
(1981) 02 AHC CK 0063

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 4636 of 1980

Smt. Sheela Jain and Others

APPELLANT

Vs

The 1st Additional District Judge and Others

RESPONDENT

Date of Decision : 27-02-1981

Acts Referred:

Constitution of India, 1950 — Article 226
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 333

Hon'ble Judges : S.D. Agarwala, J

Bench : Single Bench

Advocate : S.C. Agarwal, for the Appellant; G.N. Chandra, for the Respondent

Final Decision : Allowed

Judgement

S.D. Agarwala, J.—This is a petition under Article 226 of the Constitution of India. Suit No. 129 of 1974 was filed by the opposite party No. 3. Suresh Chandra Sharma against one Kulwant Rai. Opposite party No. 3 is the landlord. Kulwant Rai was the tenant of the premises in suit. After decision by the revisional Court Kulwant Rai died and as such the Petitioners are the heirs of Kulwant Rai. The Judge Small Causes Court held that the tenant was entitled to the benefit of Section 20(4) of U.P. Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972, U.P. Act XIII of 1972, hereinafter referred to as the Act, and hence the suit was decreed as regard the arrears of rent but the relief for ejectment was not granted. The judgment of the Judge Small Causes Court is dated 3-2-1976. Against the said judgment Kulwant Rai filed a revision u/s 25 of the Provincial Small Causes Court Act. The 1st Additional District Judge, Nainital by judgment dated 30-5-1977 allowed the revision and remanded the case to the Court below after holding that Kulwant Rai was not entitled to the benefit of Section 20(4) of the Act. The judgment dated 30-5-1977 was thereafter challenged by Kulwant Rai by filing a revision in this Court. The revision was held

to be not maintainable in view of the Full Bench decision of this Court. Thereafter the present petition has been filed by the heirs of Kulwant Rai.

2. I have heard the learned Counsel for the parties. learned Counsel for Petitioner has contended that the Petitioners are entitled to the benefit of Section 20(4) of the Act and view to the contrary taken by the revisional Court is manifestly erroneous. The present suit was filed on 23-12-1974. 17th March, 1975 was the first date fixed in the suit. On that date the tenant deposited the amount of arrears of rent but did not deposit the counsel's fee. In effect the amount deposited was short. Thereafter the date fixed in the case was 21st May, 1975. On this date an application was made by the tenant for permission to make good the deficiency in deposit. No orders were passed on this application for the reason that the opposite party No. 3, who is the landlord did not appear before the Court and as such the suit was dismissed in default on 21-5-1975. Opposite party No. 3 thereafter moved an application for restoration which was allowed by the Court on 5th August, 1975 and the suit was restored to its original number. The next date fixed for hearing was 10th October, 1975. Admittedly the amount which was deficit was deposited before the 10th October, 1975. It is clear from the above fact that after the suit was restored to its original number on 5th August, 1975, the first date fixed was 10th October, 1975 and the entire amount had been deposited by the tenant before 10th October, 1975. In the circumstances the first date of hearing would be 10th October, 1975 and not 17th March, 1975 as held by the revisional Court. The view taken by the revisional Court is manifestly erroneous. The submission made by the learned Counsel for the Petitioner is well founded. The Petitioners are entitled to the benefit of Section 20(4) of the Act.

3. In the result, the petition succeeds and is allowed. The order dated 30-5-1977 is quashed and that of the Judge Small Causes Court dated 3-2-1976 is restored. In the circumstances of the case, parties are directed to bear their own costs. Petition allowed.