

(1988) 12 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16449 of 1987

Rajendra Prasad alias Lallan and Others

APPELLANT

Vs

The IIIrd Additional District Judge and Others

RESPONDENT

Date of Decision : 12-12-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 15 Rule 5

Constitution of India, 1950 — Article 226

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 30

Citation : (1989) 1 AWC 352

Hon'ble Judges : S.D. Agarwala, J

Bench : Single Bench

Advocate : J. Sahai, for the Appellant; Haider Hussain and S.C., for the Respondent

Final Decision : Allowed

Judgement

S.D. Agarwala, J.—This is a petition under Article 226 of the Constitution of India arising out of a suit No. 453 of 1981 filed in the Court of the Judge Small Causes Court, Jaunpur.

2. The Petitioners are the tenants. Respondent Waqf Askaria is the landlord. The mutwalli is Syed Nazim Hussain.

3. An application was moved on behalf of the landlord that the defence of the tenants be struck off as they have not deposited the amount as required by Order XV, Rule 5 of the CPC (hereinafter referred to as the CPC).

4. The trial Court dismissed the application holding that the deposit has been made as required by Order XV, Rule 5 of the Code of Civil Procedure(CPC).

5. Aggrieved, a revision was filed against the order of the trial Court. The revision was allowed by the order dated 20th August, 1987 and the defences of the Petitioners were struck off.

6. It is against this order that the present petition has been filed.

7. I have heard learned Counsel for the parties.

8. Learned Counsel for the Petitioners has contended that for the purposes of Order XV, Rule 5 of the CPC a deposit made u/s 30 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) should be considered as payment to the landlord and consequently the defence of the Petitioners could not have been struck off. The view to the contrary taken by the revisional Court is manifestly erroneous.

9. It is not disputed that the Petitioner has been making deposits u/s 30 of the Act, in Misc. case No. 12 of 1978. Section 30 Sub-clause (6) of the Act clearly provides that in respect of a deposit made u/s 30, it shall be deemed that the person depositing it has paid it on the date of such deposit to the person in whose favour it is deposited.

10. In the instant case, the deposit was made in the name of Nazim Hussain who is, admittedly, the Mutwalli of the Waqf. In the circumstances, the deposit made u/s 30 of the Act had to be considered while considering the question of compliance of Order XV, Rule 5 of the CPC .

11. Once the deposit has been made and it is treated in law to have been paid to the landlord, such a deposit would enure to the benefit of the landlord while considering the question of deposit under Order XV, Rule 5 of the Code of Civil Procedure. If this deposit is considered then it cannot be held that the Petitioners have not complied with the provisions of Order XV, Rule 5 of the Code of Civil Procedure. In the circumstances, the view to the contrary taken by the revisional Court is manifestly erroneous.

12. Learned Counsel for the Respondent has, however, vehemently urged that after notice of demand has been issued to the Petitioners, they could not have made the deposit u/s 30 of the Act and since the deposit u/s 30 of the Act was not a valid deposit, they cannot get the benefit of its adjustment under Order XV, Rule 5 of the Code of Civil Procedure.

13. The question whether the deposit is valid or not is relevant for determining the question whether the Petitioners can be held to be defaulters or not in the eye of law, but so far Order XV, Rule 5 of the CPC is concerned, the . Only requirement is that the tenant has to deposit the amount on or before the first hearing of the suit. If the deposit has been made u/s 30 of the Act then it will enure to the benefit of the landlord. In the circumstances, the question of validity of the deposit is not relevant for the purposes of Order XV. Rule 5 of the Code of Civil Procedure. It will be open to the Court while deciding the suit to determine the validity of the deposit to examine the question as to whether the Petitioners were defaulters or not in the eye of law.

14. In the result, the petition is allowed. The order dated 20th August, 1987 is quashed. The application for striking off the defence moved by the Respondent is

rejected since the suit is pending since a fairly long number of years; the same may be disposed of by the trial Court expeditiously. Parties are directed to bear their own costs.