
(2017) 01 AHC CK 0082
In the Allahabad High Court
Case No : Writ A No. 19649 of 2013

Gattu @ Rasheed

APPELLANT

Vs

Addl. Dist. Judge

RESPONDENT

Date of Decision : 31-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 3 ADJ 350 : (2017) 2 AllWC 2072 : (2017) 1 ARC 671

Hon'ble Judges : Abhinava Upadhyaya, J.

Bench : Single Bench

Advocate : P.S. Gupta, Advocate, for the Petitioner; Swapnil Kumar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Abhinava Upadhyaya, J.—Heard Sri P.S.Gupta, learned counsel for the petitioner and Sri Swapnil Kumar, learned counsel appearing for the landlord respondent.

2. This a writ petition filed against the order of the revisional court dated 15.10.2012 in SCC Civil Revision No.8 of 2008 which revision was filed against the order of the SCC court in SCC suit for arrears of rent and eviction being suit No.56 of 1985 in which the defence of the petitioner was struck off under Order 15, Rule 5 CPC on the ground that on the first date of hearing, the petitioner did not deposit the entire amount nor paid interest and further defaulted in payment of monthly rent. Against the said order a revision was filed and the revisional court also affirmed the order of the trial court.

3. Sri P.S. Gupta, learned counsel appearing for the revisionist submits that although there was some delay in depositing the entire rent along with interest but the rent amount was being deposited under section 30 of the U.P.Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 and, therefore, there was no default on his part.

4. Learned counsel for the petitioner has relied upon a decision in the case of *Bimal Chand Jain v. Gopal Agarwal* AIR 1981 SC 1657 wherein it has been held that it is in the discretion of the court upon proper explanation to condone the delay in depositing the rent as an opportunity is provided under R.5 of O.15 to file a representation. Therefore, if a genuine and proper explanation is given, the language should not be taken as peremptory and should not be exercised mechanically. Similar view has been taken by learned Single Judge in the case of *Wali Mohamad v. Moin Khan* 2008 (3) ARC 260 wherein it was held that the language of Order 15, Rule 5 CPC is akin to the language of Order 7, Rule 1 CPC which has been explained by the Supreme Court in the case of *Kailash v. Nanhku* AIR 2005 SC 2441.

5. I have considered the submissions of the learned counsel for the revisionist and have gone through the judgements cited. It is to be noted that in both these judgements, the facts are that the entire rent amount was deposited on the first date of hearing but there were default in payment of monthly rent. That apart, considering the ratio of the aforesaid judgment, it can be said that the court had the discretion to condone the delay in depositing the rent upon appropriate and proper explanation.

6. In the present case, the suit for arrears of rent and eviction was filed in 1985. In the written statement, the defence that was taken was that the defendant lessee are not entitled to payment of any interest as the lessor has himself refused to accept the rent and, therefore, there was no need to deposit. Second defence that was taken was that the amount was being deposited under section 30 of U.P.Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 and further it is argued that finally the entire rent was deposited in the year 2003. Therefore, the court below erred in law in striking off the defence of the defendant lessee.

7. After considering the submissions of the learned counsel for the parties, I am of the view that the language of the order 15 R.5 CPC clearly indicates that the defence will be struck off if on the date of first hearing the entire rent amount is deposited along with 9% interest and lessee continues to deposit the admissible monthly rent but the interpretation of the provisions by the aforesaid judgements cited above it leaves a room for the court to condone the delay upon proper explanation. It is not disputed that the suit was filed in the year 1985 and written statement was filed in the year 1986 but the rent for the first time was deposited in the year 2003. The explanation or reason given for not depositing the rent is that the lessee was not obliged to deposit the rent as the lessor had refused to accept the rent and was also not obliged to pay any interest. Such an explanation, in my view, is hardly any explanation to apply the decisions cited above and in my view the court was perfectly justified in striking off the defence of the defendants and consequently the revisional court was also right in dismissing the revision.

8. There is no merit in the writ petition and is accordingly dismissed.