
(2008) 09 AHC CK 0280
In the Allahabad High Court

Qazi Abdul Wahab (D) through L.Rs.	APPELLANT
Vs	
Special Judge (Additional District Judge) and Others	RESPONDENT

Date of Decision : 15-09-2008

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(4)

Citation : (2009) 3 AWC 2191

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Judgement

S.U. Khan, J.—Heard learned Counsel for the petitioner. No one appeared on behalf of tenants respondents.

2. This is landlord's writ petition arising out of suit for eviction instituted by him against original tenant, respondent No. 3 Master Salahuddin in the form of S.C.C Suit No. 100 of 1979. Eviction was sought on the ground of default and decree for recovery of arrears of rent was also prayed for. Property in dispute is a shop, rent of which is Rs. 50 per month.

3. Prior to the filing of the suit giving rise to the instant writ petition, landlord had filed another similar suit being Suit No. 253 of 1973. In the earlier suit, tenant had deposited the entire rent on the first date of hearing, hence suit was dismissed for eviction and landlord was permitted to withdraw the amount deposited by tenant u/s 20 (4) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Against the said decision, landlord filed revision before the District Judge, which was dismissed on 1.10.1975. Landlord filed second revision before the High Court (Civil Revision No. 105 of 1978), which was pending when the second suit giving rise to the instant writ petition was filed. In the second suit, defendant took the plea that he was depositing the rent in the previous decided suit, hence he was not defaulter.

4. Before filing the second suit, notice was given by the plaintiff landlord on 17.3.1979, which was served on 21.3.1979. Tenant sent reply to the said notice

on 15.4.1979. Thereafter, second notice was given by the landlord on 27.4.1979, which was served upon tenant on 1.5.1979.

5. Landlord also asserted that even in the old decided suit, tenant had not deposited house tax, water tax and chhajja tax.

6. In the old suit, tenant deposited the rent for two years from May, 1977 till April, 1979 on 18.4.1979. Tenant contended that accordingly when the second notice was given, he was not defaulter and within one month from receipt of the first notice, he had deposited the amount.

7. It was also argued by the tenant that in the earlier suit an excess amount of Rs. 906.88 was deposited, which could be adjusted in the house tax, water tax and chhajja tax.

8. The main contention of the plaintiff was that after receiving the first notice on 21.3.1979, deposit could not be made by the tenant in the old decided suit.

9. The trial court/J.S.C.C, Bijnor held that even on the principle of Section 30 of the Act, where tenant is permitted to deposit the rent before Munsif, tenant is not entitled to deposit the rent or to continue to deposit the rent after receipt of the notice.

10. Accordingly, trial court decreed the suit for eviction through judgment and decree dated 11.2.1982. Suit for recovery of arrears of rent of Rs. 2,500 as asked for was also decreed.

11. Against the judgment and decree passed by the trial court, tenant respondent filed Civil Revision No. 95 of 1982 Special Judge/A.D.J., Bijnor, through judgment and order dated 19.1.1984, allowed the revision, set aside the judgment and decree passed by the trial court and suit was dismissed. However, landlord was permitted to withdraw the amount deposited by the tenant in Original Suit No. 259 of 1973 (old suit). The revisional court held that rent from May, 1977 till April, 1979 deposited by the tenant in the old decided suit on 18.4.1979 had to be taken into consideration.

12. The revisional court held that as at the time of giving both the notices in 1979 and even at the time of filing of the suit, revision was pending in the High Court against dismissal of the earlier suit for eviction, hence tenant was entitled to deposit the rent in the said suit under Order XV, Rule 5, C.P.C. Revisional Court held that under the said provision, tenant was not bound to deposit the rent after decision of the suit but during pendency of revision, however he was entitled and justified to do so.

13. Copy of first notice dated 17.3.1979 is Annexure-1 to the writ petition and copy of second notice dated 27.4.1979 is Annexure-2 to the writ petition. In the first notice, it was mentioned that rent was due since 1.1.1970, hence suit No 70 of 1973 was filed In the said suit, rent was deposited by the tenant. It was further stated that after adjusting the rent deposited by the tenant in the suit of

1973, the balance rent was due against the tenant which the landlord was entitled to get subject to the decision of the revision pending in the High Court. It was demanded that unpaid rent should be paid within a month and tenancy was also terminated. In the second notice, it was mentioned that earlier notice was given. It was also mentioned that tenant gave a wrong reply on 15.4.1979 (sic.) intimating that rent from May, 1977 till April, 1979 @ Rs. 50 per month had been deposited in the suit. Thereafter, it was mentioned in the second notice that tenant in his reply notice had not intimated that the rent for two years from May, 1977 to April, 1979 had been deposited in which court and in which case and on what date and at what rate and through what tender number. It was also mentioned that after decision of Suit No. 253 of 1973, tenant was not legally entitled to deposit the rent in the said suit. It was further mentioned in the second notice that if in fact tenant had deposited the rent after April, 1977 in the Court (in the earlier suit), then its detail should immediately be sent in writing to the landlord so that in case money had validly been deposited, then landlord could withdraw the same subject to the decision of the revision pending in the High Court failing which it would be deemed that whatever amount was deposited by the tenant was illegal. Through the said notice, tenancy was again terminated. Revisional court took a technical view of the matter by holding that second notice waived the first notice hence deposit was valid as first notice demanding rent did not remain any notice in the eye of law.

14. The main point to be decided in this case is as to whether rent deposited in the decided suit of 1973 was valid or not and can be adjusted in the rent or not?

15. The Supreme Court in *Carona Ltd. Vs. Parvathy Swaminathan and Sons*, and *R.K. Shukla v. Sudhrist Narain Anand* 2008 (2) ARC 613 : 2008 (2) AWC 2638 (SC) (Para 17) has held that if during pendency of proceedings before High Court in between landlord and tenant, tenant does not pay or deposit the rent to the landlord, this itself may be a good ground for refusing to grant any relief to the tenant under the discretionary remedy of appeal before the Supreme Court or writ petition before the High Court.

16. Accordingly, if during pendency of revision of the landlord, tenant deposits the rent in the decided suit instead of criticism, he deserves appreciation. In revision, appeal or writ petition by the tenant the Court usually grants stay order on the condition that the rent as and when it accrues must be deposited by the tenant in the decided suit. Accordingly, if without any order of the higher Court and even after winning from the court below, tenant deposits the rent in a decided suit, it cannot be said that deposit is not valid. Even before receiving the notice of the landlord in 1979, tenant had already deposited two years' rent, i.e., from October, 1975 till April, 1977 in the decided suit. After receiving the first notice, tenant again deposited the rent for subsequent period of two years, i.e., from May, 1977 to April, 1979 in the same decided suit.

17. Moreover, Supreme Court in *C. Chandramohan v. Sengottaiyan* AIR 2000 SC 568, has held that if rent is deposited in the case initiated by the tenant for

deposit of rent and the said case is dismissed still in case landlord has withdrawn the amount tenant will not remain defaulter.

18. In the second notice dated 27.4.1979, the landlord clearly asked for details of deposit and communicated its willingness to withdraw the rent deposited by the tenant in the decided suit. This clearly meant that the landlord had approved the deposit, hence it cannot be said that the said deposit cannot be taken into consideration.

19. Accordingly, I am of the opinion that deposit of rent by the tenant in the decided suit in between the two notices sent by the landlord was valid.

20. In this manner, rent was deposited within 30 days from the first notice and at the time of second notice, tenant was not defaulter even for a month. Accordingly, suit could not have been decreed for eviction on the ground of default.

21. Accordingly, writ petition is dismissed.

22. I have held in *Smt. Khursheeda Begum and Others Vs. Additional District Judge and Others*, and *H.M. Kichlu v. A.D.J.* 2004 (2) ARC 652 that while granting relief against eviction to the tenant in respect of building covered by Rent Control Act or while maintaining the said relief already granted by the courts below, writ court is empowered to enhance the rent to a reasonable extent.

23. In the aforesaid authority of *Khursheeda (supra)*, I placed reliance upon the Supreme Court authority of *Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another*, where it was held that it was essential to provide for periodical enhancement of rent under the Rent Control Acts. The Supreme Court has further held that frozen rents are giving rise to lawlessness and landlords out of frustration are approaching muscle man to get the premises vacated and courts of law are becoming redundant in this sphere. This authority has recently been followed by the Supreme Court in *Satyawati Sharma (Dead) by LRs. Vs. Union of India (UOI) and Another*, part of Para 29 and Para 34 of which are quoted below:

29. It is trite to say that legislation which may be quite reasonable and rationale at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equity and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent.

34. In *Malpe Vishwanath Acharya and Ors. v. State of Maharashtra and Anr. (supra)*, the Court found that the criteria for determination and fixation of rent by freezing or by pegging down of rent as on 1.9.1940 or as on first date of letting, had, with the passage of time become irrational and arbitrary but did not strike down the same on the ground that extended period of Bombay Rent Act

was coming to an end on 31.3.1998.

24. Under U.P. Rent Control Act, there is no provision of enhancement of rent after October, 1972 [Except where landlord is public charitable or public religious institution (Section 9A) or Government is tenant (Section 21 (8))]. In the aforesaid authority of Khursheeda, I have also placed reliance upon the authority of Supreme Court in Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another, of which is quoted below:

It is well-settled that the High Court in exercise of Its jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priorly, before invoking the jurisdiction of the High Court, the Court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief.

25. Thereafter in Para 8 of the aforesaid authority of Khursheeda, I held as under:

Rent Control Act confers a reasonable advantage upon the tenant of protection against arbitrary eviction. Tenant under the Rent Control Act cannot be evicted except on specific grounds like bona fide need of the landlord, arrears of rent, subletting and material alteration etc. This advantage is also coupled with the advantage of immunity from enhancement of rent. The latter advantage cannot be said to be either reasonable or equitable. The Supreme Court in the aforesaid authority of Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another, . has laid down that while granting relief to a party the writ court can very well ask the said party to shed the unfair advantage which it gained under the impugned order. By slightly extending the said doctrine it may safely be held that while granting the reasonable advantage to the tenant conferred upon him by the Rent Control Act the tenant may be asked to shed the unreasonable arbitrary advantage conferred upon him by the said Rent Control Act. The writ court therefore while granting or maintaining the relief against arbitrary ejection to the tenant can very well ask the tenant to shed the unreasonable benefit of the Rent Control Act granted to him in the form of immunity against enhancement of rent, however inadequate the rent might be. Tenant will have to shed the undue advantage of immunity from enhancement of rent under the Rent Control Act to barter his protection from arbitrary eviction provided for by the said Act.

26. Thereafter in H.M. Kitchlu v. A.D.J. 2004 (2) ARC 652, I have held that the same principle of enhancement of rent to a reasonable extent may be made applicable while dismissing the writ petition of the landlord for the reason that by doing so writ court approves the protection of Rent Control Act granted to the tenant by the courts below.

27. Property in dispute is a shop, rent of Rs. 50 per month is virtually as well as actually no rent. It is rather ridiculous. Accordingly, it is directed that w.e.f. October, 2008 onwards, tenants respondents shall be liable to pay rent @ Rs. 1,000 per month. No further amount as house tax, water tax or chhajja tax shall be payable over and above the aforesaid rent of Rs. 1,000 per month. As no one has appeared for the tenants, hence landlord shall send certified copy of this judgment to any one of the tenants through registered post.