

(1984) 03 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7135 of 1980

Chokhey Lal

APPELLANT

Vs

2nd Addittional District Judge, Rampur and Others

RESPONDENT

Date of Decision : 08-03-1984

Acts Referred:

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

Citation : (1984) 03 AHC CK 0022

Hon'ble Judges : R.B.Lal, J

Final Decision : Allowed

Judgement

1. By this Writ petition under Article 226 of the Constitution, the tenant petitioner prays for quashing the judgment of the judge, Small Causes Court, Rampur dated 7979 and the judgment of the I Additional District judge, dated 28780.

2. Respondents nos. 3 and 4 brought Suit for ejectment of the present petitioner Chokhey Lal, on the ground of nonpayment of arrears of rent. They pleaded that the defendant was their tenant of one Kothari only at the rate of Rs. 10 per month. The defendant contested the suit and averred in the written statement that he was tenant of two Kotharies at the rate of Rs. 10 per month and the plaintiff had taken back possession of one Kothari on some pretext and, therefore, he remained tenant of one Kothari at rate of Rs. 5 per month. In order to claim benefit of the provision of subsection (4) of Section 20 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (briefly the "Act") the tenant deposited the arrears of rent, damages for use and occupation, interest and costs of the suit, on the first date of hearing. The sufficiency of the amount deposited was not disputed by the plaintiffslandlords. They took up the stand that the tenant was not entitled to claim the protection of subsection (4) of section 20 of the "Act". This plea was accepted by the trial court.and the suit for rent and ejectment was decreed. The tenant filed revision and the revisional court agreed with the view of the trial court that the deposit was not unconditional. Consequently, the revision was dismissed.

3. Feeling dissatisfied, the tenant has filed this writ petition and challenged the view of the two courts below.

4. I have heard the learned counsel for the parties.

5. The trial court did not allow benefit of subsection (4) of section 20 of the "Act" to the tenant (Petitioner) on two grounds. First, that after making the deposits under section 20 (4) of the "Act" he did not make an application claiming protection of the said provision, second, that the deposit was not unconditional, because the tenant had noted down on the tenders that matter in hindi The legality and correctness of these views has been challenged.

6. SubSection (4) of section 20 nowhere requires that in order to claim benefit of this provision the tenant should, besides making the deposit, also make a formal application claiming the benefit. After making the deposit, the tenant can request the court to take it into consideration and relieve him of liability for eviction. This is enough. Hence, the tenant could not be denied the benefit of subsection (4) of section 20 on the ground that no formal application was made to claim the protection. The contrary view taken by the trial court was erroneous in law.

7. The contention of the learned counsel for the petitioner is that mere endorsement of the words matter in hindi on the tenders by which the amount under section 20 (4) was deposited, did not make the deposit conditional. The tenant had not said in the tenders or by separate application or statement that the amount deposited should not be paid to the landlords unless they accepted it in full discharge of liability according to his (tenant) case. He also did not say that the amount deposited should not be paid to the landlord and be kept in deposit till decision of the suit. In the absence of such a statement by the tenant, the aforesaid endorsement could not amount to imposition of a condition on the deposit. The endorsement was by way of abundant caution and merely a reiteration of the plea which the tenant was taking up in his defence. If the tenant could plead in his written statement that he was in fact a tenant of two Kotharies at a total rental of Rs. 10 per month without effecting the validity of deposit under section 20 (4) of the "Act", the above endorsement made on the tenders by way of abundant caution, could not make the deposit conditional. In this connection, the learned counsel has placed reliance on a Division Bench decision of this court in Mahendra Pratap Garg v. Smt. Vijai Laxmi General, 1983 Allahabad Rent Cases, 74. This decision fully bears out the submissions of the learned counsel for the petitioner. The Division Bench observed;

Under subsection (6), the payment of the unconditional deposit is subject to the decision of the suit. The payment is thus, tentative. The landlord cannot finally appropriate the amount paid to him in fulfilment of his claimed rights. The payment does not have the effect of admission of liability by the tenant. The rights and liabilities of the parties are to be determined by the court. The payment of the unconditional deposit will be subject to the findings of the court. The fate and the sufficiency of the payment of the unconditional deposit will

depend on the decision of the suit. In case of dispute, the findings of the court will determine the rights and liabilities of the parties.?

The Division Bench also observed:

?In our opinion, the term "unconditional" has been used in section 20 (4) in a similar sense. If a tenant makes a deposit, but at the same time, states that the amount is not to be paid out to the landlord unless he accepts it in full discharge of the liability, that would be imposing a condition, or if the tenant says that the amount deposited by him should be kept in deposit and should not be paid out till the decision of the suit, that will make the deposit conditional. But taking divergent pleas in the written statement as to the extent or quantum of liability to pay rent does not make the deposit conditional. The purpose of the deposit is to pay it to the landlord "forthwith" (see subsection (6)). The deposit is to be unconditional in the sense that there be no impediment or condition to its immediate payment.?

The learned counsel for the landlordsrespondents has not been able to distinguish this decision or to cite any other decision.

8. Having regard to the principles laid down in the aforesaid Division Bench decision must be held that the endorsement made by the tenant on the tenders to the effect matter in hindi Did not make the deposit of the amount conditional. The endorsement was nothing but a reiteration of the plea taken up in defence. He had not placed any impediment in the way of, or imposed condition on immediate payment of the amount to the landlords, if they desire to withdraw the same. The view of the courts below that the endorsement amounted to imposing a condition on the deposit is, therefore, legally untenable and erroneous in law.

9. It is not in dispute that the deposit made by the tenant was sufficient and made within the time prescribed under section 20 (4) of the "Act". Since the deposit has been found unconditional, the tenantpetitioner is entitled to the benefit of the provisions of Subsection (4) of Section 20 and must be relieved of his liability for eviction. In this view of the matter, a consequential order, in consonance with the provision of Section 20 (4) of the "Act" will have to be passed. For this purpose the case should go back to the trial court.

10. In the result, the writ petition succeeds and is allowed. The order of the revisional court dated 28.7.80 and of the judge small causes court dated 7.9.79 are quashed. The case is sent back to the judge, small causes court for passing consequential order, in the light of the observations made in the body of this judgment. The parties shall bear their costs of this writ petition.

(Petition allowed)