
(1980) 11 AHC CK 0052

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6861 of 1979

Shambhoo Nath Mehrotra

APPELLANT

Vs

Nawal Kishore Agarwal and Others

RESPONDENT

Date of Decision : 12-11-1980

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 : (1981) AWC 74

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

Bench : Single Bench

Advocate : P.N. Saxena, for the Appellant; S.B. Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Verma, J.—This petition by a landlord is directed against an order passed by the learned IX Additional District Judge, Kanpur allowing a revision filed by the tenant, Respondent No. 1, under-Section 25 of the Provincial Small Cause Courts Act and dismissing the petitioner's suit for the tenant's eviction.

2. These are the relevant facts:

The Petitioner is the landlord and the Respondent No. 1 the tenant of an accommodation on the first floor of house No. 11/291 Souterganj, Kanpur. The Petitioner filed a suit for the ejectment of the Respondent No. 1 on the ground of default. It was alleged that the Respondent No. 1 was in arrears of rent from 3-4-1974 amounting to Rs. 2,346.66 ? which he failed to pay despite a notice of demand duly served on him. A decree for damages for use and occupation etc. was also claimed in the suit.

3. The suit was contested by the Respondent No. 1 on the ground that he had paid rent in advance for the period upto 31-7-1974 to the previous landlord and that when he sent a bank draft of Rs. 2090/- covering the rent for the period

1-8-1974 to 30-9-77 within one month of the receipt of the notice of demand to the Petitioner the same was refused by him. The defence of the Respondent No. 1 thus, was that he was not in arrears of rent and that the suit was, therefore, liable to be dismissed.

4. The suit was filed on 10-1-1978. Summons of the suit fixing 23-5-1978 for filing written statement and hearing of the suit was served on the Defendant. In response to the summons the Respondent No. 1 put in appearance on 23-5-1978 and deposited Rs. 3,700/- purporting to take advantage of the provisions of section 20(4) of U.P. Act No. 13 of 1972. The Respondent No. 1 had made an application for the said deposit a day earlier i. e. 22-5-1978. Along with the deposit, the Respondent No. 1 also submitted a chart giving the details of the amount or amounts which the said Respondent was required to deposit u/s 20(4). On 23-5-1978 the Respondent No. 1 moved an application for adjournment on the ground that the summons sought to be effected on him was not accompanied by a copy of the plaint and he was, therefore, unable to file the written statement on that date. He prayed for some time to do so. The Court allowed that application and the case was adjourned to 21-8-1978 for hearing. On 21-8-1978, the Presiding Officer was on leave. The case was consequently adjourned to 24-10-1978. On 24-10-1978 the Respondent No. 1 deposited a further sum of Rs. 250/-. Apart from Rs. 3,700/- which the Respondent No. 1 had deposited on 23-5-1978, he had also deposited few other sums of money namely Rs. 235.75 ? and Rs. 17535 ? respectively on 14-8-1978 and 10-8-78.

5. It was not disputed before me by the learned Counsel for the Petitioner that if all the aforesaid amounts are taken into account they would together be more than sufficient to cover the amount, which was required to be deposited u/s 20(4) of the aforesaid Act.

6. On the pleadings of the parties, necessary issues were framed by the trial Court. It held that the Defendant; had not paid rent from 3-4-1974. Another finding recorded by the trial Court was that the rate of rent was Rs. 55/- per month which was inclusive of the water-tax. On the question whether the tenant was entitled to the benefit u/s 20(4) of the aforesaid Act, the trial Court held that the date of first hearing was 23-5-1978 being the date mentioned in the summons for the hearing of the suit, and, inasmuch as, the Defendant had not deposited full amount which was according to the trial Court, Rs. 4,109.10 P, before that date, the tenant was not entitled to the benefit of the said provision. The result was that the suit of the Petitioner for the ejectment of the Petitioner from the disputed accommodation as well as for the recovery of Rs. 1,943.32 being the arrears of rent and damages was decreed. A decree for mesne profits, pendente lite and future, at the rate of Rs. 55/- was also passed.

7. Both sides preferred revisions u/s 25 of the Provincial Small Causes Courts Act. The revisionai Court disagreed with the trial Court on the question whether the Defendant was entitled to the benefit of Section 20(4). It held that the date of the first hearing in the suit was 24-10-1978. It further held that the amounts

deposited by the Defendant on or before that date were sufficient to cover the amount which was required to be deposited u/s 20(4). The result was that the revision of the tenant was partly allowed and the suit of the plaintiff for the ejectment of the Defendant was dismissed. The revision of the Petitioner which was directed against the decree of the trial Court as regards the rate of rent was dismissed.

8. Aggrieved by the aforesaid order, passed by the revisionai Court, the landlord has approached to this Hon"ble Court under Article 226 of the Constitution of India for a writ of certiorari quashing the order passed by the Respondent No. 3 dated 18-5-1979 disposing of the aforesaid two revisions.

9. learned Counsel for the Petitioner contended that the date of the first hearing in the suit was 23-5-1978 being the date mentioned in the summons of the suit, in view of the definition of the expression "first hearing" as given in the explanation to Section 20(4) of the aforesaid Act, and the revisionai Court committed a patent illegality in holding that the date of the first hearing was 24-10-1978. The second argument advanced by the petitioner's counsel was that the revisionai Court committed a manifest error of law in holding that the rate was Rs. 55/- which -was inclusive of the water-tax payable for the premises in question.

10. Having heard learned Counsel for the parties, I am clearly of the view that 24-10-1978 was the date of the first hearing in the suit and that therefore, the suit of the Petitioner for eviction of the Respondent No. 1 was rightly dismissed.

11. On the first point the submission of the petitioner's counsel was that on the plain language of the explanation to Section 20(4), there could possibly be no manner of doubt that 23-5-1978 was the date of the first hearing in the Court and that the decisions and the concepts of the date of the first hearing of the suit which had been rendered on the interpretation of Section 20(4) before the insertion of the explanation to Section 20(4) or which were accepted by this Court would not be helpful in construing of Section 20(4) as it stood after its amendment by U.P. Act No. 28 of 1976 whereby an explanation was added to this Section namely. Section 20(4) defining the expression "first hearing" in the suit. It was submitted that where a Defendant is served with the summons, it is the date mentioned in the summons which must be taken to be the date of first hearing in terms of the said explanation.

12. Counsel for the Respondent on the other hand urged that where the suit is adjourned to a date without the court's transacting any business on the date fixed in the summons for the hearing of the suit, it is the adjourned date on which the Court for the first time applies its mind to the pleadings of the parties or to the questions involved in the suit which must be held to be the date of the first hearing in the suit and not the date which was originally mentioned in the summons. In support, learned Counsel placed reliance on the decision of this Court in the cases of Mathura Prasad and Another Vs. Vikram Jeet Singh, and

Krishna Lal Vs. Narendra Kumar Jain, and Bankey Behari Vs. Gopal Das, .

13. Having heard learned Counsel for the parties, I am clearly of the view that 23-5-1978 could not be regarded as the date of the first hearing of the suit for the simple reason that the Court had without transacting any business adjourned the hearing of the. suit to 21-8-1978, upon the application of the Defendant. As mentioned above, the Defendant had moved an application on 23-5-1978 with the complaint that, inasmuch as, he had not been supplied with the copy of plaint along with the summons, he could not file the written statement on the date fixed i.e. 23-5-1978. I am in full agreement with the view expressed by the learned Judges in the cases of Mathura Prasad v. Vikramjeet Singh and Krishna Lal v. Narendra Kumar Jain (supra) that when the Court passes an order changing the -date mentioned in the summons for the hearing of the case without transacting any business in the sense of application of mind to the pleadings of the parties, the date mentioned in the summons ceases to be the date fixed in the summons for the hearing of the case, even in cases which are covered by the explanation to section 20(4).

14. Construing the provision of explanation to Order XV Rule 5 of the CPC which is expressed in terms which are in pari materia with those of explanation to Section 20(4), the learned Judge in Mathura Prasad's case observed thus:

In a suit instituted in a Court of Small Causes, the summonses are normally issued fixing all the dates together..... The amount in the present case must accordingly be deemed to be deposited within the time contemplated by Rule 5 of Order XV of the Code.

15. The above decision was followed by K. N. Singh, J. in the case of Krishna -Lal v. Narendra Kumar Jain (supra). This case was directly concerned with the interpretation of section 20(4) together with the explanation added thereto. The learned Judge held, following the decision in Mathura Prasad's case, that if the date of hearing is adjourned it is the adjourned date of hearing which would be the date of first hearing within the meaning of section 20(4). The learned Judge observed that if the hearing of the case is adjourned without any proceedings having taken place, the first date of hearing will be the adjourned date of hearing. The ratio of both the aforesaid two decisions is squarely applicable to the facts of the present case. The decisions are based on the statutory provisions as they stood after the amendment of section 20(4). I am in respectful agreement with the statement of ?the law contained in both these decisions, namely that if the case is adjourned with-. out the court's transacting any business on the date mentioned in the summons, by a legal fiction it must follow that the date of first hearing would be the adjourned date on which the Court takes up the case and applies its mind to the question? involved. The basic idea seems to be that if the tenant makes the deposit before . the Court takes up the case for hearing for the first time, the tenant may be relieved from eviction.

16. Counsel for the Petitioner, however, made a feable attempt to argue that -the

amount of Rs. 250/- was deposited by the Respondent No. 1 after the conclusion of the arguments on 24-10-1978 and that, therefore, it could not be said that the amount was deposited at or before the first hearing of the suit. Such an argument, which indisputably depends on investigation of facts was not raised before the trial Court which was in the best position to judge the correctness of this allegation of the landlord. The finding of the trial Court is clear and unambiguous namely, that the amount of Rs. 250/- was deposited by the Respondent No. 1 on the date of first hearing of the suit. The trial Court has observed that the sum of Rs. 250/-, though deposited on 25-10-1978 would be deemed to have been deposited on 24-10-1978, inasmuch as, the tender was got passed on that date i. e. on 24-10-1978. Furthermore, in the counter affidavit filed on behalf of the tenant, it is asserted that the amount of Rs. 250/- was paid before the commencement of the first hearing of the suit. It is not possible to enter into this question of fact in these proceedings. I, therefore, find no substance in this submission of the learned Counsel for the Petitioner.

17. As mentioned above while the case was adjourned on 23-5-1978 without the Court transacting any business on that date at the instance of the Defendant. On 21-8-1978, the Presiding Officer himself was on leave. The next date fixed in the case was 24-10-1978. On 24-10-1978 for the first time, the Court applied its mind to the pleadings of the parties, issues were framed, evidence of the parties was recorded and arguments were addressed. In my view, therefore, 24-10-1978 was the date of first hearing.

18. As mentioned above, if the amounts deposited by the Respondent No. 1 on or before 25-10-1978 are taken into account, it was not disputed by the learned Counsel for the Petitioner that the Respondent No. 1 shall be deemed to have complied with the requirements of Section 20(4).

19. There is another process of reasoning by which the same conclusion is reached namely that 23-5-1978 could not be regarded as the date of first hearing. In order that explanation to Section 20(4) may apply to a case it is essential that summons must have -been duly served on the Defendant. If the summons are not duly served, the Defendant cannot be imputed with the knowledge of the date mentioned in the summons for the purpose of the application of Section 20(4). For, it would be unjust to apply the explanation to Section 20(4) and hold that the date of the first hearing is the date mentioned in the summons even if the summons has not been served on the Defendant as required by law. The explanation to Section 20(4) in so far as it is relevant reads thus :

Explanation--For the purposes of this sub-section :

(a) the expression "first hearing" means the first date for any step or proceeding mentioned in the summons served on the Defendant.

20. It artificially fixed a date of hearing. In substance it creates a legal fiction. The fiction cannot be extended beyond the permissible limits. The explanation

proceeds on the assumption that summons has been duly served on the Defendant. Order 5 Rule 2 provides that every summon shall be accompanied by a copy of the plaint, or, if so permitted, by a concise statement. In my view, where a summons is not accompanied by a copy of the plaint, the summons cannot be deemed to have been duly served. The accompaniment by a copy of the plaint with the summons has a particular significance in the context and purpose of Section 20(4). The Defendant has to deposit under that section the entire arrears of rent due from him as well as the amount of interest thereon and the costs etc. The contents of the plaint would therefore, be very relevant and material. In the absence of the plaint, it would be difficult for the Defendant to find out the precise amount of costs etc. In the present case I find that the copy of the plaint was not supplied to the Defendant along with the summons. Indeed, it was on that ground that the hearing of the suit was deferred. That being so, summons would be deemed to have been served on the Defendant only when the Defendant was supplied with the copy of the plaint. Consequently, 23-5-1978 could not be deemed to be the date of the first hearing in any view.

21. For the reasons stated above, I find no substance in the first point urged by the learned Counsel for the Petitioner.

22. Coming to the second point, namely, whether the sum of Rs. 55/- was inclusive of the water-tax, I find that both the courts below have recorded a concurrent finding of fact that under an agreement between the parties Rs. 55/- was inclusive of the water-tax. Whether there was an agreement to that effect is indisputably a pure question of fact. This Court would, therefore, not be justified in interfering with that finding. The Act came into force on 15-7-1972. The Petitioner purchased the property in the year 1974. The courts below have taken into consideration the fact that the tenant had been paying Rs. 55/- per month as rent even after coming into force of the Act to the previous owner. Their conclusion, therefore, was that Rs. 55/- was inclusive of the water-tax appears to be a plausible one.

23. In the result, the petition fails and is dismissed. There will be no orders as to costs.