

(2008) 09 AHC CK 0174

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 252 of 1985

Hanumanji Maharaj Virajman Mandir Bahar, Bara Gaon, Gate,
Jhansi and another

APPELLANT

Vs

VIth Additional District Judge, Jhansi and others

RESPONDENT

Date of Decision : 01-09-2008

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (2008) 09 AHC CK 0174

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.—This writ petition was earlier allowed and matter was remanded to the Revisional Court through judgment and order dated 8.12.2004. Thereafter, the said order was set aside on the rehearing application filed by the respondents as it had been passed without hearing any one on behalf of respondents.

2. Heard learned Counsel for the parties.

3. This is landlord's writ petition. Petitioner filed S.C.C. Suit No. 4 of 1976 against tenantrespondent No. 3Raghuardayal Geda for eviction on the ground of bona fide need and for recovery of arrears of rent. In the point it was stated that rate of rent was Rs. 50/ per month and rent had not been paid since 1.1.1971 in spite of notice dated 4.8.1975. Recovery of rent for three years before filing of the suit was also sought, apart from eviction. Judge Small Cause Courts, Jhansi decreed the suit through judgment and decree dated 14.7.1979. However, tenant had asserted that rate of rent was Rs. 5/ per month and J.S.C.C., accepted the case of the tenant in respect of rate of rent. Against judgment and decree passed by the Trial Court tenantrespondent No. 3Raghuardayal Geda filed S.C.C. Revision No. 122 of 1979. IVth Additional District Judge, Jhansi allowed the revision in part through judgment and order dated 22.9.1984. Suit for eviction was dismissed. The said judgment of the Revisional Court has been challenged through this writ petition.

4. Trial Court held that plaintiff was a private trust hence it was expected to keep records of receipt of rent. In this view of the matter the Trial Court held that the assertion of the plaintiff that receipt of rent was noted by the plaintifflandlord on a note book maintained by the tenant was not believable. Trial Court concluded that counter foils of rent receipts must be available with the landlord however, they were not filed for the reason that they must be showing the rate of rent as Rs. 5/ per month. The Trial Court merely on the basis of written statement and reply notice held that there was variation in the two documents hence tenant must be assumed to have failed to prove that he had paid the rent. Annexure C.A. 1 to the supplementary counteraffidavit dated 27.7.2008 is copy of notice dated 4.8.1975. In the said notice it was mentioned that rent was due from 1.1.1971 to 31.7.1975. Written statement is AnnexureC.A. 2 to the same supplementarycounteraffidavit. In Para 8 of the written statement month was not mentioned. It was mentioned that when defendant received notice of the plaintiff, defendant had paid the rent till 31. 1975. Annexure C.A.3 to the supplementarycounteraffidavit is oral statement of the tenant in which he stated that at the time of receiving notice rent till 31.7.1975 had been paid. In the reply notice also tenant mentioned that he had paid the rent till 31.7.1975.

5. It is mentioned in the judgment of the Trial Court that as in the written statement (Para 8) month was not mentioned hence tenant was defaulter. In the written statement it had further been stated that at the time of service of notice rent for only one month i.e., August, 1975 was due. Trial Court held that as notice was served on 6.8.1975 hence rent of August could not be due by that time.

6. In my opinion Trial Court was not right in deciding question of default merely on the basis of written statement and reply notice. Omission of number of the month in Para 8 of the written statement can be described as merely an inadvertent omission. The assertion in the written statement that at the time of service of notice only one month rent i.e., of August, 1975 was due cannot be read against the tenant. Tenant received the notice in August, 1975. Even if rent of August, 1975 was payable in September, 1975 still the assertion in the written statement that rent for August, 1975 was due would not make any difference. More often the arrangement between landlord and tenant is to pay rent one month in advance. Lower Revisional Court held that plaintiff bitterly failed to establish that at the time of notice four months rent was due. However, Revisional Court did not say a single word regarding evidence of the parties in respect of payment of rent. The matter therefore, requires remand.

7. Finding of fact may better be recorded by Trial Court than Revisional Court hearing revision under section 25 Provincial Small Cause Courts Act.

8. Accordingly, writ petition is allowed. Both the impugned judgments, decree and orders are set aside. Matter is remanded to the Trial Court to decide the suit afresh. However, it is clarified that the finding of rate of rent to be Rs.5/ per month shall not be reopened. The said, finding is approved. Only question of

default on the basis of evidence shall be decided by the Trial Court.

9. According to Para 6 of counteraffidavit dated 22.12.2006 property in dispute contains four rooms, veranda, Tin shaded portion, courtyard, one iron shop and chabootara, stairs, bathroom, kitchen, store room etc. Existing rent of Rs. 5 per month is ridiculous. The Court wonders whether to laugh or lament at this rent.

10. I have held in *Khursheeda v. A.D.J.* 2004 (55) ALR 586. and *H.M. Kichlu v. A.D.J.*, 2004 (57) ALR 485 that while granting relief against eviction to the tenant in respect of building covered by Rent Control Act or while maintaining the said relief already granted by the Courts below, Writ Court is empowered to enhance the rent to a reasonable extent.

11. In the aforesaid authority of *Khursheeda (supra)*, I placed reliance upon the Supreme Court authority in *M.V. Acharya v. State of Maharashtra*, AIR 1998 SC 602=1998 SCFBRC 75 where it was held that it was essential to provide for periodical enhancement of rent under the Rent Control Acts. The Supreme Court has further held that frozen rents are giving rise to lawlessness and landlords out of frustration are approaching muscle man to get the premises vacated and Courts of law are becoming redundant in this sphere. This authority has recently been followed by the Supreme Court in *Satyawati Shartna (dead) by LRs. v. Union of India and another*, (2008) 5 SCC 287=2008 (71) ALR 499 (SC)=2008 (65) AIC 1 (SC) part of Paras 29 and 34 of which are quoted below :

"29. It is trite to say that legislation which may be quite reasonable and rationale at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equity and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become nonexistent.

34. In *Malpe Vishwanath Acharya and others v. State of Maharashtra and another (supra)*, the Court found that the criteria for determination and fixation of rent by freezing or by pegging down of rent as on 1.9.1940 or as on first date of letting, had, with the passage of time become irrational and arbitrary but did not strike down the same on the ground that extended period of Bombay Rent Act was coming to an end on 31.3.1998."

12. Under U.P. Rent Control Act, there is no provision of enhancement of rent after October, 1972 [Except where landlord is public charitable or public religious institution (section 9A) or Government is tenant (section 21 (8))]. In the aforesaid authority of *Khursheeda*, I have also placed reliance upon the authority of Supreme Court in *Shangrila Food Products Ltd. v. Life Insurance Corporation of India*, AIR 1996 SC 2410=1996 SCFBRC 472. Paragraph 11 of which is quoted below :

"11. It is wellsettled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and

circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priorly, before invoking the jurisdiction of the High Court, the Court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief."

Thereafter, in Para 8 of the aforesaid authority of Khursheeda, I held as under:

"Rent Control Act confers a reasonable advantage upon the tenant of protection against arbitrary eviction. Tenant under the Rent Control Act cannot be evicted except on specific grounds like bonafide need of the landlord, arrears of rent, subletting and material alteration etc. This advantage is also coupled with the advantage of immunity from enhancement of rent. The later advantage cannot be said to be either reasonable or equitable. The Supreme Court in the aforesaid authority of S.F.P. v. L.I.C. AIR 1996 SC 2410=1996 SCFBR 472 has laid down that while granting relief to a party the Writ Court can very well ask the said party to shed the unfair advantage which it gained under the impugned order. By slightly extending the said doctrine it may safely be held that while granting the reasonable advantage to the tenant conferred upon him by the Rent Control Act the tenant may be asked to shed the unreasonable arbitrary advantage conferred upon him by the said Rent Control Act. The Writ Court therefore, while granting or maintaining the relief against arbitrary ejection to the tenant can very well ask the tenant to shed the unreasonable benefit of the Rent Control Act granted to him in the form of immunity against enhancement of rent, however inadequate the rent might be. Tenant will have to shed the undue advantage of immunity from enhancement of rent under the Rent Control Act to barter his protection from arbitrary eviction provided for by the said Act."

13. Thereafter, in H.M. Kitchlu v. A.D.J., 2004 (57) ALR 485. I have held that the same principle of enhancement of rent to a reasonable extent may be made applicable while dismissing the writ petition of the landlord for the reason that by doing so Writ Court approves the protection of Rent Control Act granted to the tenant by the Courts below.

14. Same principle may be applied while remanding the matter.

15. Accordingly, it is directed that irrespective of result of the suit tenant shall pay rent to the landlord at the rate of Rs. 1, 250 per month with effect from August, 2008 onward.

16. Both the parties are directed to appear before the Trial Court on 1.9.2008.

Writ Petition Allowed.