
(2000) 01 AHC CK 0113

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2427 of 1981

Keshari Mal and Others

APPELLANT

Vs

IVth Addl. District Judge, Jalaun and Others

RESPONDENT

Date of Decision : 12-01-2000

Acts Referred:

Evidence Act, 1872 — Section 114

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

Citation : (2000) 01 AHC CK 0113

Hon'ble Judges : Sudhir Narain, J

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order of the Judge, Small Causes Court dated 1991979, Dismissing the suit filed by the petitioners and the order of the Revisional Court, dismissing the revision against the aforesaid order.

2. Briefly stated the facts are that the petitioners filed suit for recovery of arrears of rent, ejectment and damages against Respondent No. 3 with the allegations that they had sent notice on 15111997 demanding arrears of rent and terminating his tenancy. This notice was sent on 17111976. They had further sent notice dated 1811977 to the defendant Respondent No. 3 which was served on 2411977. He was in arrears of rent for more than four months on the date of service of the notice but in spite of the service of notice the rent was not paid. It was further stated that the defendant had made material alteration in the building. Respondent No. 3 contested the suit. It was stated that on receipt of the notice dated 1811977, he sent money order for the sum of Rs. 660 on 3171977 to Shri Ram Das father of the petitioners but it was refused. He did not commit any default in payment of the arrears of rent. It was denied that he had made any material alteration in the building in question. He also claimed the benefit of deposit under Section 20 (4) of UP. Act No. 13 of 1972.

3, The Judge, Small Causes Court dismissed the suit by his judgment dated 1991997 with the finding that Respondent No. 3 committed default in payment of rent but as he had made the deposit on the date of the first hearing as contemplated under Section 20 (4) of U.P. Act No. 13 of 1972, the suit was liable to be dismissed. He recorded a finding that Respondent No. 3 has not made any material alteration in the building. The petitioner preferred a revision. Respondent No. 1 took the view that Respondent No. 3 had not deposited the rent on the date of first hearing. He was not entitled to the benefit of Section 20(4) of the Act but reversed the finding of the trial Court on the question of default alleged to have been made by Respondent No. 3. The revision was accordingly dismissed on 2091980. This order has been challenged in the present writ petition.

4. I have heard Shri Prakash Gupta, learned Counsel for the petitioner and Shri B.N. Agarwal, learned Counsel for the contesting respondent.

Learned Counsel for the petitioner urged that the revisional Court was not justified in Reversing the finding of the trial Court on the question as to whether Respondent No. 3 had committed default in payment of arrears of rent. If the Revisional Court finds that there is manifest illegality in recording the finding it can either remand the matter or in certain circumstances can reverse the finding.

5. On the facts of the present case the question was as to whether Respondent No. 3 had remitted the money order within one month from the date of service of the notice and secondly, whether the addressee refused to accept the amount sent to him by money order.

6. Respondent No. 3 had filed receipt dated 3111977 by which it was proved that he had sent money order for Rs. 660. This receipt was exhibited as Ex. A5. This clearly established that he had sent the money order. The trial Court also did not disbelieve this fact that the defendant had sent the money order for Rs. 660 on 3111977 within one month from the date of service of the notice.

7. The next question is whether this amount sent by money order was refused by Ram Das, Respondent No. 3 appeared as DW1 and categorically stated that the amount was not accepted but was refused by Ram Das, father of landlord and thereafter the amount was returned to him. Ram Das himself did not appear in the witness box but Keshari Mai, Plaintiff No. 1, appeared as PW1. He could not say whether the money order was refused by Ram Das. It was only Ram Das who could have stated as to whether he had refused to accept the money order. There is a presumption under Section 114 of the Evidence Act that the transaction had taken place in accordance with the procedure prescribed. There was no allegation that the post man had colluded with defendant Respondent No. 3.

8. Secondly, the money order if it is refused, the amount is returned. In Post Office Rules there is nothing to show that endorsement of refusal is to be given on the money order coupon indicating that the addressee refused to accept the

money.

9. Thirdly, Santosh Kumar was minor and Ram Das, his father was guardian. The petitioners 1 and 2 were major sons while Santosh Kumar, petitioner No. 3 was minor. The money order was sent to Ram Das. The trial Court acted illegally in holding that the money order was illegally sent to Ram Das. Any one of the co landlords could have accepted rent. In these circumstances, the finding of the trial Court was incorrect and the Revisional Court was justified in recording the finding on the question whether the money order was sent to the plaintiffs and it was refused by the landlord. It is not a fit case for interference under Article 226 of the Constitution of India.

The writ petition is accordingly dismissed. The parties shall however, bear their own costs.