
(1996) 05 AHC CK 0071

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22330 of 1994

Sardar Amreek Singh

APPELLANT

Vs

IVth Addl. Distt.Judge,Kanpur Nagar & Ors.

RESPONDENT

Date of Decision : 09-05-1996

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(2)(c), 20(4), 3(g)

Citation : (1996) 05 AHC CK 0071

Hon'ble Judges : S.N.Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—The petitioner seeks writ of certiorari quashing the judgment and decree, dated 2211994, passed by respondent No. 2 decreeing the suit of the plaintiffrespondent No. 3 and the judgment, dated 2051994, passed by respondent No. 1, affirming the said judgment in revision.

2. The facts in brief are that the petitioner is a tenant of a portion on the second floor of House No. IIIA/419, Ashok Nagar, Kanpur Nagar. Respondent No. 3 is the landlady of this house. She filed Small Cause Suit No. 5 of 1988 against the petitioner for recovery of arrears of rent, ejectment and damages on the allegation that the petitioner committed default in payment of arrears of rent in spite of service of notice on him, damaged the disputed accommodation and made material alterations in the disputed property. The petitioner filed written statement and denied the allegations of respondent No. 3. The Judge, Small Causes Court recorded finding that the petitioner failed to pay the arrears of rent within one month from the date of service of the notice and thereby he committed default, made material alterations and damaged the property, he was liable for ejectment and decreed the suit on 2211994. The petitioner preferred revision before the District Judge. Respondent No. 1 has dismissed the revision by judgment, dated 2051994. The petitioner has challenged these judgments in the present writ petition.

3. I have heard learned Counsel for the parties. Learned Counsel for the petitioner urged that the petitioner was never served with any notice of demand and termination of tenancy alleged to have been sent by respondent No. 3 on 1081987 and 1791987. The notice is alleged to have been served on 3101987 but in fact, the petitioner never received the notice. The finding of the Courts below to the contrary is erroneous. Respondent No. 3 had sent notice on 1791987. The notice is alleged to have been served on the petitioner on 3101987. Plaintiff produced Param Lal, Public Relation Inspector of Post Office Anwarganj, Kanpur as P.W. 1. He made a statement that the acknowledgment bears the signature of the petitioner. The petitioner appeared as a witness as D.W. 3. He simply denied that any notice was served on him. He did not produce any expert or any other evidence to show that the acknowledgment due did not bear his signature. The trial Court has relied upon the documentary evidence and the statement of Public Relation Inspector and considering the evidence on the record came to the conclusion that the petitioner was served with notice on 3101987 whereby respondent No. 3 had terminated his tenancy and demanded arrears of rent. This finding does not suffer from any illegality.

The second submission of learned Counsel for the petitioner is that the petitioner had deposited the entire arrears of rent with costs etc. prior to the first date of hearing and was entitled to the benefit of Section 20(4) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act") and was not entitled to ejection on the ground that he had committed default in payment of the arrears of rent.

The petitioner in paragraph 2 of the writ petition has stated that the suit was instituted on 411988 and the first date of hearing was 521988. On 2911988 the petitioner got a tender passed from the trial Court and deposited a sum of Rs. 11,750 by that tender on 3011988. He has given the details of the amounts which he was required to deposit under Section 20(4) of the Act and according to his calculation it was Rs. 11,210.25 p. The trial Court held that the amount deposited by the petitioner was conditional one and, therefore, he was not entitled to the benefit of deposit made by him under Section 20(4) of the Act. The petitioner in his written statement had stated that the rate of rent was Rs. 175/ per month and not Rs. 300 per month as claimed by the plaintiff. He, in the written statement, however, did not state that he had deposited the amount under Section 20(4) of the Act conditionally.

4. In paragraph 15 of the written statement he categorically stated that after service of summons on him he deposited the entire amount in the Court before first date of hearing and is entitled to get benefit of Section 20(4) of the Act. In his deposition before the Court he stated that he had deposited the rent at the rate of Rs. 175 per month. This statement only related to the period of pendency of the suit. This does not relate to the deposit of the rent which was made under Section 20(4) of the Act. The petitioner had deposited the rent for the period 1101985 to 3181988 as claimed in the suit at the rate of Rs. 300 per month. The

view taken by respondents 1 and 2 that the petitioner had deposited the rent at the rate of Rs. 300 per month conditionally is not correct.

5. Learned Counsel for the respondent then urged that the cost of the suit was not correctly calculated by the petitioner.

The cost of the suit should be taken as given in the decree after it is passed by the Court. This contention of learned Counsel for the respondent is not correct. Clause (b) of Explanation added to subsection (4) of Section 20 of the Act provides that the expression "Cost of the suit" includes onehalf of the amount of counsel's fee taxable for a contested suit. The cost of the suit will be such as the r incurred by the date or includes Courtfees, Counsel fee and other expenses incurred by the plaintiff. The petitioner has given the details of the expenses incurred by the plaintiff by the date of first hearing. The respondent has not shown that he had incurred any other expensaby that date to which the petitioner was liable to pay. The amount deposited by the petitioner fully covered the amount as he was liable to deposit under Section 20(4) of the Act.

6. Learned Counsel for the respondent urged that the son of the petitioner had constructed his own house. The parties led evidence. The Judge, Small Causes Court found that daughterinlaw of the petitioner had constructed house No. 117/0/352, Geeta Nagar, Kanpur in her own name. The daughterinlaw is not family member of the petitioner as defined under Section 3(g) of the Act. The acquisition of a house by daughterinlaw of a tenant will not be covered by the proviso to subsection (4) of Section 20 of the Act. The petitioner was thus entitled to the benefit of Section 20(4) of the Act. The view taken by respondents 1 and 2 is erroneous in law.

7. The third submission of learned Counsel for the petitioner is that the finding recorded by the Courts below that the petitioner made constructions in the building which diminished its value or utility or disfigured it, is erroneous. The version of the landlord was that the petitioner was a tenant of rooms as well as the verandah. Verandah has been converted into drawing room and pooja room. This verandah was facing outer portion of the building. There was a tenant on the ground floor and the landlord is residing on the first floor but the petitioner on the second floor made the constructions with the result the building looking from outside shows that there is no verandah on the second floor and that amounts to disfigurement of the building.

8. A commissioner was appointed and he has submitted his report. From the perusal of the report it is clear that verandah has been covered. The constructions made are as follows:

(1) A portion of the verandah has been encroached by putting six windows facing west. Janglas have been fixed on pillars which were already existing.

(2) A pooja room by raising wall at about 7" towards west encroaching the verandah.

(3) The verandah has been partitioned by wooden plank and a portion is being used as Pooja room and another portion as drawing room.

9. The question is whether these constructions made by the petitioner are such constructions or alterations as is likely to diminish the value and utility of the building in question or disfigured it as provided in Clause (c) of subsection (2) of Section 20 of the Act.

10. Various cases have been cited by learned Counsel for the parties. Learned Counsel for the petitioner has raised following points in support of the contention that the petitioner has not made such constructions which are covered by Section 20(2) of the Act:

(1) The constructions are temporary.

(2) The building was let out for residential purpose and it was for the convenient use of the property.

(3) The constructions do not diminish the value and utility of the building or disfigured it.

11. He has placed reliance upon the decision in *Sardar Bahadur Mathur v. Kali Prasad Gupta*, 1961 ALJ137, wherein the Court considering the provisions of Section 3(I)(c) of U.P. (Temporary Control of Rent and Eviction) Act, 1947 held that where a tenant had encroached a verandah it may not amount to material alteration and laid down certain guidelines to determine as to whether a tenant has made material alterations in the building. On the facts it was found that the tenant had put Jangla and erected a wall of 3" thick to cover a portion of the Jangla. The bricks were easily removable.

12. In *Om Prakash v. Amar Singh & Am*, AIR 1987 SC 617, the question was whether construction of a partition wall of 6" high in a hall converted the same into two rooms and a tin shed on open space adjacent to the accommodation amounted to material alteration as defined under Section 14(c) of U.P. Cantonments (Control of Rent and Eviction) Act. It was held that the word "material alternation" under Section 14(c) should be interpreted taking into consideration the nature, character of the construction and the extent to which the changes were made in front and the construction of the premises having regard to the purpose for which the accommodation may have been let out to the tenant. The nature and the constructions, whether they are permanent or temporary, is a relevant consideration in determining the question of material alteration. A permanent construction tends to make changes in the accommodation on a permanent basis while a temporary construction is on temporary basis which do not ordinarily affect the form or structure of the building, as it can easily be removed without causing any damage to the building.

13. In *Abdul Ghafoor v. District Judge, Bulandshahr and others*, 1988 (1) ARC 492, where the tenant had removed old doors from the disputed shop and affixed new shutters, it was held that it did not amount to material alteration as

provided under Section 3(1) (c) of U.P. (Temporary Control of Rent and Eviction) Act, 1947. The Court relied upon the decision of the Supreme Court in *Manmohan Das Shah and Ors. v. Bishan Das*, AIR 1967 SC 643, wherein it was observed that the expression "material alteration" means important alteration such as those which materially or substantially change the front or the structure of the premises.

14. In *S.K. Banerji v. Surendra Nath Mishra*, 1990(1) ARC 114, it was found that the tenant had placed tin shed rested on walls and bamboo pillars without digging any foundation. It was held that the pillars could be removed without changing the building and tin shed also can be removed and such construction is not covered by Section 20(2) (c) of the Act as it is not of permanent nature.

15. In *Mis. Kedar Nath Baij Nath and others v. Sri Ram Chandra Ji Sri Janki Ji Sri Laxman Ji Virajman Mandir and others*, 1991 (1)ARC420, wherein the tenant had, by putting partition wall made five or six shops, it was held that the value of the shops was neither diminished nor there was any disfigurement of those shops. Where a tenant converts a verandah into a room, the question arises whether it diminishes its value or utility or disfigures it. A tenant is let out to use verandah as verandah or balcony as balcony. If he converts it into a room, he reduces its value or utility in as much as it cannot be used as verandah. Some times a Jangal a may be placed for permitting the light and air to come but if the walls are raised, it shall amount to converting the verandah into room and if it is used as a room, it cannot be utilised as a verandah.

16. In *Shyam Lal v. Vth Additional District Judge, Agra and others*, 1989 (1) ARC 267, wherein the tenant had enclosed the verandah at the height of 6 1/2 in the half width and put a long iron girder from west to east, it was held that this amounted to such construction which diminished utility and disfigured the building. In *Vipin Kumar v. Roshan Lal Anand*, 1993 (2) ARC 1, the Supreme Court considering the provisions of Section 13(2) (iii) of East Punjab (Urban Rent Restriction) Act, 1949, wherein the tenant had constructed a wall in the verandah and put up a door, it was held that due to the construction the value and utility of the building was materially affected. The view of the Rent Control Officer that raising of such construction impairs flow of air and light and that diminishes its value or utility, was found to be correct. The decision in *Om Prakash's* case (supra) was distinguished as in that case the Supreme Court was considering the words "materially altered" as provided under Section 14(c) of the U.P. Cantonments (Control of Rent and Eviction) Act. The Court observed.

"In considering that language it was held that putting of door in verandah is not material alteration. The ratio thus renders little assistance to the facts of the case."

17. Section 20(2) (c) provides that the construction or alteration in structure in the building made by the tenant should not be such as it likely to diminish its value or utility or to disfigure it. It does not proved that the nature of the

construction should either be permanent or temporary. It has to be considered on the facts of each case. The mere fact that the construction can be removed is itself not a defence for a tenant in making a construction. Nowadays any construction can be removed. Even if a wall is raised, it can be removed by the tenant at any time. If a tenant has raised any construction, it has to be considered whether it diminishes value or utility of the building or disfigures it.

18. In *Smt. Raj Rani Kapur v. Bhupinder Singh*, 1986 (2) ARC 457, where the tenant had raised the structure supported on poles imbedded to the ground with asbestos covering even though no portion of it was imbedded in the main structure of the building, it was held that such construction was offending construction which diminishes the value and utility of the property. It was held that it was immaterial whether the construction raised was of permanent or temporary nature and whether it can be removed without causing any damage. The Court observed as follows:

"In ordinary parlance, "construction" means some thing done to hold together the various constituents of a structure depending upon the nature or type of the construction. If it is made of masonry, then the masonry work of brick or stone may be done by mud or mortar or cement or in some other manner. If it is made of steel or fabricated and is held together by nuts and bolts it may still be some kind of construction although the various constituents are capable of being dismantled without causing any violence to its structure. The material used in the construction or the mode of joining together of its constituent parts is thus not the deciding factor. It is also immaterial whether the structure raised is of a temporary or permanent nature, or whether it can be removed without causing any damage to the building. What is really material for the purpose of subclause (c) is that some construction should have been made. One striking feature of a "construction" is the fact that it cannot be moved or displaced as it is from one place to another. When the structure is such which can be moved or shifted bodily from place with requiring its demolition or dismantling it cannot really be a construction in its true sense. A flower pot or a steel container cannot normally be said to be "construction" but when the same flower pot is permanently fixed to the ground, it may become one. Therefore, merely because the shed can be dismantled or removed without causing any damage to the main construction it not in itself a sufficient ground to hold that it is not "construction" of the nature referred to in subclause (c) of Section 20(2)."

19. The commissioner has given the details of the constructions raised by the petitioner and he has also prepared a map. The map indicates that towards west there was a verandah and there were three pillars. The verandah was encroached by putting six Janglas between the three pillars. The space between one pillar and the last wall of the verandah was covered by raising a wall. The length of wall was 7". There was a further partition of the verandah between the drawing room and Pooja ghar. The construction raised by the petitioner certainly affected the utility of the disputed accommodation as verandah. The fact that the

petitioner had put a Jangla over a portion of the Verandah may some times not amount to affecting its utility to flow air and light but the other portion of it was totally covered by the wall and thereafter was converted into a room and that certainly affected the flow of air and light. The value of the building was diminished as the verandah was converted into a room.

20. Learned Counsel for the respondent contended that the construction raised by the petitioner also disfigured the building. The building is three storied. The landlord is living on the first floor. The ground floor is in occupation of the petitioner. The building facing towards west is over looking from outside. On the ground floor and the first floor it is verandah but on the second floor it does not look like verandah and that amounts to disfiguring the building. It is not necessary to decide this question as it has been found that the construction raised by the petitioner diminished the value and utility of the accommodation in dispute.

21. The courts below have further found that the petitioner has damaged the building by fixing iron angle in a corner of the building. The plaintiff, in paragraph 8 of the plaint, stated that the petitioner had damaged the northeastern corner of the room. The petitioner denied this fact in written statement. The Commissioner appointed by the Court, submitted a report. He stated that the petitioner had affixed an iron angle 31/2" in length in the eastern wall of the building in question. On account of this fixing of the iron angle, there was a crack in the building. The extent of the crack in the building was 102" and the width of this crack is about half inch. This record of the Commissioner clearly indicates that on account of fixing the iron angle in the wall by the petitioner crack was developed and it was to the great extent almost covering a major portion of the wall running into 102". The petitioner in his statement denied the fact that there was any crack in the wall. There was no other explanation given by him. It was admitted by him that there was telephone in his house and the iron angle was fixed for putting necessary wires for his telephone. The Courts below have recorded the finding that the damage was caused by the petitioner by fixing iron angle. This finding is supported by evidence on the record.

22. Learned Counsel for the petitioner urged that there was neither any leading nor evidence to show that the petitioner had caused this damage wilfully. It was urged that the landlord has to establish as provided under Section 20(2)(b) that the tenant had wilfully caused or permitted to be caused substantial damage to the building. The plaintiff in his plaint has clearly stated that the petitioner has caused damage to the building in question. The petitioner had denied the same. It was not his case that any damage caused to the building was not wilful. The parties led evidence in the case. The petitioner appeared in the witness box and in his deposition also he denied that any crack was caused in the building by fixing iron angle. It was not his case that the crack was developed in the wall by fixing iron angle but it was not his intention to damage the building. What is wilful depends upon intention of a person doing or permitting to be done

something. A person who is either doing or permitting to do a particular thing can better explain what was his intention. The petitioner having caused the damage by affixing the iron angle it was for him to explain that it was not intentional. A tenant who has by his own act caused damage to the property can very well explain that it was not his intention to cause damage to the property. This depends upon various facts. If the building is strong and iron angle is fixed it may not cause any damage to the building but if the building is such it cannot bear any thrust it will be damaged. The petitioner did not lead any evidence to indicate the circumstances under which the building was damaged and if he was going to get fixed the iron angle why he could not take necessary precaution that it should not be damaged and if he failed to take necessary precaution the burden of proof will lie upon him to prove that his Act was not wilful.

23. Learned Counsel for the petitioner has placed reliance upon the decision in *Bhagwan Das Vani v. Rajendra Narain Bhatnagar and others*, 1979 ALJ 216, where in it was held that in order to bring a case under Section 20(2) (b) it is mandatory for the landlord to allege and prove that the tenant has wilfully caused or permitted to be caused substantial damage to the building.

24. The pleadings of the parties have to be liberally construed and structure of the pleadings will not be stressed too strictly where fair notice of case is given as held in *Someshwar Datt v. Thbhuwan Datt & Am*, AIR 1934 Privi Council 130 and *Raghubir Prasad v. Rajendra Kumar Gurudeo & Ors.* 1993 (2) ARC 52. The mere fact that the plaintiff had not used the word wilful in his plaint itself will not be taken that the plaintiff had not taken a ground for eviction under Section 20(2) (c) of the Act. He had filed replication and in paragraph 8 of the replication he had further reiterated the damage caused by the defendant. The intention of the party is reflected by his action.

25. In *Sri Radhey Mohan v. Har Narain Das*, 1952 ALJ 152, the question was as to whether the tenant wilfully failed to make payment of rent to landlord. It was held that if the amount was payable by the tenant at the rate of the rent demanded by the landlord and the tenant fails to establish that the rate of rent was lesser, it was held that it shall be taken that he wilfully failed to pay arrears of rent.

26. What is wilful depends upon the various facts and circumstances in each case. As discussed above, in the present case the action of the petitioner in causing the damage to the property without explaining the cause of such damage will be taken as wilful.

27. In the result the writ petition fails and is hereby dismissed.

The parties shall however, bear their own costs.

Writ petition dismissed.