

(2001) 02 AHC CK 0087

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No 3798 of 2001

Idris Ansari

APPELLANT

Vs

VIII Addl. Distt.Judge,Gorakhpur and Others

RESPONDENT

Date of Decision : 13-02-2001

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Transfer of Property Act, 1882 — Section 106

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 20(4)

Citation : (2001) 02 AHC CK 0087

Hon'ble Judges : A.K.Yog, J

Final Decision : Allowed

Judgement

A.K. Yog, J.—S.C.C. Suit No. 23 of 1999 was filed by Noor Ahmad and Firdaus Ahmad against Idris Ansari, defendant, in the Court of Judge, Small Causes Court, Gorakhpur for recovery of arrears of rent, mesne profit as well as for possession of residential house in possession of the defendant situate at Mohalla Basantpur Narkatiya, Gorakhpur. Plaintiff claimed rent at the rate of Rs. 600 per month, copy of the plaint has been filed as Annexure1 to the Writ Petition. Defendant filed written statement and denied claim .of the plaintiff, trial Court framed points for determination including whether rent was Rs. 600 as claimed by the plaintiff or Rs. 50 as asserted by the defendant; whether notice dated 621999 was not tendered and presumption sought from the endorsement of refusal of postal authority was rebutted; whether tenant was entitled to seek direction for eviction decree by making deposit as contemplated under Section 20 (4) under U.P. Act No. XIII of 1972 (for short called "the Act"); whether notice demanding higher rent was valid in law. Judge Small Causes Court partly decreed the suit for arrears of rent and dismissed the suit to the extent plaintiffs claimed eviction from the accommodation in question. It further allowed the suit partly with respect to other reliefs vide judgment and order dated 20102000 (Annexure2 to the Writ Petition).

2. Feeling aggrieved plaintiff landlord filed revision under Section 25, Provincial Small Causes Court Act against the judgment and order dated 20102000 of the trial Court to the extent it had gone against him.

3. Revisional Court allowed the revision by means of judgment and order dated 20 January, 2001 (Annexure 3 to the Writ Petition). The Revisional Court, however, affirmed the finding of the Judge Small Causes Court on the question of rate of rent; namely it was affirmed that rate of rent payable by the tenant was Rs. 50 per month only.

4. I have heard learned counsel for the parties and perused the record.

Landlord respondent has filed Counteraffidavit and annexed certain documents. Petitioner has also filed Rejoinder affidavit.

5. Learned counsel for the petitioner has sought to raise three points as follows:

Notice under Section 106, Transfer of Property Act was invalid, inasmuch as landlord was admittedly claimed higher rent. Revisional Court has held, on this issue against the tenant petitioner relying upon decision in the case of Gokaran Singh v. 1st Additional District and Sessions Judge, Hardoi and others, 2000(1) JCLR 375 (A1!)(LB)(FB); 2000 (40) ALR 405 (FBLB).

6. Learned counsel for the petitioner submitted that notice shall be had if higher amount of rent is being demanded and seeks to support his argument by placing reliance upon the ratio laid down in the case of N.M. Engineer and others v. Narendra Singh Viridi, AIR 1995 SC 448. I have gone through the decision it does not help the petitioner. On the other hand Full Bench decision of this Court which dealt with the issues directly is a binding precedent.

7. As far as the conclusion of two Courts below regarding contrary appreciation of evidence on record, on the question of notice being served or not, the endorsement of refusal and the presumption arising therefrom was whether adequately rebutted and the question whether tenant made adequate deposit as contemplated under Section 20 (4) of the Act depending upon the appreciation of evidence on record. The question whether tenant had actually refused to accept the notice as claimed by the plaintiff or endorsement of "refusal" has been made without actually tendering it upon the defendant, is a question of fact to be adjudicated by the concerned Court after appreciating evidence, led by the parties. The related question whether presumption arising in law or the endorsement of refusal has been rebutted or not will be a consequential finding. It is true that aforesaid question has to be decided in accordance with law, settled principles and criteria laid down by the Court in various decisions is referred to in the judgment of Revisional Court. The Revisional Court before it recorded finding of fact on the said issue appreciated evidence on record and pointed out relevant circumstances in support of its conclusion.

8. Regarding second contention with respect to compliance of the provisions of Section 20 (4) of the Act by the tenant petitioner, it will suffice to mention that

none of the two Courts below have given full desired details regarding deposit of amount by the tenant under different head. It is not possible from the perusal of this judgment to find out the adequacy on this score. Revisional Court ought to have referred to various amounts as contemplated under Section 20 (4) of the Act before it attempted to reverse the finding of the trial Court on this issue.

9. In view of the above, I find that the judgment of the Revisional Court dated 20th January, 2001 cannot be sustained and the Revisional Court/Respondent No. 1 should have, in view of its conclusion/finding remanded the case back to be decided by the Court of Judge, Small Causes Court.

10. Learned counsel for the contesting respondent however submitted that if this Court proposes to remand the case his client would like to file cross petition in order to challenge the finding on the rate of rent.

11. Since the case is being remanded back to the trial Court, I permit the plaintiff to challenge the finding on rent and consequently, it is made clear that trial Court shall decide the whole suit afresh including issue regarding rate of rent as per evidence on record before it.

12. In view of the above, the impugned judgment and order dated 20102000 passed by Judge, Small Causes Court,

Gorakhpur in S.C.C. Suit No. 23 of 1999 (Annexure2 to the Writ Petition) and judgment and order dated 2012001 passed by VIII Additional District Judge, Gorakhpur in S.C.C. Revisional No. 40 of 2000 (Annexure3 to the Writ Petition) hereby quashed with direction to the aforesaid Judge, Small Causes Court, Gorakhpur to decide aforesaid S.C.C. Suit No. 23 of 1999 afresh within six months of the receipt of a certified copy of this judgment.

13. Writ petition stands allowed subject to the observations made above.

14. No order as to costs.