

(2003) 09 AHC CK 0114
In the Allahabad High Court
Case No : Civil Revision No. 53 of 1993

Punjab National Bank

APPELLANT

Vs

IIIrd Additional District Judge/Judge for Small Causes and
Others

RESPONDENT

Date of Decision : 15-09-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 4, Order 22 Rule 4
Constitution of India, 1950 — Article 141
Provincial Small Cause Courts Act, 1887 — Section 25
Transfer of Property Act, 1882 — Section 106
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2(2), 20(4)

Citation : (2004) 2 AWC 1031

Hon'ble Judges : N.K. Mehrotra, J

Bench : Single Bench

Advocate : S.C. Misra and J.N. Mathur, for the Appellant; R.P. Srivastava and Anil Kumar, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Mehrotra, J.—This is a revision u/s 25 of the Small Causes Court Act against the judgment and order dated 6.4.1993 passed by the IIIrd Additional District Judge/Small Causes Judge, Lucknow, thereby decreeing the Suit No. 9 of 1986, Sarad Thadant v. Punjab National Bank, for arrears of rent and ejectment.

2. Plaintiff/opposite parties filed a suit for arrears of rent and ejectment with respect to the premises in question situated at the first floor of Thadani Mansion, Hazratganj, Lucknow, on the ground that the provisions of U. P. Act No. 13 of 1972 (hereinafter referred to as the "Act") were not applicable to the premises in suit as the premises in suit was constructed on the open space after entering into an agreement dated 26.5.1977, between the predecessor in title of the plaintiff and the Hindustan Commercial Bank predecessor of the defendant. The premises was let out on monthly rent of Rs. 7,150 (Rs. 4,000 as rent for fitting and fixture

in strong room Rs. 2,950 and Rs. 200 for up keep of passage). It was alleged that the defendant Bank had failed to pay rent with effect from 1.8.1985. The plaintiff served a registered notice dated 15th October, 1985 and demanded the rent. The tenancy of the defendant was also determined on the expiry of 30 days from the receipt of the said notice. Plaintiff alleged that the rent from 1.8.1985 to 11.12.1985 at the rate of Rs. 7,150 and mesne profits from 12.12.1985 to 13.1.1986 at the rate of Rs. 500 per day were due on the date of the filing of the suit. It was also alleged by the plaintiff that the reasonable market rate often in the locality, was not less than Rs. 7 per sq. ft. and the total covered area in the tenancy of the defendant was about 3,500 sq. ft.

3. Defendant/ revisionist contested the suit by filing written statement and pleaded that the building in question was covered by the provisions of the Act. It was also contended that Bank had never defaulted in payment of rent and the rent remitted through money orders and cheques were refused by the plaintiff. The defendant also denied that the rate of rent in the locality was Rs. 7 per sq. ft. The defendant also disputed the agreement dated 26.5.1977 on the ground that it was inadmissible being unregistered and not duly stamped. The defendant moved an application u/s 20(4) of the Act claiming exemption from decree of eviction. The suit was decreed on 6.4.1993. It is against this judgment and decree this revision has been filed.

4. In revision it has been contended that the judgment was an ex parte judgment and the trial court has committed illegality by rejecting the application for adjournment. I find from the record of the trial court that the suit was pending since 1986 and in all nine adjournments were taken by the defendant. On 6th April, 1993 the defendant applied for adjournment 10th time. The learned counsel for the defendant being present in the Court moved an application on the ground that he could not recover from illness and therefore, the hearing be adjourned. On that day, the trial court rejected the application on the ground that the suit was pending since 1986 and defendant was taking successive adjournment. The learned trial court by the same order fixed the time of 12.30 p.m. for taking the case on the same day and at the appointed time the defendant and his counsel did not participate. The trial court proceeded in the absence of the defendant-recorded evidence of the plaintiff and decreed the suit. Therefore, the contention of the revisionist that the court below committed illegality by rejecting the application and by deciding the suit without participation of the defendant has no force. There is a limit for granting adjournment in such old cases. It has become the tendency of the defendant to avoid proceeding on one ground or the other. Learned counsel for the revisionist has relied on a decision of the Supreme Court in Nirankar Nath Wahi and Others Vs. Fifth Additional District Judge, Moradabad and Others, . In view of the peculiar facts of that case Supreme Court held that the appellant had been denied a reasonable opportunity of hearing because he was genuinely handicapped in securing the services of senior advocate to appear for him in the matter. In the instant case the defendant/revisionist was not handicapped in

anyway. Defendant was given full opportunity to contest and even after refusal of adjournment he was asked to appear and contest at particular time fixed by the Court. Moreover, only those decisions of the Supreme Court have the binding effect which declare some law. So ratio of the law only can be binding and not the decision on facts. Suit was filed in the year 1986. It was decreed in 1993. Revision was filed in the year 1993 and now it is being decided in 2003. Even if, it is remanded again after 19 years there will be no justice to the landlord who is waiting for the judgment for the last 19 years. Even after 19 years one can think to provide more opportunity to the defendant/tenant but in this particular case it will be a futile exercise because it is a case where the protection of the Act is not available to the defendant/revisionist whose tenancy has been determined by serving a notice u/s 106 of the Transfer of Property Act. Therefore, there is no sufficient ground to interfere in the impugned judgment.

5. The next contention of the learned counsel for the defendant/revisionist is that the provisions of the Act were applicable because it was constructed more than 10 years back from the date of filing of the suit. I find that the plaintiff filed a copy of the agreement between the plaintiff landlord and the Hindustan Commercial Bank, the predecessor of the defendant-revisionist who has initially let out the premises. In the agreement itself, it is mentioned that the building was to be constructed for letting it out to the defendant tenant which was to be completed by 31.7.1977. This agreement contains the admission of the defendant/tenant who had taken premises on rent. Moreover, in the written statement defendant has not pleaded any specific date about the date of completion of construction of the disputed premises. Section 2(2) of the Act provides that nothing in this Act shall apply to a building during the period of 10 years from the date on which its construction is completed. The construction was completed by 31.7.1977 and the suit was filed on 14.1.1986. A period of 10 years was not completed. Therefore, there is no illegality in the finding of the learned trial court that the provisions of the Act were not applicable to the premises in suit. The next contention is that the notice was not proved. I find that there is a finding by the trial court that all the documents filed by the plaintiff have been proved by P.W. 1 Krishna Kumar.

6. It has been next contended by the revisionist that his application u/s 20(4) seeking exemption from the decree of eviction was not considered. I find that this application was not maintainable, in view of the finding that the provisions of the Act were not applicable.

7. It has been next contended that the rate of mesne profits has not been correctly assessed. On the rate of the amount of mesne profits the learned trial court after taking into consideration the plaintiff allegation and statement of P.W. 1, has recorded a finding, therefore, this finding need not be interfered in revision. The Order XX, Rule 4 of the CPC provides that the judgment of Court Small Cause need not contain more than points for determination and decision thereon and in the impugned judgment the point of determination and the decision

thereon have been recorded.

8. u/s 25 of the Provincial Small Causes Court Act only those findings of the Court of Judge Small Cause can be interfered which are per se illegal or perverse and based on no evidence. I do not find that the finding recorded by the trial court in the impugned judgment suffers from any illegality or perversity. Therefore, the revision has no force.

9. The impugned judgment goes to show that the learned trial court has awarded decree of rent and mesne profit at the rate of Rs. 8,000 per month. The initial rent was Rs. 7,150 per month. Therefore, in the amount of Rs. 8,000 rent and mesne profits both are inclusive. According to the plaint allegation out of amount of Rs. 7,150 amount of Rs. 4,000 was the rent for fitting and fixture and strong room and amount of Rs. 2,950 and Rs. 200 was fixed for up keep of passage. Therefore, it is directed that the amount of Rs. 3,150 will not be in addition to Rs. 8,000 per month which is inclusive of rent and mesne profits both.

10. Revision is dismissed with the aforesaid observations.