

(1994) 01 AHC CK 0025

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 13961 of 1985

Chhotey Lal

APPELLANT

Vs

XIV Addl. District Judge and Others

RESPONDENT

Date of Decision : 10-01-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Transfer of Property Act, 1882 — Section 106
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 30, 30(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 21, 21(3), 21(5)

Citation : (1994) 2 AWC 813

Hon'ble Judges : N.L. Ganguly, J

Bench : Single Bench

Advocate : B.N.L. Katiyar, for the Appellant;

Final Decision : Dismissed

Judgement

N.L. Ganguly, J.—This writ petition is directed against the judgment and order dated 8-1-85 passed by the Addl. Judge Small causes court in S.C.C. Suit No. 116 of 1980 and revisional judgment in S.C.C. Revision No. 25 of 1983 dated" 9-9-85 passed by the XIV Addl. District Judge, Kanpur, whereby the suit for arrears of rent, damages was decreed and decree for eviction was granted by the trial court and the said judgment and decree was affirmed by the re visional court.

2. The opposite parties--Plaintiffs are the landlords and owners of premises No. 108/64, Gandhi Nagar, Kanpur. The Petitioner was a tenant in one kothari of the ground floor of the said premises at the rate 2.50 p. rent per month. The Petitioner fell in arrears of rent which he failed to pay on the demand notice of the opposite parties. It is said that the Petitioner failed to pay the rent w.e.f. 1-8-1974 to 19-12-1979. The rent for 1-8-74 to 31-1-77 had become barred by limitation The Plaintiffs-opposite parties had served notice claiming rent for

1-2-77 to 19-12-79 and damages for the period 20-12-79 to 1-2-80. There is no dispute about the service of the demand notice. The other pleas of the Plaintiffs-opposite parties was of sub letting half of the kothari to Smt Savitri Devi and her two sons. Smt, Savitri Devi and her two sons are none-else than widowed Bhabhi of Petitioner and nephew. The plea of creating nuisance etc. was also raised by the Respondent in the suit.

3. The Petitioner contested the suit and stated that entire rent up to 31-12-79 was deposited in Misc. Case No. 135/77 in the court of Munsif City, Kanpur u/s 30 of U.P. Act No. 13 of 1972. The learned Counsel for the Petitioner submitted that the Petitioner had already deposited the rent u/s 30(1) of the Act in the court of City Magistrate. There was no default and the amount deposited was available to the opposite party. He submitted that thus there was no default in payment of rent. The decree for eviction was bad in law and liable to be quashed. The learned Counsel for the Petitioner further submitted that notice of demand dated 18-11-79 was served to the Petitioner on 20-11-79 and the the suit was filed in February 1980. Thus, taking into consideration, the amount of rent already deposited, u/s 30(1) of the Act, there was no default in payment of rent for a period of more than four months.

4. I have heard learned Counsel for the parties at length. The sole question which requires consideration by this Court, as submitted by the learned Counsel for the Petitioner is that the deposit of rent u/s 30(1) of the Act was a valid deposit and the courts below illegally refused to take into consideration the said deposit in arriving at a conclusion that Petitioner was a defaulter.

5. The provision of Section 30(1) of the Act is quoted as under:

If any person claiming to be a tenant of building tenders any amount as rent in respect of a building to his alleged landlords refuses to accept the same, then the former may deposit such amount in the prescribed manner and continue to deposit any rent which the landlord in the meantime signifies by notice in writing to the tenant his willingness to accept.

The learned Counsel for the Petitioner submits that the Petitioner was perfectly justified the depositing the amount of arrears of rent up to Section 30 of the Act. The learned Counsel for the Petitioner is not correct in making the said submission. Mere deposit of the amount u/s 30 is not sufficient for treating the deposit due compliance of law and availability of the same to landlord.

6. For treating the deposit u/s 30 as valid deposit to absolve the tenant from the risk of the fault in payment of rent the provisions of Rule 21 should have been complied with strictly. The Rule 21 framed under the U.P. Urban Building (Rent, Letting and Eviction), Rules 1972 is reproduced as under;

21. Deposit of Rent (Section 30)--(1) Any person desirous of depositing rent u/s 30 shall apply in Form E. The application shall be accompanied by as many copies thereof as there are opposite-parties, and also, the process fee and

notices in Form F.

(2) The deposit shall be made under the Head P-Deposits and Advances-II-Deposits, not bearing interest-C-Other Deposit Accounts-(B) Departmental and judicial Deposit-Civil Deposits-Civil Court's Deposits.

(3) On such deposit being made, the Court shall cause notice of the deposit to be served on the opposite-party alongwith a copy of the application.

(4) Where a notice of deposit is returned unserved the court shall fix a date on or before which the applicant shall deposit fresh process fee and notice in Form F. If within the time so allowed or within such extended time, as the Court may grant, the applicant fails to take steps as above, the application shall be rejected and the amount deposited shall be refunded to the applicant.

The provision of Sub-rules 3 and 5 of the said Rule are important. For the first deposit u/s 30, the tenant was required to take steps so that a notice about the deposit could have been served to the landlord. In subsequent deposit for continuation of depositing the amount of rent, fresh application was not necessary but process fee and the notice in Form "F" was necessary and a mandatory requirement. The courts below concurrently held that Petitioner had not taken steps to serve the Plaintiff landlords after the deposit u/s 30 was made by him. The finding recorded by the courts below on this point is conclusive as finding of fact and the learned Counsel for the Petitioner could not assail the said finding that it suffered with any such irregularity which could have necessitated interference under Article 226 of the Constitution. Thus, this point alone is sufficient to affirm the judgment of the courts below that the Petitioner was a defaulter and failed to pay the amount due after receipt of the notice u/s 106 of T.P. Act, according to law. The learned Counsel for the Petitioner attempted to raise certain other arguments which were neither advanced nor considered in the courts below. It was for the first time the learned Counsel for the Petitioner attempted to raise question of fact twisting it and alleged it to be legal argument which I do not consider proper or legal to entertain for the first time in the writ petition. Thus, there is no merit in the writ petition which is accordingly dismissed with costs.

7. The learned Counsel for the Petitioner submitted that the Petitioner is a poor man and it would be very difficult for him to immediately vacate the accommodation. He requested that some time be granted for vacating the premises. There is no justification for making such a request by the learned Counsel for the Petitioner. He has already availed eight years period after the judgment of the revisional court and occupied the premises on the basis of the interim stay order of this Court. Since the accommodation is in possession of the Petitioner for long on a very low rent, it appears that the Petitioner is a poor man it would be hard for him to immediately vacate the premises. The learned Counsel for the Respondents opposed this request of the Petitioner. However, I consider that Petitioner be given six months time for vacating the premises,

provided he undertakes and submit an affidavit and undertaking in writing before the J.S.C.C. within a period of two weeks from today that he shall vacate the premises within six months and delivered vacant possession of the Kothari to the landlords-opposite parties. He shall state that he shall not damage the kothari or induct any other person therein. The entire arrears of rent with cost and damages and future rent for six months from the date of this judgment, which the Petitioner shall occupy under the orders of this Court, shall have to be deposited within 15 days from the date of this judgment. In case of default of either of the conditions, the Plaintiffs-landlords shall be free to execute the decree for eviction of the Petitioner and recovery of the amount due.

8. The petition is dismissed with costs