
(2007) 02 AHC CK 0005
In the Allahabad High Court

Gulfan and Others

APPELLANT

Vs

Ravi Gandhi and Others

RESPONDENT

Date of Decision : 13-02-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34, 35A
Constitution of India, 1950 — Article 226

Citation : (2007) 4 ADJ 26 : (2008) 2 AWC 1951

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. This is tenant's petition. S.C.C. Suit No. 212 of 1980 was filed by Smt. Parwati Gandhi, mother of the respondent-landlords, inter alia, that the tenants have made material alterations diminishing the value and utility of the suit property and that they have not paid rent from August, 1970.

3. The tenants deposited rent in Court for the period May, 1977 to April 1980 which was accepted by the landlords. Therefore, the tenants claimed that the notice terminating the tenancy stood waived. They also filed ? written statement denying the plaint allegations.

4. The trial court vide judgment dated 29.2.1996 dismissed the suit holding that there was no material alteration in the shop in dispute and that the tenants having remitted the rent in Court without any default, notice terminating the tenancy stood waived.

5. Aggrieved, the respondents preferred Rent Revision No. 148 of 1996, which has been allowed by the revisional court by the impugned judgment dated 31.8.2006.

6. Aggrieved by the judgment dated 31.8.2006, the tenants have preferred this

writ petition under Article 226 of the Constitution of India.

7. Counsel for the petitioners contended that the revisional court has committed gross error in law in overlooking the finding of the trial court that the notice dated 12.10.1972 terminating the tenancy stood waived as the landlords had accepted the arrears of rent for the period May, 1,977 to April, 1988.

8. From perusal of record, it is evident that the tenants did not deposit the rent on the first date of hearing. The defence of the tenants was that they were ill-advised by their counsel and, therefore, the rent could not be deposited on the first date of hearing. The revisional court has given a finding of fact to this effect, which is as under:

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;g ekU; fu.kZ; IEifRr vUrj.k vf/kfu;e dh /kkjk 113] 111?,p?] 106 ds IEcU/k esa gSA bl ekU; fu.kZ; esa ;g vo/kkfjr fd;k x;k gS uksfVI nsus ds ckn Hkh ;fn yS.MykMZ }kjk Hksth xbZ uksfVI fu"izHkkoh gks xbZ gS vFkkZr~ yS.MykMZ us uksfVI ls IEcU/kr rF;ks ds vk/kkj ij dk;Zokgh djuk NksM+ fn;k gS A bl ekU; fu.kZ; ds izLrj 13 esa ;g vo/kkfjr fd;k gS fd ;fn ,slk fd;k tkrk gS rc fdjk;snkj dks ;g lkfcr djuk iM+sxx fd fdjk;k izkIr djus ds ckn yS.MykMZ dk bjknk o mn~ns"; ;g Fkk fd og fdjk;k ;k yht ls IEcU/kr dk;Z dks vkxs Hkh izHkkoh j[kuk pkgRk gS A

;g rF; fl) gqvK gS fd lquokbZ dh izFke frFFk ij izR;FkhZ@fdjk;snkj }kjk IEiw.kZ fu/kkZfjr /kujkf"K ;w0ih0 ,DV 13@72 dh /kkjk 20?4? ds izko/kku ds vuqlkj fcuk "krZ tek ugh dh xbZ gSA----

9. There is no illegality, irregularity or perversity in the order impugned calling

for interference in the writ jurisdiction. If the tenants were ill advised by their counsel, they have to blame themselves for engaging such counsel and they have the remedy to proceed in accordance with law against such counsel but the accepted fact is that they committed default in not paying the arrears or rent on the first date of hearing.

10. The tenants pleaded that they have not defaulted in payment of rent as they had paid the rent to the landlord outside the Court on 12.5.1981 and 5.6.1981 and landlord having accepted the same, the notice stood waived. The revisional court has rightly recorded the finding that mere acceptance of rent by the landlord outside the Court will not waive the notice as has been held in *New India Insurance Co. v. Ghanshyam* 1997 ALR 568.

11. In *New India Insurance Co. (supra)*, it has been held that even after service of notice, landlord accepts the rent, the notice shall not be treated to have been waived. The tenant will have to prove that the landlord has waived his rights to act upon in pursuance of the notice. In the present case, such is not the case of the tenants. For the reasons stated above, the writ petition fails and is dismissed. The petitioner-tenants shall vacate the premises in dispute, within a month from this date failing which, they shall be evicted by coercive process in accordance with law with the aid of local polices.

Costs:

12. So far as costs is concerned, Hon''ble the Apex Court in *Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI)*, has held that--

So far as awarding of costs at the time of judgment is concerned, awarding of costs must be treated generally as mandatory inasmuch as the liberal attitude of the Courts in directing the parties to bear their own costs had led the parties to file a number of frivolous cases in the Courts or to raise frivolous and unnecessary issues. Costs should invariably follow the event. Where a party succeeds ultimately on one issue or point but loses on number of other issues or points, which were unnecessarily raised. Costs must be appropriately apportioned. Special reasons must be assigned if costs are not being awarded. Costs should be assessed according to rule in force. If any of the parties has unreasonably protracted the proceedings, the Judge should consider exercising discretion to impose exemplary costs after taking into account the expense incurred for the purpose of attendance on the adjourned dates.

13. Thus, from the law laid down by the Hon''ble Apex Court in the aforesaid case of *Salem Advocate Bar Association (supra)* it is apparent that non-payment of cost is an exception for which special reasons have to be given by the Court and that in normal circumstances cost has to be awarded on the party according to the issue decided in favour of the party which were unnecessarily raised. The cost so imposed should be in accordance with rules and if the proceedings are unnecessarily protracted or adjournments have been sought it is upon the discretion of the Judge to impose exemplary cost taking also into account the

circumstances etc. for the purpose of adjournment.

14. Following the ratio laid down in Salem Advocate Bar Association (supra), this Court in Civil Misc. Writ Petition No. 48752 of 2006 Nizamuddin v. Shakoor Ahmad after considering provisions of Rule 9 of Chapter XXII and Rule 11 of Chapter XXI of the High Court Rules, 1952 and provisions of Sections 34, 35A and 35B of the CPC has held that while awarding interest on a party by non-payment of principal amount or any dues should also be considered by the Court and not only interest but penal interest may also be awarded.

15. Since the petitioners have protracted the proceedings by filing unnecessary petition and have retained the accommodation in dispute unauthorizedly, which could have been utilized by the landlords, as such costs is to be deterrent and exemplary. In the facts and circumstances of the case, it is directed that apart from payment of arrears of rent, if any, the petitioners will also pay cost of Rs. 5,000 (Rupees five thousand) which shall be deposited by the petitioners before District Judge, Agra within two months from today. The arrears of rent as well as the cost so deposited can be withdrawn by the respondent-landlords without furnishing any security within two months from the date of deposit. In case the petitioners fail to make payment of the aforesaid amount, the same shall be recoverable as arrears of land revenue.