

(1998) 09 AHC CK 0121
In the Allahabad High Court
Case No : C.M.W.P. No. 213 of 1984

Dr. Ram Prakash Misra (Decd.) through L.Rs.	APPELLANT
Vs	
IVth Addl. District Judge, Etah and others	RESPONDENT

Date of Decision : 09-09-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 15 Rule 5, Order 15 Rule 5(2)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(4), 30, 30(1)

Citation : (1999) 1 AWC 715

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : P.C. Sharma, P. K. Saxena, S.K. Kulshrestha and Vinod Sinha, for the Appellant; S.C., J.N. Singh, N.K. Srivastava, R.K. Mishra, N. Agarwal, K.S. Tewari and Virendra Singh, for the Respondent

Final Decision : Allowed

Judgement

J.C. Gupta, J.—By means of this writ petition, the tenant-petitioner has challenged the order dated 7.9.83 passed by respondent No. 1 in S.C.C. Revision preferred by the landlord against the order of the trial court dated 11.2.1981.

2. During the pendency of suit filed by the respondent No. 2 against the petitioner for rent and ejection, the respondent No. 2 moved an application for striking off the defence of the petitioner for non-compliance of the provisions of Order XV. Rule 5 of the Civil Procedure Code. The petitioner filed reply to the said application stating that since he has already deposited the entire rent due upto 31.3.81 u/s 30 (1) of U. P. Act No. XIII of 1972, petitioner's application deserved rejection. The trial court rejected the said application of the respondent No. 2 by the order dated 11.2.81. Aggrieved by that order, the landlord-respondent No. 2 preferred revision and the same has been allowed by the respondent No. 1 under the impugned order and the petitioner's defence has been struck off.

3. Learned counsel for the petitioner contended before this Court that the power

to strike off the defence is discretionary and once the discretion had been exercised by the trial court in favour of the petitioner, the respondent No. 1 in revision should not have interfered. It was further contended by him that as per the finding of the trial court rent upto March, 1981, had been deposited by the petitioner u/s 30 (1) of the U. P. Act No. XIII of 1972, thus not only the entire rent claimed in the suit but also future rent upto March, 1981, stood deposited prior to the moving of application for striking off the defence, therefore, there was neither any justification nor occasion for the revisional court to have shut down the right of defence of the petitioner. On the other hand learned counsel for the respondent supported the impugned order contending that the revisional court has correctly reversed the Order of the trial court as there has been default in making deposits as contemplated under Order XV, Rule 5, C.P.C.

4. It is well-settled that the object of Order XV, Rule 5, C.P.C. is merely to ensure that the dues of the landlord are properly secured and he may not lose the rent/mesne profits just for the reason of the suit being contested by the tenant.

5. u/s 20 (4) of the U. P. Act. tenant gets relieved from the decree of eviction by depositing the entire arrears of rent due upto date along with interest at the rate of nine per cent per annum together with the plaintiffs costs of the suit, but there was no provision dealing with the cases of those tenants who were not making deposit u/s 20 (4) and yet were being allowed to contest the proceedings without making any payment of rent/mesne profit. Therefore, the State Legislature in its wisdom brought out an amendment in Order XV, Rule 5, C.P.C. by Act No. LVII of 1976, which came into effect from 1.1.77. The Idea behind introduction of this provision appear to be to secure the landlord's right of getting rent regularly even though the litigation may continue.

6. A bare perusal of the provision of Order XV, Rule 5, C.P.C. shows that it has two branches. The first branch relates to the striking off the defence where the defendant at or before the first hearing of the suit fails to deposit the entire amount which is admitted by him to be due together with interest thereon at the rate of nine per cent per annum. Under this part however the defence is not liable to be struck off where the defendant does not admit the claim of the plaintiff of arrears of rent. However, under the other part, the position is somewhat different, and therein it is obligatory on the part of the tenant to deposit regularly throughout the continuance of suit the monthly amount within a week from the date of its accrual, whether or not the same is admitted to be due. It is further provided that in the event of default in making the deposit in any of the situations as aforesaid, the Court may, subject to the provisions of sub-rule (2) strike off the defence of the tenant.

7. The Apex Court in the case of Bimal Chand Jain v. Gopal Agrawal 1981 ARC 463 held that the provisions of Order XV, Rule 5, C.P.C. are discretionary and the Courts have power not to strike off defence even in the absence of a representation by tenant, if on the facts and circumstances already existing on record it finds good reasons for doing so. It was further held that it must be

remembered that an Order under sub-rule (1) striking off the defence is in the nature of a penalty and a serious responsibility rests on the Court in the matter and the power is not to be exercised mechanically. It was observed that there is a reserve of discretion vested in the Court entitling it not to strike off the defence if it finds good reasons for the same and that the provisions of Order XV, Rule 5 did not oblige the Court to strike off the defence in every case of default.

8. In a recent decision in the case of Bhawani Vasthya Bhandar. Ballia and another v. Smt. Sahodra Devt (since deceased) and others 1996 (2) ARC 406 a single Judge of this Court has held that the provisions of Order XV, Rule 5, C.P.C. should not be interpreted in such a way that they should be trapped to evict the tenants. It was further observed that under this rule, it is the discretion of the Court to or not to strike off the defence. The striking off the defence entails serious consequences of eviction. At the same time, the Court is also to see that the Interest of the landlord is not jeopardised regarding payment of rent and the tenant walks out without making payment of money to which the plaintiff was entitled.

9. In another decision of Vinod Chandra Kala and another v. M/s. Premier Precisions Tools Manufacturing (P.) Ltd., Meerut and others 1996 (1) ARC 62. It was held by this Court :

"The powers conferred by Order XV. Rule 5 of the CPC to strike off defence is a discretionary power and the Court is not bound to strike off the defence in every case of a mere technical or bona fide default. An order striking off the defence under Rule 5 of Order XV is in the nature of a penalty and, therefore, a serious responsibility rests on the Court and the power is not to be exercised mechanically. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances."

It was further observed :

"By an order striking off defence under Order XV, Rule 5 of the Code, the tenant is deprived of his right to defend himself and such a result should not be allowed to come about unless the tenant's conduct has been contumacious or dishonest or the tenant has acted in conscious disregard of its obligation. Where a tenant is substantially complying with the provisions in question the defence of the tenant cannot be struck off for minor lapses."

10. It has long been a practice which has received the strength of rule that no one is to be condemned, punished or deprived of property in any judicial or quasi-judicial proceeding unless he has had an opportunity of being heard. This is based upon the principle audi alteram partem. This maxim means that a person should not be condemned on ex-parte statements. The right to adduce evidence in defence and its due consideration by the authority concerned are integral part of the principle of natural justice. Therefore, a great care has to be taken by the Courts in exercising the discretion to strike off the defence as such an order has

the effect of abrogating an important constituent of the principle of natural justice i.e., consideration of defence. A great responsibility thus lies on the Judges to decide whether or not in the facts and circumstances of the case, the order of striking off defence should be passed. Such an order should not be passed in a routine manner and since it abrogates a valuable right of a party, the discretion should be used in making such an order only where there is no escape from it and where the discretion of the trial court has leaned in favour of the tenant, the revisional court should not interfere in that discretion except in the cases of extreme necessity and only where it finds that the discretion by the trial court has been exercised absolutely in an arbitrary manner against the sound judicial principles.

11. On an examination of the facts of the present case, in the backdrop of the above legal position, I find that the revisional court was not justified in striking off the defence of the petitioner especially when the trial court had declined to do so. In the present case, the plaintiff-respondent on 25.9.80 moved application before the trial court for striking off the petitioner's defence for not making the requisite deposits as contemplated under Order XV, Rule 5, C.P.C. The petitioner in his reply dated 30.10.80 clearly indicated that he has already deposited the entire amount in Court u/s 30 (1) of the Act and the plaintiff was fully aware of the same. This was not refuted by the plaintiff in any rejoinder. The trial court while rejecting plaintiff's application on 11.2.81 found as a fact that rent upto 31.3.81 stood deposited u/s 30(1) of the Act, that means even rent in advance had been deposited by the petitioner. The revisional court while setting aside the order of the trial court has not touched this finding of fact of the trial court that the entire rent upto 31.3.81 stood deposited prior to the date of the order of the trial court. By virtue of the deeming provision contained in sub-section (6) of Section 30, such deposit is to be treated as a payment to the person in whose favour it has been made.

12. In the case of Rqjendra Prasad and others v. IIIrd A. D. J., Jaunpur and others 1989 ALJ 396 it was held by this Court that the deposit of rent made u/s 30 of the Act has to be considered while considering the question of compliance of Order XV, Rule 5 of the C.P.C. It was also observed therein that the question whether the deposit is valid or not is relevant for determining the question whether the tenant could be held to be defaulter or not in the eye of law, but so far as Order XV, Rule 5, C.P.C. is concerned, the only requirement is that the tenant has to deposit the entire amount on or before the first hearing of the suit. If the deposit has been made u/s 30 of the Act. then it will ensure to the benefit of the tenant.

13. In the present case as per the finding of fact recorded by the trial court and even not assailed before this Court that the tenant petitioner u/s 30 (1) of the Act had already deposited rent due upto March. 1981, i.e., much more than the amount which had fallen due. Therefore, in this view of the matter there has been substantial compliance of the provisions of Order XV. Rule 5, C.P.C. as the

amount so deposited u/s 30 (1) of the Act was readily available to the landlord and his interest of securing payment of his dues was fully safeguarded. In these circumstances, the revisional court should not have interfered in the discretion of the trial court whereby the Court had refused to strike off the petitioner's defence. The impugned order, therefore, cannot be sustained.

14. For the above reasons, this writ petition is allowed. The order of the revisional court striking off the defence dated 7.9.83 is set aside and that of the trial court dated 11.2.1981 is restored. However, keeping in view the fact that the suit is pending for the last more than 19 years, the trial court is directed to proceed with the case on day to day basis and decide the same, in accordance with law within a period of six weeks from the date a certified copy of this order is produced. The stay order granted earlier shall stand vacated and the parties are directed to appear before the Court concerned on 21.9.1998.

15. In the circumstances, parties are directed to bear their own costs.