
(1983) 07 AHC CK 0040

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1795 of 1980

Kishori Sharan Sita Saran

APPELLANT

Vs

The IV Additional District Judge and Others

RESPONDENT

Date of Decision : 11-07-1983

Acts Referred:

Citation : (1983) 07 AHC CK 0040

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : K.N. Tripathi and B.N. Misra, for the Appellant; G.P. Bhargava, A.N. Bhargava and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—In this tenant's petition although the order of revising authority is not very satisfactory but the facts found by the two authorities and those alleged in writ petition and counter-affidavit leave little scope for argument and narrow down the controversy to a short question of law whether payment made to a person who was found not to be landlord, amounts to payment or tendering of rent to landlord so as to absolve tenant from eviction.

2. Admittedly Petitioner was admitted to tenancy by opposite party No. 3 who is the landlady. No rent was paid to her since 1st December, 1963 till the termination of tenancy on 29th December, 1972. Claim for rent, however, was made from 1st April, 1970 to 14th July, 1972 only. In defence it was claimed that dispute of proprietorship for premises in dispute arose between Petitioner and one Saraswati Inter College in which claim of college was upheld and the Petitioner after intimation from College had been paying rent bonafide to it. It has been found that suit of college filed in 1965 was no doubt decreed by trial Court, but it was dismissed in appeal on 8th November, 1969. And according to paragraph 8 of the counter affidavit the order was upheld by this Court on 26th July, 1979 and the review petition against an order dated 20th July, 1979 was also dismissed on 18-9-1979. Although in paragraph 16 of the writ petition filed

on 26th February 1980 it was averred that appeal was pending but now it is not disputed that it had been dismissed. Petitioner was party in that suit. Revising Authority held that after dismissal of suit in 1969 by the appellate Court Petitioner was not justified in paying rent to Saraswati Inter College.

3. From what has been narrated above this much is certain that conduct of Petitioner has not been fair. At least it does not invoke any sympathy. It can succeed only if the order is found manifestly erroneous either in law or fact. In written statement copy of which has been filed with rejoinder affidavit there is no specific denial that Petitioner did not pay rent from 1963. Dispute between College and opposite party arose in 1965 only. What could be the justification of not paying the rent till then. Although nothing turns on it but it does throw light on Petitioner's attitude specially when the rent was Rs. 10/- only and Petitioner is a firm and its landlord a lady.

4. Coming to the controversy it stands established that Petitioner was in arrears of rent for not less than four months and failed to pay the same to the landlady within one month from the date of service upon him of notice of demand. Assuming in Petitioner's favour, although there is no finding, could the payment of rent after 1969 by Petitioner to Saraswati Inter College, be deemed payment to landlord. Obviously not. Suit of the college had been dismissed by appellate Court on 8th November, 1969. Effect of dismissal was that college could not be deemed to be landlord. Decree for declaration applies from the date of filing of suit. College, therefore, shall be deemed not to have been landlord even between 1965 and 1969. Filing of second appeal did not result in suspension of decree passed by lower appellate Court. The judgment was no doubt subjudice but it operated against the College. Its operation could come to an end only if it was set aside. In law therefore, college was not the landlord. Any payment made to college could not amount to discharge of Petitioner's obligation.

5. Even claim of bonafide payment cannot be sustained. If a tenant knowing full well with open eyes makes payment to third person he cannot be permitted to invoke bonafide. That which is against good faith, honest and fairness cannot be considered to be bonafide. Petitioner was admitted to tenancy by opposite party. Her title was disputed by third person. Even that challenge came to end and to the knowledge of Petitioner. Probably if college would have succeeded and payment had been made to opposite party it could be considered to be bonafide. But conduct of Petitioner in not paying rent to opposite party, who was lady, even when there was no challenge to her title. Then paying it to College on intimation by them that their suit had been decreed and continuing to pay the same even after suit was dismissed in November, 1969 to knowledge of Petitioner do not bring the case of Petitioner in realm of bonafide. Moreover appellate authority rightly observed that remedy of Petitioner in case of dispute as to the person who was entitled to receive rent was to deposit it in Court as provided in Sub-section (2) of Section 30.

6. Attempt has been made to claim benefit of Sub-section (4) of Section 20.

Prescribed Authority found that entire amount was not deposited. No argument appears to have been addressed on this specific question before Revising Authority. Even from averments in writ petition it is clear that entire amount was not deposited on first date of hearing.

7. In the result this petition fails and is dismissed. But there shall be no order as to costs.