

(2008) 04 AHC CK 0202

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7893 of 2005

Gauri Shanker

APPELLANT

Vs

Civil Judge (J.D.), City Varanasi and another

RESPONDENT

Date of Decision : 15-04-2008

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 30(1)

Citation : (2008) 04 AHC CK 0202

Hon'ble Judges : Dilip Gupta, J

Final Decision : Allowed

Judgement

Dilip Gupta, J.—This petition has been filed by the landlord to assail the order dated 22nd August, 2004 as well as the order dated 29th January, 2005 passed in the Miscellaneous Case under section 30 (1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act")

2. The records of the writ petition indicate that the petitioner was a tenant of the house in dispute of which the rent was enhanced to Rs. 2000/ per month with effect from June, 1995. A notice dated 21st March, 2000 was sent by the landlord in respect of which a detailed reply was sent by the Counsel for the tenant admitting therein that from June, 1995 the rate of rent of the house in dispute was Rs. 2000/. It was also stated that the landlord had refused to accept the rent with effect from December, 1999 as the MoneyOrders sent by the tenant were refused.

3. The tenant then started depositing the rent at the rate of Rs. 2000/ per month with effect from December, 1999 under section 30 (1) of the Act. This deposit was continued to be made up to December, 2003 and ultimately the tenant vacated the premises on 31st May, 2005. Just prior to vacating the premises, in the month of August, 2004 the tenant moved an application that since the amount had been deposited under section 30 (1) of the Act at his own risk, the

tenant may be permitted to withdraw the amount. This application was allowed by the Court but before the amount could be withdrawn the landlord moved an application in October, 2004 with a prayer that the amount deposited under section 30 (1) of the Act by the tenant in favour of the landlord may be permitted to be withdrawn by the landlord. This application has been rejected by the Court by the order dated 29th January, 2005 holding that the amount cannot be paid to the landlord since the deposit was made by the tenant at his own risk.

4. I have heard Ajay Kumar Singh, learned Counsel for the petitioner and Sri Cyan Prakash Singh, learned Counsel appearing for the tenantrespondent No. 2.

5. Learned Counsel for the petitioner submitted that deposit under section 30 (1) of the Act is made in the Court when the landlord refuses to accept the amount and section 30 (6) of the Act provides that in respect of the such a deposit it shall be deemed that the person depositing it has paid it on the date of such deposit to the person in whose favour it is deposited. He, therefore, contends that the landlord is entitled to withdraw the amount.

6. Learned Counsel for the respondent, however, submitted that even though the tenant had admitted in the reply to the notice that the rent was Rs. 2000/ per month with effect from June, 1995 and even though the amount was deposited under section 30 (1) of the Act at this rate, yet the landlord had subsequently orally agreed to accept the rent at the rate of Rs. 500/ and, therefore, the landlord can withdraw the amount treating the rent to be only Rs. 500/ per month. He further contended that even prior to October, 2004, the landlord had moved an application on 5th July, 2004 that he should be permitted to withdraw the amount before the case was withdrawn but no orders were passed on this application.

7. The records, therefore, clearly indicate that even before the Miscellaneous Case was withdrawn by the tenant, the landlord had clearly expressed his willingness to withdraw the amount. The Court below, however, by the order dated 22nd August, 2004 allowed the application filed by the tenant without passing any order on the application filed by the landlord. Even otherwise, any deposit made by the tenant under section 30 (1) of the Act shall be deemed to have been made to the landlord on the date of deposit as contemplated under section 30 (6) of the Act. In such circumstances the Court was not justified in rejecting the application filed by the landlord for withdrawing the amount deposited by the tenant.

8. Learned Counsel for the respondents has placed reliance upon the decision of this Court in *Narain Prasad v. IXth A.D.J. and others* 2004 (55) ALR 3 (HC). It provides that an invalid deposit made under section 30 of the Act cannot confer any right upon the tenant for its adjustment. The Court below has not recorded any finding that it was an invalid deposit and even the landlord has not taken up the case that it was an invalid deposit. The Court below has rejected the application only on the ground that the deposit was made under protest. This

decision does not help the respondent.

9. It also needs to be mentioned that the tenant had clearly admitted in writing that the rent was enhanced to Rs. 2000/ per month with effect from June, 1995 and he had also deposited this amount towards the rent in the proceedings under section 30 (1) of the Act. The tenant does not dispute the right of the landlord to withdraw this amount since all that he contends is that the landlord should be permitted to withdraw the amount treating the rent to be Rs. 500/ per month only. The case taken by the tenant that the landlord orally reduced the rent to Rs. 500/ cannot be accepted particularly when the landlord has denied this fact.

10. The petition, therefore, succeeds and is allowed. The orders dated 22nd August, 2004 as well as the order dated 29th January, 2005 passed by the Court below are quashed and the application filed by the landlord for withdrawal of the amount deposited by the tenant under section 30 (1) of the Act is allowed.