
(1980) 09 AHC CK 0043

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6623 of 1979

Rustum Lal

APPELLANT

Vs

The District Judge and Others

RESPONDENT

Date of Decision : 22-09-1980

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(4)

Citation : (1980) AWC 589

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Advocate : M.S. Negi, for the Appellant; S.C. and Gyan Prakash, for the Respondent

Final Decision : Allowed

Judgement

A.N. Varma, J.—This petition is directed against an order passed by the learned District Judge, Allahabad dated 5-2- 1979 setting aside a decree passed by the trial court for ejectment in the suit filed by the Respondent No. 3 against the Petitioner and decreeing the Plaintiff's suit for ejectment against the Petitioner.

2. These are the relevant facts:

The Respondent No. 2 filed a suit against the Petitioner on the ground of default. The suit was contested by the Petitioner on the ground that he had not committed any default. However, purporting to take advantage of Section 20(4) of U.P. Act No. 13 of 1972 the Petitioner on or before the first date of hearing deposited the entire arrears of rent demanded in the suit against him, the costs of the suit as well as the interest etc. which were payable u/s 20(4). The Defendant also disputed the rate of rent at which the arrears were demanded by the Plaintiff. However, he deposited the arrears at the rate claimed by the Plaintiff u/s 20(4).

3. The trial court held that the amount deposited by the Petitioner u/s 20(4) was sufficient to meet the requirements of law and consequently dismissed the suit of the Plaintiff for ejectment of the Petitioner. The suit of the Plaintiff-Respondent was, however decreed for recovery of Rs. 125/- together with the costs of the suit.

4. Aggrieved by the order passed by the trial court both the Plaintiff as well as the Defendant filed revisions u/s 25 of the Provincial Small Cause Courts Act. The revision of the Petitioner was directed against the order passed by the trial court as regards the rate of rent. The revision of the landlord on the other hand was directed against the decree passed by the trial court dismissing the suit of the Plaintiff-Respondents for ejectment. The revision of the Petitioner was dismissed by the learned District Judge on the ground that there was no error in the finding of the trial court as regards the rate of rent payable by the Petitioner.

5. The learned District Judge, however, allowed the revision of the landlord on the ground that the Petitioner had not deposited the costs of the notice which was sent by the Plaintiff to the Defendant seeking to determine the latter's tenancy. The learned District Judge held that, inasmuch as, the Petitioner had not deposited the costs of the notice, he must be deemed to have failed to comply with the requirements of Section 20(4) which were mandatory in character. The learned District Judge consequently allowed the revision of the landlord and decreed the suit for ejectment.

6. Learned Counsel for the Petitioner submitted that the Plaintiff-Respondent had neither claimed the costs of the notice in the suit nor led any evidence in support thereof. Under the circumstances the Petitioner was not required to deposit the costs of the notice.

7. Having heard Learned Counsel for the parties, I am clearly of the view that the learned District Judge fell into a manifest error of law in holding that the Petitioner had not complied with the provisions of Section 20(4) on the ground that he had not deposited the costs of the notice. From a perusal of the plaint it is obvious that the Plaintiff had not claimed the costs of the notice in the suit; nor was any evidence led by the Plaintiff to show what the costs of the notice were, the tenant was consequently not required to deposit the supposed costs of the notice. I do not agree with the learned District Judge that the costs of the suit must include the costs of the notice, whether the costs of the notice are claimed or not. If the costs are neither claimed nor proved, obviously the tenant cannot be expected to deposit imaginary costs u/s 20(4) of U.P. Act No. 13 of 1972. The learned District Judge, therefore, committed a patent illegality in decreeing the Plaintiff-Respondents' suit for ejectment.

8. As regards the Petitioners' own revision, Learned Counsel for the Petitioner was unable to point out any error in the findings recorded by the courts below on the question of the rate of rent. The learned District Judge did not committed any error in dismissing the Petitioner's revision.

9. In view of what has been stated above, this petition succeeds and is allowed. The order passed by the learned District Judge dated 5-2-1979 in so far as the decree for ejectment is concerned is quashed, The decree passed by the trial court is affirmed. The order passed by the learned District Judge dismissing the revision No. 474 of 1978 is, however, affirmed. The Plaintiff-Respondent shall be at liberty to withdraw any amount or amounts which the Petitioner may have deposited in the courts below towards the claim of the Plaintiff-Respondents. The parties shall bear their own costs of this petition.