

(2008) 12 AHC CK 0258

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 68572 of 2005

Brij Bhushan Mishra

APPELLANT

Vs

Surita Sarbaddhikari and another

RESPONDENT

Date of Decision : 12-12-2008

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20, 28

Citation : (2008) 12 AHC CK 0258

Hon'ble Judges : V.K.Shukla, J

Final Decision : Allowed

Judgement

V. K. Shukla, J.—This is tenant's writ petition questioning the validity of the decision dated 7.9.2004 passed by the Judge Small Causes, Allahabad in SCC Suit No. 139 of 1999 decreeing the suit for eviction and order of its affirmance in J.S.C.C. Revision No 685 of 2004 passed by the Additional District Judge, Court No. VIII, Allahabad.

2. In Civil Misc. Writ Petition No. 49844 of 2008 tenant has questioned the validity of the order dated 17.9.2008 wherein application for staying the execution of the decree has been rejected as being not maintainable.

3. Brief background of the case is that late Brij Bhushan Mishra has been tenant of the ground floor of House No. 257/127, Mohatsimganj, Allahabad. Original landlord of the said premises in question was Yogendra Kumar Vashney and said Yogendra Kumar Vashney sold the house in question to one Harish Mathur who had filed release application under section 21 (1) (a) of U. P. Act No. 13 of 1972. During continuance of the aforementioned proceedings, property in question including property in tenancy of the petitioner was sold by erstwhile landlord vide registered sale deed dated 18.6.1999, in favour of Smt. Sunta Sarbaddhikari and Smt. Gauri Sarbaddhikari who were also coexisting tenant in whose favour said sale deed in question has been registered. In the proceedings under section 21(1) (a) of U.P. Act No. 13 of 1972, which were on going, the other tenant who

subsequently become landlord was also party and therein statement was made that property in question has been sold and in this regard proceeding in question were dropped. New landlords who were earlier tenant on the basis of the said sale deed on 31.7.1999, sent notice to petitioner informing and intimating that house in question has been purchased. Thereafter on 26.10.1999 notice was sent determining tenancy and to the said notice, reply was sent on 4.11.999 by tenant. In paragraph 6 of the reply, it was categorically mentioned that rent uptil September, 1999 has already been deposited in Misc. Case No. 76 of 1988 and further in the event copy of the sale deed was sent w.e.f. October, 1999 rent shall be payable to the landlord. Thereafter, J.S.C.C. Suit No. 139 of 1999 had been filed on the ground that petitioner has been in arrears of rent. On filing of aforementioned suit, petitioner filed his written statement and also proceeded to comply with the provision as contained under section 20 (4) of U.P. Act No. 13 of 1972 by depositing the amount provided for under the aforementioned provision. However, it was mentioned by him that in case plaintiff proves their title, qua premises in question, in spite of the fact that rent has been paid in Misc. Case No. 24 of 1988, even then said amount, tenant is prepared to pay. In the said proceeding so undertaken, amendment was also introduced by the landlord contending therein that deposit in question was conditional deposit, as such benefit of section 20 (4) of U. P. Act No. 13 of 1972 cannot be accorded. In the said suit, Prescribed Authority on the basis of material which was adduced, framed three issues (i) as to whether tenant was liable to be evicted on the basis of being arrears of rent (ii) as to whether by making construction tenant has diminished the value of property in question (iii) Tenant, having denied the title is liable to be evicted on the said ground. During this period property in question has been sold to Ashwani Kumar Verma and Anil Kumar Verma. Trial Court has recorded categorical finding on issue No. 1 that deposit under section 20 (4) of U.P. Act No. 13 of 1972 was conditional one and as such benefit of section 20(4) of U. P. Act No. 13 of 1972 shall not be accorded. On issue No. 2 also it has been mentioned that suit was liable to be decreed. On issue No. 3 also finding was given in favour of the landlord. Against the said order revision in question had been filed and Revisional Court qua issue No. 1 affirmed the said finding. At this juncture Civil Misc. Writ Petition No. 68572 of 2005 has been filed and therein conditional interim order was passed by this Court and matter had been pending before this Court.

4. Counter affidavit has been filed on behalf of the Ashwani Kumar Verma and Anil Kumar Verma. To the same rejoinder affidavit has been filed appending therein application moved under Order XXII, Rule 10 C.P.C. and its rejection order dated 31.8.2005.

5. During pendency of aforementioned writ petition, petitioner Brij Bhushan Mishra died and substitution application had been made to substitute his legal heirs and representative. Said matter was dismissed in default and net effect of the same was that interim order accorded in favour of petitioner was not there. Thereafter decree in question was sought to be executed by Ashwani Kumar

Verma and Anil Kumar Verma. In the execution proceeding, legal heirs of Brij Bhushan Mishra had not been substituted and execution was being pressed, and application raising objection to this effect was moved in this regard and same was rejected, then Civil Misc. Writ Petition No. 49844 of 2008 had been filed, and second writ petition has been directed to be clubbed with the first writ petition and thereafter both the writ petition are being taken up together and are being decided together with the consent of the parties.

6. Sri V. P. Mishra, Advocate appearing for the legal heirs of petitioner, Brij Bhushan Mishra contended with vehemence that in the present case view, which has been taken by both the Courts below are totally perverse and unreasonable and said view is not at all sustainable in view of the admitted position and coupled with this suit itself was not maintainable, as on the date of institution of the suit, tenant was not at all in arrears of rent of four months as payment had admittedly been made to earlier landlord and further on the first date of hearing entire amount had been deposited and in the facts case same cannot be accepted as conditional deposit, and there has been no denial of title rather genesis of derivative title was being asked for as such entire proceedings based on the same are liable to be quashed.

7. Countering the said submission, Sri P. K. Jain, Senior Advocate, assisted by Sri Sheo Sagar, Advocate on the other hand contended that valid notice was there wherein clearly it was pointed out that petitioner was in arrear of rent of four months and further other ground as envisaged under section 20 (2) of U. P. Act No. 13 of 1972 were also there as such view, which has been taken warrants no interference by this Court, as it is admitted position that unconditional deposit was made, tenant had denied title of the landlord and material alternation had been made diminishing the value of property and as such writ petition in question deserves to be dismissed, as it has been framed and drawn.

8. After respective arguments have been advanced, first question to be adverted to in the present case is as to whether there was valid notice demanding arrears of rent relatable to the accommodation let to the tenant from which he was sought to be evicted.

9. In order to appreciate the respective arguments advanced relevant provision which covers the filed are being looked into. Section 20 of U. P. Urban Buildings (Regulations of Letting Rent and Eviction) Act, 1972 is being quoted below:

Section 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 eviction of 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.

(2) A suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the following grounds namely:

(a) that the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand:

Provided that in relation to a tenant who is a member of armed forces of the Union and in whose favour the Prescribed Authority under the Indian Soldiers (Litigation) Act, 1925 (Act No. IV of 1925) has issued a certificate that he is serving under special conditions within the meaning of section 3 of that Act or where he has died by enemy action while so serving, then in relation to his heirs, the words "four months" in this clause shall be deemed to have been substituted by the words "one years".

(b) That the tenant has wilfully caused or permitted to be caused substantial damage to the building.

(c) that the tenant has without the permission in writing of the landlord made or permitted to be made any such construction or structural alteration in building as is likely to diminish its value or utility or to disfigure it;

(d) that the tenant [has without the consent in writing of the landlord used it for a purpose other than the purpose for which he was admitted to the tenancy of the building or otherwise done any act which is inconsistent with such use], or has been convicted under any law for the time being in force of an offence of using the building or allowing to be used for illegal or immoral purposes;

(e) that the tenant has sublet, in contravention of the provisions of section 25, or as the case may be, of the old Act the whole or any part of the building;

(f) that the tenant has renounced his character as such or denied the title of the landlord and the latter had not waived his right of reentry or condoned the conduct of the tenant;

(g) that the tenant was allowed to occupy the building as part of his contract of employment under the landlord and his employment has ceased..

(3) [* * *]

(4) In any suit for eviction on the ground mentioned in Clause (a) of subsection (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 the 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 there from any amount already deposited

by the tenant under subsection (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 subsection 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 for got vacated after acquisition, any residential building in the same city, municipality, notified area or town area.

Explanation For the purposes of this subsection

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

(b) the expression "cost of the suit" includes onehalf of the amount of Counsel's fee taxable for contested suit."

10. Bare perusal of the provision quoted above would go to show that Chapter IV of U. P. Act No. 13 of 1972 deals with regulation and eviction. Subsection (1) of section 20 of U. P. Act No. 13 of 1972 bars suit for eviction of tenant except on specified grounds as provided in subsection (2) of section 20. Subsection (2) of section 20 provides and gives right to landlord to institute on one or more ground mentioned, suit for eviction of tenant from a building after determination of his tenancy. Under Clause (a) of subsection (2) of section 20 of the Act, the ground provided for is that the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand. Thus, this provision is clear that from the date of service of notice of demand in case tenant proceeds to pay arrears of rent, which is not less than four months, to the landlord within one month, the tenant can save himself from institution of suit and in case .tenant has chosen not to make payment within one month from the date of service of notice of demand then after institution of suit another opportunity is provided to him to save his eviction by depositing said amount and another amount provided for on the first day of hearing. Thus, two opportunities have been provided to the tenant; (i) preinstitution of suit to make payment within one month from the date of service of notice of demand upon him, and (ii) post institution of suit; on the first date of hearing make payment unconditionally entire amount of rent and damages together with interest and cost of suit. In case on second occasion petitioner fails to deposit the amount on first date of hearing then there is no option except for passing decree and order of eviction in terms of provision mentioned above. For institution of suit, on other grounds also namely, grounds mentioned in Clauses (b) to (g) of subsection (2) of section 20, termination of tenancy is condition precedent for institution of suit. Thus, this much is clear that before proceedings to institute suit under subsection (2) of section 20 of U.P. Act No. XIII of 1972 valid notice has to be there, determining tenancy.

11. Hon''ble Apex Court in the case of Chimanlal v. Mishrilal AIR 1985 SC136 has clearly taken the view the notice of demand is an act independent of the

institution of the suit. The notice and plaint are two distinct matters, different by nature, designed for different purposes and located in two different points of time. They operate in two different planes, and are related insofar only that one is a condition for maintaining.

12. In this background as set out, the facts of the present case are being adverted to.

13. Section 20 (2) (a) of U. P. Act No. 13 of 1972 gives landlord right to file suit for eviction of the tenant from the building after determining the tenancy on the ground that tenant is in arrears of rent for not less than four months and has failed to pay the same to the landlord within one month from the date of service of notice of demand. Thus this provision is clear that in the notice of demand tenant should be in arrears of rent of not less than four months and further has failed to pay the same to the landlord within period of one month from the date of service of notice of demand. If these twin contingencies are there, in existence, only then suit can be filed on such ground. In the present case admitted position is that sale deed was not executed by the landlord in their favour on 18.6.1999 and on 31.7.1999 information has been sought to be given by landlord that house in question has been purchased by them. Notice has been given under section 20(2) (a) on 26.10.1999. In *Harish Mathur v. Brij Bhushan Mishra*, P.A Case No. 24 of 1992 as far as copy of the sale deed is concerned, same has never been filed as is evident from the copy of the judgment dated 8.7.1999, copy of which has been supplied. In the judgment of Small Causes Court finding has been recorded that after period of two months petitioner had acquired knowledge of the fact that sale deed in question had been executed, by accepting said period as August, 1999 and this finding of fact has come on the basis of statement of petitioner himself that copy of the sale deed was handed over to him. As per finding recorded, after sale deed in question had been executed after two month, tenant had acquired knowledge of the same. Notice determining tenancy was given on 26.10.1999 and to the same, reply was given on 4.11.1999, and therein categorical mention has been made that earlier landlord had not been accepting to rent and as such deposit had been made under section 30 of U. P. Act No. 13 of 1972 up till September, 1999. Once this fact has come on record that sale deed in question had been executed on 18.6.1999 and information of the same itself has been sent on 31.7.1999, then can it be said that on 26.10.1999, tenant was in arrears of rent for more than four months. The dates in the present case are not being disputed.

14. Notice of demand, in the present case, cannot be said to be valid, as accepting the case of landlord, that information was given to tenant on 31.7.1999, and as per the finding recorded by Judge Small Causes, knowledge of sale deed was in August, 1999, and on the date of notice i.e. 28.10.1999, deposit under section 30 in favour of earlier landlord, from whom landlord had derived title till September, 1999 was already there, then by no stretch of imagination, it could be inferred, that rent of four months was due. Such plea

was specifically raised, in reply to the said notice, dated 4.11.1999 but same has been conveniently ignored. Consequently in the facts of present case on admitted position, notice of demand was invalid, as rent of four months was not all due, as such suit for arrears of rent was not at all competent and maintainable. In this background, finding qua Issue No. 1 qua the question of conditional deposit and arrears of rent is of no consequence, as suit on the ground of arrears of rent for want of valid notice is clearly not maintainable.

15. Now coming to the Issue No. 2. In the present case finding of fact has been recorded that petitioner has undertaken repairing work without taking permission from the landlord, same is in breach of section 28 of U. P. Act XIII of 1972. Merely because repairing work has been carried out in breach of section 28 of U. P. Act No. XIII of 1972, same cannot be ground for decreeing suit, under section 20 (2) (c) of U. P. Act No. XIII of 1972, as for decreeing suit under section 20 (2) (c) of U. P. Act No. XIII of 1972, categorical finding will have to come, that said construction has diminished the value or disfigured it. In the present case, none of the prerequisite conditions as envisaged, such as same has diminished the value or utility of building or disfigured it has been arrived at. Finding on issue No. 2 is following short of prerequisite terms and conditions, as such same cannot stand. Suit has also been decreed on the ground that tenant has denied the title of landlord. In the present case, as far as denial of title of landlord is concerned, at no point and at no place tenant has ever proceeded to deny title of landlord, rather to the contrary averments have been mentioned that copy of sale deed be produced, thereafter without any inquiry, tenant would accept the landlord as landlord.

16. Hon'ble Apex Court, in the case of Jalsabh Shaikh v. State of Goa AIR 2000 SC 568, has taken the view, that to constitute denial of title of their landlord, a tenant should renounce his character that of tenant and setup right or title inconsistent with the relationship of landlord and tenant, either in himself or third person, in the case of derivative title of landlord, unless tenant has renounced his relationship as tenant, same cannot be accepted as denial of title.

17. This Court in the case of Aziz Begum v. Vth A.D.J. 2004 (56) ALR 305 has taken the view, that if there was any denial of derivative title and not denial of title of landlord who let the shop to the ancestor of petitioner, same does not amount to denial of title. Denial of title, has to be judged, taking into account overall fact and circumstances which exist in the case.

18. Petitioner tenant never claimed that he has recounted his character as tenant, and has some independent rights or title inconsistent with the relationship of landlord and tenant. Tenant has never contended that earlier. Yogendra Kumar Varshney and Harish Mathur were not landlord. There was no denial of derivative title and qua the same it was being mentioned that copy of sale deed be produced and proved. This was case of derivative title, and no where title had been denied rather request was to prove the same, qua which petitioner was prepared to surrender. In the fact of case, denial of title, cannot

be inferred, and suit cannot be decreed on said score.

19. Consequently, writ petitions are allowed. Decree in question passed by both the Courts below are set aside, and as decree itself has been set aside, as such execution proceeding based on the said decree are also of no consequence.

20. This Court in Smt. Khurshida Begam v. A.D.J., 2004 (55) ALR 586 has taken the view, that writ Court while granting relief to tenant, is empowered to enhance rent to reasonable extent. With effect from 1.1.2009 onwards, petitioner shall pay Rs. 1,000/ per month, the rent which was being paid by petitioner pursuant to order dated 28.10.2005.

21. No orders as to costs.