

(1979) 01 AHC CK 0062
In the Allahabad High Court
Case No : Civil Revision No. 1985 of 1975

Salik Ram and Others

APPELLANT

Vs

Smt. Sita Devi

RESPONDENT

Date of Decision : 10-01-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Limitation Act, 1963 — Section 5
Provincial Small Cause Courts Act, 1887 — Section 17, 2(2), 25
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(4)

Citation : (1979) AWC 96

Hon'ble Judges : K.C. Agrawal, J

Bench : Single Bench

Advocate : K.B. Mathur, for the Appellant; R.N. Bhalla, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agrawal, J.—This is a Defendants' revision filed against a judgment of the Tenth Additional District Judge, Allahabad, dated August 8, 1975, dismissing a revision filed by the applicants u/s 25 of the Provincial Small Causes Courts Act.

2. The Plaintiff opposite party was the owner and landlord of the house in dispute, of which the applicants were tenants. Suit No. 23 of 1972 was filed by the opposite party for ejectment of the applicants. In view of U.P. Civil Laws (Amendment) Act, 1972, the jurisdiction to try the suit was conferred on the Judge Small Cause Court, and, as such the suit was transferred to that court.

3. On 5-4-1974, the suit was decreed ex-parte. On 16-4-1974, the Defendant-applicants moved an application for setting aside the ex-parte decree. They, however, did not deposit the entire amount required by the proviso to Section 17 of the Provincial Small Causes Courts Act. On 6-7-1974, an application was moved purporting to be u/s 5 of the Limitation Act for condonation of delay in making the deposit on the ground of their stringent financial circumstances. On

24-9-1974, the Judge Small Causes having found that the Defendants had not made the deposit as required by Section 17 of the Provincial Small Causes Courts Act, rejected the application filed under Order IX Rule 13 Code of Civil Procedure. Against the said order, the Defendants went in revision. The revision was also dismissed on 8-8-1975. Hence, this second revision.

4. The only question that arises for determination in this revision is whether the order passed by the trial court dismissing the application under Order IX Rule 13 CPC on the ground of non-deposit of the amount, as required by Section 17 of the Provincial Small Cause Courts Act could be sustained.

5. Learned Counsel for the Defendant-applicants argued that the courts below committed an error in finding that the Defendants had not made deposit. In this connection, the contention of the applicants was that the decretal amount should only comprise of a sum of Rs. 155/-, which was the past rent and mesne profits plus Rs. 36.25 paise, the costs of the suit, and taking those amounts together, the total would come to Rs. 191.25 paise, whereas before the suit had been decreed, the applicants had deposited Rs. 230/-on 12-3-1973, and Rs. 15/-on 29-5-1973. According to the counsel, these amounts exceeded the decretal amount, and, as such, no further security or deposit was required to be made by the Defendant-applicants. On the other hand, the learned Counsel for the Plaintiff opposite party urged that the decree granted to the Plaintiff was also in respect of future mesne profits at the rate of Rs. 5/-per month, which amount, calculated upto the date of the decree would come to Rs. 135/-. Thus the amount of decree within the meaning of the proviso to Section 17 would be Rs. 326.25 paise, and since the amount of deposit made by the Defendant-applicants fell short of this amount, there was no compliance of the proviso.

6. The question that arises now is whether the Defendants were liable to deposit the amount of mesne profits or compensation for use and occupation pendente lite and future, even if the same had not been calculated in the decree. There is no dispute that the suit of the Plaintiff opposite party had not only been decreed for the arrears of rent, but also for future mesne profits. The Defendant-applicants were thus liable to pay the future mesne profits under the decree. The calculation of the actual amount of mesne profits could not be made in the decree itself inasmuch as it had to be determined with reference to the date on which the possession of the property was to be given to the Plaintiff opposite party. The Plaintiff opposite party was entitled to get mesne profits or compensation for use and occupation for the period till the Defendants retained possession. Accordingly,- the submission of the learned Counsel for the Defendant-applicants that since the amount of mesne profits had not been calculated in the decree, the applicants were not liable to deposit the same u/s 17 of the Act, cannot be accepted.

7. Section 17 of the Act also does not bear the submission advanced on behalf of the applicants. u/s 17, an applicant for an order to set aside a decree passed ex parte is required either to deposit in the court the amount due from him under

the decree or in pursuance of the judgment, or give such security for the performance of the decree or compliance of the judgment as the court may, on a previous application made by him in this behalf, have directed. The word "decree" used in this Section 17 indicates the amount which may be payable by a Defendant under a decree passed against him. The fact that the amount had not been actually calculated or worked out was wholly immaterial for the purposes of the obligation which had to be discharged by the Defendant under the decree. The question whether certain amount decreed in the suit is legally payable by a Defendant or not, is also not material. A debt is often said to be due from a person where he is a party owing it, or primarily bound to pay, whether the time for payment has or has not arrived.

8. In the instant case, however, the position is better than a time barred debt. Here the deposit of the amount decreed has been made a condition precedent for getting the ex-parte decree set aside. At the stage when the question of entertainability of an application without a deposit is being considered, a court is not called upon to decide the legality or correctness of the decree.

9. In *Basdeo Ram Swarup v. Mool Chand Nemichan* 1921 ALJ 245, relied upon by the learned Counsel for the Defendant-applicants, the controversy was altogether different. In that case, the amount entered in the decree was not correct. As the application filed for setting aside the ex parte decree had been rejected by the Judge Small Causes on the basis that the correct amount had not been deposited by the Defendants of that suit, this Court held that it was the duty of the Court to enter correct figures in the decree, and if the Defendant deposited the amount stated therein u/s 17 of the Provincial Small Cause Courts Act, he must be deemed to have complied with the law. In this way, it would be seen that the decree was incorrect in figures and it was impossible to say on the face of that decree that the Defendant had not complied with Section 17.

10. In our case, the controversy is altogether different. There is no allegation that the amount entered in the decree was incorrect. The case of the Defendant was that as the actual mesne profits had not been worked out, he was not called upon to deposit the same under the Proviso to Section 17. This submission I have already negatived above. A decree to come within the definition of the word "decree" used in Section 2(2) for payment of money need not state the exact amount due. A decree under which the amount has to be ascertained subsequently is also a decree.

11. In *Khadi Gram Udyog Trust Vs. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur*, the Supreme Court was called upon to interpret the words "entire amount of rent due", used in Section 20(4) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Interpreting these words, the Supreme Court approved the decision given in *Curwen v. Milburn* (1889) 42 Ch. D. 422, and remarked,

Statute barred debts are dues though payment of them cannot be enforced by

action.

12. Although the aforesaid case does not have a direct bearing on the controversy in question but it would show that the word "due" is not interpreted to mean only that amount which is legally due and may be claimable by a Plaintiff bringing a suit. In this view of the matter, the fact that since the tenancy of the Defendants had not been lawfully terminated, therefore, they were not liable to pay the mesne profits, is immaterial.

13. For all these reasons, the revision fails and is dismissed with costs. The stay order, if any, shall stand discharged.