

(1984) 10 AHC CK 0039
In the Allahabad High Court
Case No : Writ Petition No. 1788 of 1983

Savitri Devi

APPELLANT

Vs

The District Judge and Others

RESPONDENT

Date of Decision : 10-10-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 15 Rule 5
United Provinces Municipalities Act, 1916 — Section 338
United Provinces Town Areas Act, 1914 — Section 14(1)
Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 149, 179
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 5, 6, 7

Citation : (1985) AWC 175

Hon'ble Judges : D.N. Jha, J

Bench : Single Bench

Advocate : S.K. Mehrotra, for the Appellant;

Final Decision : Dismissed

Judgement

D.N. Jha, J.—This writ petition has been directed by the landlord Smt. Savitri Devi alleging that the courts below committed an error in not striking out the defence of the tenant, under Order 15 Rule 5 Code of Civil Procedure.

2. The brief submission of the learned Counsel is that the liability to pay taxes is included in the rent payable with respect to building in occupation. Therefore, if merely rent has been paid and taxes have not, been paid the same principle will apply and his defence is liable to be struck off by virtue of Order 15 Rule 5. The argument is wholly misconceived. In the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) there are two separate provisions in Chapter 2 of the Act.

Section 5 of the Act reads as under:

In the case of a tenancy continuing from before the commencement of this Act, in respect of a building to which the old Act was applicable, the landlord may, by

notice in writing, given within three: months from the commencement of this Act, enhance the rent payable therefore to an amount not exceeding the standard rent, the rent so enhanced shall be payable from the date of commencement of this Act.

Standard rent has also been defined in the Act. It is not necessary to reproduce the provision. Section 6 of the Act provides for the effect of improvements on rent. Section 7 which has strenuously been relied upon by the learned Counsel for the Petitioner reads as under:

Subject to any contract in writing to the contrary, but notwithstanding anything contained in Section 179 of the Uttar Pradesh: Nagar Mahapalika Adhiniyam 1959 (U.P. Act II of 1959) or in Section 149 or in any rule made or notification issued u/s 338 of the United Provinces Municipalities Act, 1916 (U.P. Act II of 1916) or in Section 14(1)(e) of the United Provinces Town Areas Act, 1914 (U.P. Act II of 1914), the tenant shall be liable to pay to the landlord in addition to and as part of the rent for following taxes or proportionate part thereof, if any, payable in respect of the building or part under his tenancy, namely;

(a) the water tax;

(b) twenty five percent of every such enhancement in house tax made after the commencement of this Act, or such portion thereof, as is not occasioned on account of the increase in the assessment of the building as a result of the enhancement of rent under the provisions of Section 5;

Provided that nothing in this section shall apply in relation to a tenant the rate of rent payable by whom for the time being (excluding any enhancement of rent under provisions of Section 5) does not exceed twenty five rupees per month.

3. The submission of the learned Counsel is that liability of payment of tax is also envisaged as part of payment of rent and, therefore, is included in the rent payable by the tenant. Learned Counsel, therefore, maintained that in case if along with the rent the tenant fails to deposit the liability of taxes which also constitutes part of the rent he is not entitled to be heard and his defence ought to have been struck down. In support of his contention he has placed reliance on *Ramesh Chandra Gupta v. IVth Additional District Judge* 1984 ARO 139. It may at the very outset be mentioned that in the case relied upon by the Petitioner the question of striking down of defence under Order 15 Rule 5 CPC was not involved. It is well settled that every provision of statute has to be strictly construed.

4. Learned Counsel in order to satisfy that the defence of the tenant was liable to be struck down has to show that, the liability of tax was part of the agreed rent payable by the tenant. The authority, cited by the learned Counsel only highlights the provision contained in Section 7. The bald reading of Section 7 clearly indicates that the payment of liability of taxes rests on the tenant unless there is contract to the contrary. The mode of payment also has been mentioned but I do

not subscribe to the submission of the learned Counsel for the Petitioner that in all cases it constitutes part of the agreed rent. It will have to be established from the averments that after the incorporation of the provision monthly rent was increased and that increased rent was being paid monthly by the tenant. If the tenant was making separate payment of taxes yearly, six monthly or quarterly then the payment of water tax and 25% of the enhanced house tax would not constitute rent but would be an additional liability coupled with the rent determined u/s 5 of the Act. The rent for the use and occupation, therefore, would be the agreed rent payable by the tenant although the liability for payment of additional amount for use and occupation of the building would also be on the tenant, that liability cannot be clubbed with the agreed rent. The law laid down in *Major Baldeo Krishna Bhandari v. Vth Additional District Judge, Lucknow* 1982 (1) ARC 121 is thus distinguishable on facts. In that case the question involved was payment of agreed rent which the tenant was liable to deposit.

5. A person depositing rent in the Court cannot be saddled with the other liabilities which he has to pay with respect to the building in his occupation separately. The statute has used the words rent plus costs and other incidental matters mentioned therein but does not include liability which in addition to rent is on the tenant to be paid for the use and occupation of the building. In my opinion, therefore, the courts below have not committed any error in rejecting the application of the Petitioner landlord to strike down the defence of the tenant. It is a valuable right of a Defendant to contest a suit. This right can only be circumscribed within the four-corners of the penal word in the statute itself. It is not for this Court to add something to the definition of Statute. There can also be other contractual liabilities existing between the landlord and the tenant but that would not constitute rent as envisaged for striking down the defence under Order 15 Rule 5.

6. No other point has been pressed.

7. In view of the observations made above the scrutiny of the order impugned in the petition does not call for any interference as it has been passed after due appreciation of the papers. The petition being devoid of merit is dismissed. Stay order, if any, is vacated.