

(1995) 03 AHC CK 0060
In the Allahabad High Court
Case No : Civil Revision No. 382 of 1995

Jammu and Kashmir Bank (A Govt.Co.) and Ors.	APPELLANT
Vs	
Rani Devi & Ors.	RESPONDENT

Date of Decision : 07-03-1995

Acts Referred:

Specific Relief Act, 1963 — Section 27A
Transfer of Property Act, 1882 — Section 106, 116, 53A
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2

Citation : (1995) 03 AHC CK 0060

Hon'ble Judges : N.L.Ganguly, J

Final Decision : Dismissed

Judgement

N.L. Ganguly, J.—This Civil Revision under Section 25 of the Provincial Small Cause Courts Act is directed against the judgment and decree dated 3051995 passed in SCC No. 8 of 1994 by the Court of III Addl. District Judge, Kanpur Nagar.

2. The revisionist is the J & K Bank. The suit was filed by the plaintiffrespondents for recovery of arrears of rent along with water tax and drainage tax and also for eviction of the tenant from the accommodation No. 38/159, Meston Road, Kanpur I and II floor. The suit has been decreed and for recovery of arrears of rent and eviction of the revisionistapplicant from the accommodation in question.

3. The revision was presented on 2481995 before this Court. The learned counsel for the revisionist and the respondent Sri A.N. Sinha requested to take up the revision on 3081995. The learned counsel for the revisionist addressed the Court at length. When found that the Court was not inclined to accept his submissions the learned counsel for the revisionist requested that the case may be adjourned so that the parties may negotiate and arrive at a compromise outside the Court. The learned counsel for the respondentlandlord, Sri A.N. Sinha submitted that he had no objection if the revisionist wanted to negotiate and settle the matter

outside the Court.

4. The tenancy of the revisionist for the accommodation in question is on the basis of a registered tenancy has expired before service of the notice for eviction and damages. The learned counsel for the revisionist submitted that his client is a Bank, a Government Company and if they are evicted, a lot of inconvenience to the bank and also to its customers is likely to be caused. Thus he requested that he would try to get the matter compromised between the parties. The landlord's representative was present in Court and Sri A.N. Sinha also obtained instructions from him and it was tentatively agreed between the parties that the rate of rent shall be enhanced and fixed at the rate of Rs. 8.50 per sq. ft. for both the floors and they may be filing the compromise document in Court. The enhanced rate would be effective w.e.f. 29/9/1993, which is the date of expiry of the lease. On such developments the Court fixed 30/9/1995 as the date for further hearing.

5. Thereafter on the request of the revisionist and the respondent the case was adjourned. The interim order staying the eviction was extended. After seeking number of adjournments the revisionist did not file the compromise document and the matter was kept pending. The learned counsel for the revisionist stated on earlier occasions that parties have agreed for the compromise, the deed was not prepared and on some occasion it was submitted that the higher authorities of the Bank were to be contacted before entering into the compromise. After prolonged adjournments in the case when it became apparent that the revisionist is simply delaying the proceedings the learned counsel for the respondent/landlord insisted for disposal of the revision. The learned counsel for the revisionist filed photostat copies and typed copies of necessary papers, which he relied for addressing the Court. The learned counsel for the respondent stated that he would not file any counteraffidavit to the application filed by the revisionist. The counsel for the parties consented that the revision be finally disposed of without record or formally admitting it.

6. The facts in the present revision are not disputed. The revisionist is a tenant of the accommodation No. 38/159, Meston Road, Kanpur I and II floors at the rate of Rs. 5,100/- per month exclusive of water and drainage taxes, which also payable by the tenant. A registered agreement of tenancy was entered into between the parties on 22/9/1983 for a period of ten years lease. The period of ten years expired on 21/9/1993. The notice under Section 106, T.P. Act dated 11/5/1994 was sent by the landlord/respondent to the revisionist, which was served on 14/5/1994. It is also stated that the building in question is outside the purview of the U.P. Act No. 13 of 1972. The suit was for eviction and arrears of rent. The revisionist failed to comply with the request made in the notice and did not vacate the premises; hence the suit.

7. The plaintiff/respondent claimed ejectment decree and damages from the date of expiry of period of the notice with costs. A written statement was filed by the revisionist. The rate of rent, execution of the agreement, liability of payment of water and drainage taxes are admitted. It is not disputed that the respondent is

the landlord. The main contest by the revisionist is on the ground that the period of tenancy, according to the lease deed, expired on 21/9/1993. After the expiry of the said period the revisionist had been paying the rent to the landlord, as such the tenant continued by principle of holding over. The revisionist continued as tenant even after the expiry of the lease period. The validity of the notice dated 11/5/1994 was challenged and said that on the basis of the said notice the revisionist could not be evicted. It was stated in the written statement that upto May, 1994 the revisionist had been depositing the amount of rent in the Bank account of the respondent No. 2127, which the respondent had accepted. Thus it was suggested that new tenancy came into force. The learned J.S.C.C. after framing necessary issues arrived at a finding that the building in question was for the first time assessed after construction on 11/10/1994. Thus it was held that in view of the provisions of Section 2(2) read with Explanation 1(a) of the U.P. Act No. 13 of 1972 would not be applicable to the accommodation in question. It has been found after appreciating the evidence on record that on the date the suit was filed ten years period had not been completed. Further the learned trial court relying on the decision in *Rajkumar Sharma v. District Judge, Hardwar*, 1993 ACJ 626, found that the building was outside the purview of the U.P. Act No. 13 of 1972. The court below also referred to the decision in *Ramesh Chandra v. III Addl. District Judge*, AIR 1992 SC 1106, wherein it has been held that during the pendency of the suit also if ten years period is completed, then also it will not bring the building in question within the purview of the U.P. Act No. 13 of 1972.

8. It is also to be noted that the provisions of the U.P. Act 13 of 1972 have been further amended by the Amendment in S. 2(IV) after clause (f) when the amount of rent exceeded Rs. 2,000 month, then also it would be outside the purview of the U.P. Act 13 of 1972. It is not disputed that the rent of the accommodation in question is more than Rs. 2,000 per month and the tenant revisionist would not be entitled for protection under the Act. In the decision reported in (1995) 1 SCC 104, *D.C. Bhatia v. Union of India*, the Constitution Bench of the Apex Court has been pleased to hold that it is for the Legislature to decide as to which section of the people would be protected and what should be the basis of classification. It is not for the Court to interfere with the legislative policy. According to the amended provisions also besides the question of ten years from the construction, now if the rent of the building is more than Rs. 2,000 the provisions of the Act would not be applicable.

9. The other argument of the learned counsel for the revisionist is that after the expiry of the period of tenancy according to the registered tenancy agreement, if the revisionist continued to occupy the premises, after the said period, the tenancy would automatically be treated as tenancy from month to month basis. The learned counsel for the revisionist submitted that since the revisionist is a Bank, six months' period is necessary for terminating the tenancy by notice under Section 106, T.P. Act. It has not been shown and the court below found that the tenancy was not in respect of agriculture or for manufacturing purposes.

The argument of the tenantrevisionist was found to be misconceived. The revisionist submitted that the rent for the period after expiry of the term i.e. 2191994 has been paid to the respondent, which he has accepted. It has been found by the court below that the respondent served a notice on the revisionist not to deposit any amount in Bank Account No. 2127 and the said account be closed. The revisionist ignored the request and continued depositing the amount in the said Bank account of the respondent, which, in no manner, can be said to be acceptance of rent by the respondentlandlord. It is not disputed that the notice for closing the account and direction not to deposit the amount of rent in the account was received by the Bank manager.

10. The learned counsel for the revisionists submitted that revisionists are entitled for holding over of the tenancy right. Sri Haider Zaidi submitted that there was no necessity of fresh agreement after the expiry of the term of the lease. He submitted that be S. 27A of the Specific Relief Act the Legislature has recognised that in case of lease, equity of part performance is an active equity as in English law and is sufficient to support an independent action of the plaintiff. The learned counsel for the revisionists cited the decision reported in A.I.R. 1950 S.C. 1, Manaklal Mansukhbhai v. H.J. Nuwalla & Sons. He referred to paras 15 and 16 of the said judgment and also referred to the provisions of S. 53A of the Transfer of Property Act. The ruling cited by the learned Counsel for the revisionists has no application in the facts of the present case. It is not disputed that after expiry of the term of the tenancy as per registered agreement the landlord specifically by notice asked the revisionists not to deposit any amount of rent in the Bank account of the landlord and requested to close the said Bank account, which fact is admitted by the Bank manager. Thus there has been no consent or acceptance by the landlord about continuation of the tenancy by any implication. It is also not disputed that the notice for eviction was given and served on the revisionists. The learned counsel for the revisionists could not bring to the notice of the Court that the building in question is in any manner within the purview of the U.P. Act No. 13 of 1972.

11. The learned counsel for the revisionists cited a decision reported in (1988) 3 SCC 44, *Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd. v. Khaja Midhat Norr and others*. He referred to paras 5 and 6 of the said judgment and submitted that after the expiry of the period as per the registered instrument, the continuance of occupation in absence of any registered instrument, lease shall be deemed to be the lease from month to month. He submitted that then also the revisionists would continue to be at tenant by holding over. This argument is misconceived. The perusal of Section 116 of the Transfer of Property Act shows that if a lessee or under lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year or from month to month, according to the purpose for

which the property is leased, as specified in Section 106. The said provision is of no help to the revisionists. There was no consent or assent by the landlordrespondent for continuance of the revisionists rather specific instructions not to deposit any rent in the landlord's account and notice under Section 106, T.P. Act terminating the tenancy was admittedly served.

12. The learned counsel for the respondent cited the decision reported in AIR 1973 S.C. 508, *Bardilal v. Municipal Corporation of Indore* and referred to para 8 of the said judgment. He submitted that for holding over it is necessary that the assent of the landlord to the continuance of possession after the determination of the tenancy will create a new tenancy. What the section contemplates is that on one side there should be an offer of taking a new lease evidenced by the lessee or sublessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise. This authority fully supports the findings of the court below in favour of the respondents. The learned counsel for the respondent also cited the decision reported in 1989 Supp (1) SCC 487, *Provask Chandra Dulai v. Biswanath Banerjee*. He also cited the decision reported in AIR 1982 Cal. 236, *Anath Nath Das v. Smt. Binali Bala Mondel*, which I do not consider relevant for the purposes of the present revision. Other decision of the Calcutta High Court reported in A.I.R. 1982 Cal. 225, *M/s Dutta and Associates v. State of W. B.* "was also cited by the learned counsel for the respondent, which I do not consider necessary in view of the decisions of the Supreme Court already referred to above.

13. After hearing the learned counsel for the parties and perusal of the record I do not find any illegality or error in appreciation of facts and law by the trial court. The findings recorded by the court below is that the revisionists were occupying the premises after expiry of the term of the notice under Section 106, T.P. Act, which was served on the revisionists. It has been found as a fact that the landlord by notice informed the Bankrevisionists not to deposit any amount in the landlord's account and request to close the said Bank account. The revisionists failed to comply with the direction. The action of depositing rent in the Bank account cannot be said to be acceptance of rent by the landlord rather it would show that the revisionists acted in contravention of the direction of the landlord. The holding over of the tenancy is not possible in view of the facts and circumstances of the case, as found by the court below. The revision has not merit and deserves to be dismissed.

14. The learned counsel for the revisionists Sri Haider Zaidi requested that some time may be given to the revisionists for vacating the premises. The matter is kept pending since August, 1995 and the revisioinists have already consumed more than five months. However, considering the facts and circumstances of the case and the request of the learned counsel for the revisionists Sri Haider Zaidi, who prayed for at least three months" time for vacating the premises, I consider it appropriate that further two months" time may be given to the revisionists for

vacating the accommodation in question. The learned counsel for the revisionists on behalf of his client has stated that the Bank would pay the necessary amount of damages for use and occupation for the period till they occupy the premises and deliver actual possession of the accommodation in question to the landlord respondent.

15. The revision is hereby dismissed with costs with the above observations.

Revision dismissed.