
(1983) 08 AHC CK 0002

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 8117 of 1980

Prem Narain Pathak

APPELLANT

Vs

1st Additional District Judge and Others

RESPONDENT

Date of Decision : 22-08-1983

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 18, 30

Citation : (1983) 08 AHC CK 0002

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

Bench : Single Bench

Advocate : Prakash Gupta, for the Appellant; R. Asthana and S.C., for the Respondent

Judgement

R.M. Sahai, J.—In this tenant's petition it is not disputed that before the suit for ejectment of Petitioner was filed an application for depositing Rs. 130/- u/s 30 of U.P. Act XIII of 1972 was made on 9th November, 1977 and the amount was deposited on 14th November, 1977. When the suit was filed on 21st November, 1977 another sum of Rs. 145/- was deposited on 15th December, 1977. It has been found by the Courts below that this amount of Rs. 145/- covered the arrears due against Petitioner and, therefore, so far arrears of rent were concerned there were none outstanding against Petitioner on 16th December 1977, the first date of hearing. The dispute, however, arose in respect of current rent. It has been found that on the date when the defence was struck off i.e. in February, 1978 Petitioner had not deposited the rent for the month of December, 1977 and January, 1978. It is this failure which resulted in striking off defence and ex parte decree against him. Earlier Petitioner had come to this Court as the revising authority did not examine the correctness of the orders passed by Judge Small Causes Court, on the view that it could not be adjudicated in revision. The order was set aside in writ petition No. 2790 of 1978 on 14th November, 1979 and the Additional District Judge was directed to decide the revision afresh after

going into correctness of the order passed on 10th February, 1978. In pursuance of this direction the revising authority again decided the revision and maintained the order of the trial Court striking off the defence and decreeing the suit *exparte*. It is the correctness of this order which has been challenged by this petition.

2. Before examining it may be stated that after the suit was decreed *exparte* the Munsif passed an order on 4th October, 1978 accepting the deposit made on 14th November, 1977 u/s 30. This order was challenged in revision which was allowed against which Petitioner came to this Court but it was dismissed as non-maintainable as on the date when it was presented, the second revision was not cognizable by this Court.

3. So far as the order passed in revision setting aside the order dated 4th October, 1978 is concerned, it cannot be disputed that no revision u/s 18 lay against this order. The order passed by Additional District Judge was, therefore, without jurisdiction. In effect order dated 4th October, 78 accepting the amount deposited by Petitioner on 14th November, 1977 stands and was in accordance with law. Although nothing turns on it yet even assuming that no order was passed the question that arises for consideration is whether the amount of Rs. 135/- which was in deposit could be adjusted towards current arrears or in any case could it be held that Petitioner was in default in not depositing the current rent regularly and, therefore, his defence was liable to be struck off. It has been vehemently argued by the learned Counsel for opposite party that once the trial Court exercised its discretion refusing to adjust this amount then the revising authority rightly refused to interfere with it and this Court also should not exercise its discretion under Article 226 of the Constitution of India in favour of Petitioner. Whether the exercise of discretion by trial Court was proper or improper shall depend on construction of Order XV and whether the deposit made by Petitioner could be taken into account towards current arrears of rent. The revising authority found that as there was no order accepting this amount it could not be adjusted towards the current arrears nor it could be deemed that Petitioner was absolved of his liability of paying the current rent. Effect of order dated 4th October 1978 was that it related back to the date when deposit was made. Consequently, it shall be deemed that arrears of rent had been paid to the landlord. And the amount of Rs. 145/- deposited on 15th December, 1977 was in surplus. It could be adjusted towards current arrears. Assuming that in absence of order dated 4th October, 1978 the deposit of Rs. 135/- could not be taken as payment to landlord on the date when defence was struck off. The amount, however, was in deposit with Court. Anxiety should be to decide after hearing in accordance with law. If the Petitioner had deposited Rs. 130/- and that was over and above the arrears it should have been adjusted towards current rent as landlord could be interested in the amount which was due against Petitioner and that is the legislature's intention pulled out from Order XV. The Legislature never intended this penal provision to be utilised harshly to scuttle the defence of the tenant on one or the other technicality.

4. In the result the petition succeeds and is allowed. The orders passed by both the Courts below dated. 10-9-1980 filed as Annexure 8 and 10th February, 1978 and 28th Feb. 1978 as Annexures 3 and 4 respectively are quashed. The trial court is directed to permit the Petitioner to file written statement within a period of two months from today subject to condition that Petitioner had deposited the entire current rent due upto August, 1983. In case Petitioner had deposited then adjustment shall be granted for the same. In case Petitioner desires to deposit current rent in lumpsum it shall be open to him to deposit but the payment shall be made in advance. Parties shall bear their own costs.