
(2008) 09 AHC CK 0027
In the Allahabad High Court

Smt. Rafeeqan and Others

APPELLANT

Vs

Jia-ul-Nabi and Others

RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 30

Citation : (2009) 1 AWC 73

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.U. Khan, J.—At the time of hearing no one appeared on behalf of respondent hence only the arguments of the learned Counsel for the petitioners were heard.

2. Property in dispute is a Tchaperaill shop of 10 feet x 12 feet. Rent is Rs. 20 per month, However, under interim order passed in this writ petition tenants are paying Rs. 100 per month rent.

3. This is tenants' writ petition. Landlords respondent Nos. 1 to 9 filed S.C.C. Suit No. 19 of 1990 against tenants petitioners for eviction on the ground of default and for recovery of arrears of rent. Tenants pleaded that entire rent had been deposited u/s 30 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 hence they were not defaulter. The trial court held that deposit of rent u/s 30 of the Act was not valid and decreed the suit for eviction through judgment and decree dated 17.8.1994. Against the said judgment and decree S.C.C. Revision No. 52 of 1994 was filed which was dismissed by 1st A.D.J. Rampur on 28.11.1995 hence this writ petition.

4. Initially Sibtey-Nabi was the landlord who died before filing of the suit leaving behind respondent Nos. 1 to 9 as his heirs. Similarly original tenant was Mohd.Yaqub Khan who died during pendency of the suit and was substituted by the petitioners. Landlords respondents sent a notice to original tenants on

2.7.1990 terminating the tenancy and demanding the rent from 1.11.1976 to 30.6.1990 (total Rs. 4,920). The tenants replied the notice stating therein that rent had been deposited u/s 30 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 in case No. 9 of 1977. Original landlord had died on 3.9.1988. However, even after his death no application for substitution of respondent Nos. 1 to 9 was filed in the case u/s 30 of the Act (Misc. Case No. 9 of 1972). Same thing was pleaded by the defendants in the written statement filed in the suit. It was further pleaded that subsequently rent till 31.10.1992 had also been deposited in the case u/s 30 of the Act (Misc. Case No. 9 of 1977). Tenants contended that firstly when notice was received by original tenants, they were not defaulter for four months and secondly tenants had deposited the entire rent and they were entitled to the benefit of Section 20 (4) of the Act.

5. Landlords contended that deposit of rent u/s 30 of the Act was not valid as no notice of any deposit was given to the landlord and that provisions of Rule 21 (5) of the Rules framed under the Act were not complied with. It was further contended that after the death of original landlord Sibtey-Nabi on 3.9.1988 deposit in his name was not valid.

6. In para No. 8 of the writ petition it has been stated that in the eviction suit giving rise to the instant writ petition tenants deposited Rs. 735 on 6.9.1993 which included Rs. 300 towards rent from 1.11.1992 to 3-1.8.1993 and cost of the suit including counsel fee. Written statement was filed on 27.9.1993.

7. In my opinion even if all the pleas taken by the tenants petitioners are accepted still deposit u/s 30 will not be valid after the date of death of original landlord as tenants did not seek substitution of the heirs of original landlord in the case u/s 30 of the Act. Rent deposited u/s 30 (1) of the Act can be withdrawn only by the person in whose name it is deposited. The heirs of original landlord after the death of original landlord could not withdraw the said rent. In this regard reference may also be made to Section 30 (4) of the Act which is quoted below:

On any deposit being made under Sub-section (1), the Court shall cause a notice of the deposit to be served on the alleged landlord, and the amount of deposit may be withdrawn by that person on application made by him to the Court in that behalf.

8. For the aforesaid reasons I do not find any error in the Impugned judgments. Continuance of deposit of rent in the case u/s 30 of the Act after the death of original landlord/opposite party in the said case on 3.9. 1988 was utterly invalid and heirs of original landlord could not withdraw the said amount. Writ petition is accordingly dismissed.

9. Tenants-petitioners are granted six months time to vacate provided that:

1. Within one month from today tenants files an undertaking before the J.S.C.C. to the effect that on or before the expiry of aforesaid period of six months he will

willingly vacate and handover possession of the property in dispute to the landlords-respondents.

2. For this period of six months, which has been granted to the tenants-petitioners to vacate, they are required to pay Rs. 1,800 (at the rate of Rs. 300 per month) as rent/damages for use and occupation. This amount shall also be deposited within one month before the J.S.C.C. and shall immediately be paid to the landlord-respondent.

3. Within one month from today tenants shall deposit entire decretal amount due till date (after adjusting any amount already deposited) before the J.S.C.C. for immediate payment to landlords-respondents.

11. In case of default in compliance of any of these conditions tenants-petitioners shall be evicted through process of Court after one month and tenants-petitioners shall be liable to pay damages at the rate of Rs. 600 per month since after one month till the date of actual vacation.

12. Similarly, if after filing the aforesaid undertaking and depositing decretal amount and Rs. 1800 the accommodation in dispute is not vacated on the expiry of six months then damages for use and occupation shall be payable at the rate of Rs. 600 per month since after six months till actual vacation. It is needless to add that this direction is in addition to the right of the landlords-respondents to file contempt petition for violation of" undertaking and execution application.