

(2001) 04 AHC CK 0008
In the Allahabad High Court
Case No : C.M.W.P. No. 1802 of 2001

Mohd. Salim alias Salim Uddin

APPELLANT

Vs

4th Addl. District Judge, Allahabad and others

RESPONDENT

Date of Decision : 18-04-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 1, Order 14 Rule 1(5), Order 15 Rule 1, Order 15 Rule 5, Order 8 Rule 1
Provincial Small Cause Courts Act, 1887 — Section 25
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 20(2), 20(4), 30(1)

Citation : (2001) 2 AWC 1468

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Brij Bhushan Paul, for the Appellant; S.C., S.F.A. Naqvi and Jafar Imam Naqvi, for the Respondent

Judgement

O.P. Garg, J.—The dispute relates to the tenanted accommodation House No. 149/160 Sadiyabad. Allahabad. This house was purchased by respondent No. 3 Ghalib Hussain on 10.5.1993 from the previous owners. On 20.5.1994 respondent No. 3 served a composite notice of demand and to quit. Arrears of rent for the period 10.5.1993 to 9.6.1994 were demanded. The present petitioner sent reply to the notice. The respondent No. 3 filed SCC Suit No. 118 of 1994 on 10.8.1994 for ejectment of the petitioner and for recovery of arrears of rent amounting to Rs. 2.350 and mesne profits. After the suit was registered, the trial court issued summons to the petitioner for his appearance and to file written statement on 21.10.1994. Summons was served and the petitioner appeared before the trial court on the date fixed, i.e., 21.10.1994 and moved an application that he may be provided a copy of the plaint. An order was passed to furnish a copy of the plaint to the petitioner and 21.11.1994 was fixed for filing of the written statement and hearing. On that date, the petitioner moved an application for adjournment, which was allowed, and 10.1.1995 was fixed for final hearing. On that date, the petitioner moved an application for adjournment,

which too was allowed, and 8.2.1995 was fixed for final hearing. Again on that date, the petitioner sought adjournment which was allowed and 15.3.1995 was fixed. The case was fixed for hearing on 2.5.1995 on which date again the petitioner sought adjournment in a casual manner. The trial court showed indulgence by adjourning the case to 12.5.1995. On that date, the lawyers abstained to work and consequently 3.8.1995 was fixed for final hearing. It was on that date that the petitioner moved an application for depositing the money with a view to avail benefit of the provision of Section 20 (4) of U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act. 1972 (U.P. Act No. XIII of 1972] (hereinafter referred to as "the Act"), which runs as follows :

"20 (4) : in any suit for eviction on the ground mentioned in clause fa) of sub-section (2). If at the first hearing of the suit the tenant unconditionally pays or tenders to the landlord or deposits in Court the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under sub-section (1) of Section 30, the court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground :

Provided that nothing in this sub-section, shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area.

Explanation -- For the purposes of this sub-section-

(a) the expression "first hearing" means the first date for any step or proceeding mentioned in the summons served on the defendant ;

(b) the expression "cost of the suit" includes one-half of the amount of counsel's fee taxable for a contested suit."

A sum of Rs. 5.600 was deposited by the petitioner on 15.8.1995. The next date of hearing on the move of the petitioner was fixed on 22.8.1995. The suit was ultimately decided against the petitioner on 29.9.1996. It was held that he committed default in payment of arrears of rent. The petitioner preferred a Revision " No. 1248 of 1998 u/s 25 of the Provincial Small Causes Courts Act which was dismissed on 20.12.2000. It is in these circumstances that the petitioner tenant has come before this Court to challenge the finding that he is liable to be evicted on the ground of having committed default in payment of arrears of rent.

2. Counter. Rejoinder and Supplementary affidavits have been brought on record.

3. Heard Sri B.B. Paul, learned counsel for the petitioner and Sri S.F.A. Naqvi as well as Sri Jafar Iman Naqvi for respondent No. 3.

4. The only legal point canvassed by Sri B.B. Paul, learned counsel for the petitioner before this Court is that the two courts below have erred in not relieving the petitioner from the liability of ejectment inspite of the fact that the petitioner has deposited the entire amount or more than the amount required u/s 20 (4) of the Act well before 22.8.1995 which was the first date proposed for hearing. Sri Naqvi repelled the above submission and urged that for the purposes of getting benefit u/s 20 (4) of the Act. the petitioner was required to deposit the entire amount of rent, interest, costs. lawyers fee etc. well on or before 21-11.1994 which was the "first date of proposed hearing." it was pointed out that the petitioner himself has brought about the situation to his detriment by seeking numerous adjournments on one ground or the other, and deposited a sum of Rs. 5.600 after a number of dates for proposed hearing had elapsed.

5. The learned counsel for both the parties have placed reliance on the observations made by the Apex Court in the case of Sudarshan Devi and another v, Shushila Devi and another, 1999 (UP) RCC 697.

6. The parties would swim or sink with the determination of the first date of proposed hearing" as it is crucial to deposit the amount as contemplated u/s 20 (4) of the Act by the tenant to relieve himself of the liability from ejectment.

7. The expression "at the first hearing of the suit" is also to be found in Order X. Rule 1. Order XIV. Rule 1 (5) and Order XV. Rule 1 of the Code of Civil Procedure. These provisions indicate that "the first hearing of the suit" can never be earlier than the date fixed for the preliminary examination of the parties.

8. The date of the first hearing within the meaning of Order XV. Rule 5 means the date mentioned in the summons and that the ordinary notion as to when the date of the first hearing in a civil suit governed by the CPC arrives, cannot be imported into or applied in the application of Order XV. Rule 5. Once it is found that the summons had been duly served, it is the date mentioned in the summons, which would be relevant for the application in Order XV. Rule 5.

9. The insertion of the Explanation with regard to the expression "first hearing" by the State Legislature has given an artificial meaning to the said expression which was not the meaning given by the Courts earlier also different from the meaning given to the expression occurring in Order VIII, Rule 1 or in Order X. Rule 1 or in Order XV. Rule 1 of the Code of Civil Procedure.

10. The language of the Explanation appended to Section 20 (4) of the Act is plain enough and a bare reading of it indicates that save in cases where the Court itself is unable to take up the case or proceed with the hearing of the same in consequence of the absence of the presiding officer or of the inability of the Court or like nature to take up the case, the date mentioned in the summons shall be the date of the first hearing provided of course if the summons has been duly served on the defendant.

11. After the amendment in the form of incorporation of Explanation added by

Act No. 28 of the 1976 to Section 20 (4). It has been held in various decisions that for the purposes of Section 20 (4). It is only the date mentioned in the summons and not any adjourned date that would be treated as the date of "first hearing". The decisions of this Court in Rafiq Ahmad v. IIIrd Additional District Judge. 1982 (1) ARC 371 : Champa Ram v. 1st Additional District Judge. 1982 UPRCC 608 and Jagannath v. Ram Chandra Srivastava, 1982 (1) ARC 665 were affirmed by a Full Bench decision of Lucknow Bench of this Court in the case Sia Ram u. District Judge. Kheri and others 1984 LRJ. 69 (FB) (Lucknow).

12. In the case of Siraj Ahmad Siddiqui v. Prem Nath Kapoor 1993 SC RC 419, the expression "first hearing" occurring in the Explanation to Section 20 (4) came to be interpreted. The Apex Court held as follows :

"The date of first hearing of a suit under the Code is ordinarily understood to be the date on which the Court proposes to apply its mind to the contentions in the pleadings of the parties to the suit and in the documents filed by them for the purpose of framing the issues to be decided in the suit. Does the definition of the expression "first hearing" for the purposes of Section 20 (4) mean something different? The "step or proceedings mentioned in the summons" referred to in the definition should, we think, be construed to be a step or proceedings to be taken by the Court for it is, after all, a "hearing" that is the subject-matter of the definition, unless there be something compelling in the said Act to indicate otherwise ; and we do not find in the said Act any such compelling provision. Further, it is not possible to construe the expression "first date for any step or proceeding" to mean the step of filing the written statement, though the date for that purpose may be mentioned in the summons, for the reason that, as set out earlier, it is permissible under the Code for the defendant to file a written statement even thereafter but prior to the first hearing when the Court takes up the case, since there is nothing in the said Act which conflicts with the provisions of the Code in this behalf. We are of the view, therefore, that the date of first hearing as defined in the said Act is the date on which the Court proposes to apply its mind to determine the points in controversy between the parties to the suit and to frame issues, if necessary."

13. Relying upon the aforesaid observation in the case of Siraj Ahmad Siddiqui (supra), the Apex Court in the case of Advaitanand v. Judge, Small Causes Court, Meerut and others 1995 ARC 563, has taken the view that the date of "first hearing" as defined in the said Act is the date on which the Court proposed to apply its mind to determine the points in controversy between the parties to the suit and to frame issues, if necessary.

14. Now let us examine the observations made by Apex Court in Sudarshan Devi case (supra) on which reliance has been placed by the counsel for the both the parties. Sri B.B. Paul referred to the observations made by the Apex Court in paragraph 28 of the report which read as follows :

"28. Thus, both in Siraj Ahmad Siddiqui and Advaitanand this Court construed

Section 20 (4) and the Explanation to say that the date of first, hearing of the suit would not be the date fixed for filing the written statement but would be the date proposed for the hearing, i.e., the date proposed for applying the Court's mind to determine the points in controversy and to frame Issues. If necessary. These decisions are binding on us. Point 1 is decided accordingly."

15. Sri S.F.A. Naqvi has drawn the attention of this Court to paragraphs 32 and 33 of the report. They run as follows :

"32. In our view, the use of the word "proposing to apply i(s mind" and the word "for" final hearing used in Siraj Ahmad Siddiqui's case and in Advaitanand's case are significant. In fact, though Section 20 (4) uses the word "at". the Explanation uses the word "for". Therefore, we cannot accept the contention of the learned counsel for the tenant-appellants that the due date is the actual date when the final hearing takes place. The due date is the date fixed in the summons for final hearing as explained above in point 1.

33. In the present case before us the case being one tried by the Small Causes Court. the summons initially stated that the date for first hearing, i.e., the date fixed for final hearing, would be. 22.2.1990. All the three courts below, therefore, held that the crucial date was 22.2.1990 and there was clear default by 22.2.1990. But in our opinion 22.2.1990 would not be the due date. The summons was served in this case by the method of substituted service and it was common ground that the summons were not accompanied by the plaint. The tenant therefore filed an IA seeking a copy of the plaint. That application was allowed and a fresh date for filing written statement and a fresh date for "first hearing" were given. The fresh date for final hearing was 12.4.1990. But the arrears were not deposited even by that date."

16. The decision in Sudarshan Devi's case (supra) is not in opposition to what has been laid down in the case of Siraj Ahmed Siddiqui (supra). The date of first hearing for all practical purposes shall be the date as has been indicated in the summons for the proposed hearing. In the case in hand, the plaint was registered on 10.8.1994 and summons was issued fixing 21.10.1994 for filing the written statement and hearing. After the service of the summons the petitioner did appear before the court below on 21.10.1994 and prayed for a copy of the plaint, which was supplied to him on 27.10.1994. The trial court has fixed 21.11.1994 for filing of written statement and hearing. On that date. the petitioner appeared but did not file the written statement and sought time. Thereafter a number of adjournments were sought by him. It was only on 15.8.1995 that the petitioner deposited the money. Sri Paul asserts that 3.8.1995 or for that matter 22.8.1995 was, in fact, the first date of proposed hearing for the purposes to avail the benefit of Section 20 (4) of the Act. I find it difficult to agree with Sri Paul on the point. The first date of hearing as indicated in the summons was 21.10.1994 but since the summons was not accompanied with the copy of plaint, the petitioner was given time to file the same and 21.11.1994 was fixed for hearing. The courts below have rightly come to the

conclusion that 21.11.1994 was the first date of hearing for the purpose of Section 20 (4) of the Act as by that date, the petitioner after due service had been supplied the copy of the plaint. The petitioner did not deposit the money on 21.11.1994 or thereafter for months together, which was the first date of hearing and allowed the matter to drag on for numerous dates. He deposited the money on 15.8.1995 and during the period 21.11.1994 to 15.8.1995 a number of dates of hearing had intervened. The observations made by the Apex Court in paragraph 28 of Sudarshan Devi's case (supra) as relied upon by Sri Paul are of no avail to the petitioner. They have to be confined to the particular facts of that case.

17. Section 20 (4) of U.P. Act No. 13 of 1972, provides that in any suit for eviction on the ground of default in arrears of payment mentioned in clause (a) of sub-section (2) of Section 20. If at the first hearing of the suit the tenant unconditionally pays the entire amount of rent and damages for use and occupation of the building due from him together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof, the Court may. In lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground. Since the petitioner did not deposit the amount on the first date of proposed hearing, i.e., 21.11.1994, he has been rightly denied benefit of the provisions of Section 20 (4) of the Act.

18. The writ petition turns out to be devoid of any merits and substance. It is accordingly dismissed without any order as to costs.