of the lessee a new lease for the demised premises for a term of 5 years as per the terms and conditions mutually agreed between the parties. The Court below by taking into consideration the terms of the compromise entered into between the parties which were also specified in the leased deed dated 26.6.1972 had found that the proviso to subsection (1) of Section 20 was applicable to the facts of the case and, therefore, a suit for the eviction of the tenant on the determination of his tenancy was maintainable and the bar of sub section (1) of Section 20 was not applicable thereto. Having noticed the terms of the compromise agreement and the lease deed, I do not find any reason to differ from the view taken by the Court below.

10. The learned Counsel for the defendant-applicant has however placed reliance upon the contents of clause III of the lease deed which reads as follows:

“III. After the expiry of the lease, in case the lessee does not exercise its right of entering into a new lease and also does not give any intimation of its future intention the tenancy shall be continued on monthly basis terminable by either party by giving a calendar month's notice in writing.”

11. It has been contended that as the lease expired on 31.3.1982 and the parties have failed to enter into a new lease of 5 years, the tenancy according to this clause shall be continued on monthly basis. Consequently the suit could only be filed if any of the grounds envisaged under Section 20 (2) of the Act was made out. He has also placed strong reliance upon the case of *Shri Gandhi Ashram, Meerut* (supra). I am unable to agree with said submission. The lease deed dated 26.6.1972 is a registered bilateral agreement executed by the parties in accordance with the terms agreed to in the compromise entered in writing by the parties and in pursuance thereof. I am of the view that clause III of the agreement contained in the aforesaid lease and quoted above, will apply only if clauses (I) and (II) of the agreement which precedes clause (III) does not apply. Clause (I) in effect provides that the lessee shall after the determination of the period of lease (10 years) remove his fixtures and fitting etc. within a period of one month. Clause (II) in effect lays down that if the lessee is desirous of taking a new lease after the expiration of the said term of 10 years, he shall at least one month before the expiration thereof signify such intention in writing to the lessor and fresh lease shall be granted at the rent to be mutually agreed. Clause (III) as already quoted above applied only if the lessee did not exercise its right in entering into a new lease and also did not give any intimation of its future intention. Here the lessee had invoked clause (II) and had admittedly written to the lessor intimating that it was desirous of entering into a new lease, but the parties failed to mutually agree regarding the lease rent, hence, the new lease

could not be executed. The plaintiff landlord therefore vide notice dated 24/2/1982 terminated the tenancy w.e.f. the date, the period of 10 years was completed i.e. 31/3/1982. The tenancy was thus terminated by efflux of time as per the terms of the compromise deed which also so incorporated in the lease deed. Lease is a bilateral agreement for transfer of interest in the property and one of the essential feature of the same is that interest is transferred for consideration which is called premium or rent. In the absence of any agreement with regard to the premium to be paid the fresh lease could not be executed, and therefore, the tenancy stood terminated with effect from the date of expiry of 10 years.

12. So far as the decision in *Shri Gandhi Ashram's* case is concerned, the facts in the said case were not similar. In that case a decree was passed on the basis of compromise by which the rent was enhanced and it was agreed that the accommodation would be vacated after 31/3/1974. The decree was put into execution by the plaintiff decree holder on 4/4/1974. An objection was raised under Section 47 C.P.C. that the possession in respect of the accommodation in dispute was that of a tenant and the eviction could not be had without compliance of the requirements of U.P. Act No. 13 of 1972. The decree holder had resisted the said action by saying that no tenancy was created, only time to vacate the accommodation was given till 31/3/1974. On an appraisal of the terms of the compromise in the said case, this Court had come to the conclusion that as the terms thereof did not indicate that if the defendant failed to deliver possession to the plaintiff, the latter shall be entitled to execute the decree and as the defendant was admitted as a month to month tenant in the said compromise upon payment of an enhanced rate of rent for the period specified therefor, a new tenancy was created in favour of the tenant and in the absence of a registered document this would operate as a tenancy from month to month. In the said case the provisions of proviso to subsection (1) of Section 20 was not invoked and no arguments regarding the same were raised. The compromise decree was sought to be executed immediately after the period specified in the decree without terminating the tenancy. In the present case it would be noticed that the lease deed dated 26/6/1972 entered into in terms of the compromise was a registered document by which the tenancy was for a fixed period for 10 years and the option for fresh lease was to take effect only if the lessee expressed his intention to renew the lease and the parties mutually agreed regarding rate of rent. Since the parties could not mutually agree to the terms for a fresh lease the tenancy was terminated after a fixed period of 10 years and, thereafter a suit by invoking proviso to Section 20(1) was filed. This decision in *Shri Gandhi Ashram's* (supra), therefore, is quite distinguishable and is of no help to the learned Counsel for the applicant.

13. It was next contended that the Act No. 13 of 1972 is prospective and therefore, as the lease deed was entered prior to the coming into force of the Act, the terms thereof could not be looked into. I am unable to agree with the submission made by the learned Counsel. The proviso to subsection (1) of Section 20 does not speak about a compromise or adjustment arrived at after

coming into force of the Act, therefore, even if a compromise has been arrived at in a suit, appeal or execution proceedings which arose out of the old Act No. 3 of 1947 prior to the coming force of the Act No. 13 of 1972 and the cause of action arose when the later Act was in force and the suit was filed by invoking the proviso to Section 20 (1) of the said Act the terms of the said compromise decree of the earlier suit could be looked into and, therefore, the submission made by the learned Counsel for the applicant also cannot be accepted.

14. As a result of the aforesaid discussion the revision fails and is dismissed with costs. Any amount deposited by the applicant towards the decretal amount or under the interim orders during the pendency of the revision before this Court shall be adjusted. However, as the defendant is running a shop in disputed premises since long and another accommodation may not be easily available, the decree shall not be executed for a period of three months from today to enable the applicant to search out another accommodation.

Revision dismissed.