

(1999) 05 AHC CK 0131

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. Nos. 17349 of 1984 and 3141 of 1985

Sri Chunubad

APPELLANT

Vs

District Judge, Banda and Others

RESPONDENT

Date of Decision : 04-05-1999

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(2)(a), 20(4), 30

Citation : (1999) 05 AHC CK 0131

Hon'ble Judges : S.P.Srivastava, J

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—These two petitions have been filed by the parties against the judgment and order dated 19.11.1984. The dispute in question is in between the landlord and tenant arising out of a suit filed by Dr. Maqsood Hussain against the petitioner (hereinafter referred to as the tenant) for arrears of rent and delivery of possession on the ground of default as well as that the tenant has made material alteration in the rented portion (Chabutra) and the writ petition No. 17349 of 1984 has been filed by the tenant whereas the writ petition No. 3141 of the 1985 has been filed by the landlord. In writ petition No. 17343 of 1984, there is an order of this, Hon"ble Court dated 24.8.1985⁰ connect" this writ petition along with writ petition No. 3141 of 1985, therefore, the parties were heard in both the petitions and both these writ petitions are being decided by common judgment. This Civil Misc. Writ Petition No. 17349 of 1984, Sri Chunubad v. District Judge, Banda and Another shall be the leading case and the judgment is being delivered in this case. A copy of the judgment shall be placed on record of the Civil Misc. Writ Petition No. 3141 of 1985.

2. The brief facts, as stated in the writ petition giving rise to the present writ petition are that Dr. Maqsood Hussain Khan (landlord) who has been arrayed .a? respondent No. 2 in this writ petition filed a suit being S.C.C. No. 18 of 1982 against the petitioner for ejectment, arrears of rent, amounting to Rs. 620 and

delivery of possession on the allegations inter alia that the petitioner was a tenant of a disputed accommodation since 1.2.1973 on a monthly rent of Rs. 20. He was given tenancy of one Pucca room, front Khaprildar Chabutra. The tenant raised two walls on the land of Chabutra and built a latrine upon plaintiff's land without the permission of the landlord and has taken illegal possession causing disturbance in the user of eastern exit door of the plaintiff's house, therefore, on 22.5.1980 a notice was sent to the defendant/tenant directing him not to continue with the construction but when it was not stopped. The tenant did not pay rent from 1.5.1980 despite the service of notice dated 5.7.81, which was served on him on 29.7.98. The suit was filed for the ejectment and recovery of the arrears of rent, damages etc.

3. The suit was contested by the petitioner on the ground, inter alia, that he was tenant of only one room at the monthly rent of Rs. 20 and land in front of that room was not owned by the plaintiff. It is further stated in the written statement by the tenant that then he had been paying rent of the tenanted portion to the father of the plaintiff who was his MukhtareAam and who has been realising the rent since beginning and used to issue rent receipt through his servant Rajjab. The petitioner asserted that he had paid the rent after 1.4.90 to Sri Manzur Husain (father of the respondent No. 2) and paid rent from May, 1980 to October, 1980 through his servant Rajjab and since Manzur Husain had gone for Haj as such, he could not get any receipt for that payment of rent and thumbimpression was given by Rajjab in lieu of the payment of rent received through him. It is further stated that after return from Haj, the rent receipt of May, 1980 to October, 1980 was demanded by the petitioner from Manzur Saheb but no receipt was issued by him, then the defendant remitted the amount through the money order from November, 1980 which was accepted by Manzur Saheb, thereafter, since June, 1981, January, 1998 Manzur Saheb stopped accepting the rent through the money order, then the defendant deposited the same under Section 30(1) of the UP. Act No. XIII of 1972, therefore, he never committed any default. The allegation regarding the alteration in the construction made in the tenanted portion was also denied by the defendant. It was stated that the land situated in front of the room which was only in the possession of the defendant was not in the tenancy of the tenant. The said land was possessed by the defendant's son and wife, who had kept Chapper and were carrying on their betal shop. The trial Court dismissed the suit in toto with the finding that there was no material alteration caused by the tenant in the room and over the eastern Chabutra and further the father of the respondent/landlord used to realise the rent from the petitioner as MukhtareAam of the landlord. Further finding of fact was recorded by the trial Court that the rent from May, 1980 to October, 1980 was paid by the petitioner to Rajjab alias Razzaq, the servant of the landlord and further from November, 1980 to May, 1981 the rent was paid, which is proved from Ex. A19 to Ex. A9. Therefore, on the date of notice under Section 106 of Transfer of Property Act, dated 5.8.1988, there was only arrears of one month's rent, hence, the notice was invalid and tenancy of the petitioner

(tenant) was not validly terminated and he was not liable to be ejected.

4. Aggrieved by the judgment and order of the trial Court landlord filed a revision being S.C.C. Revision No. 64 of 1984 in the Court of the District Judge, who by his judgment and order dated 29.11.1984 allowed] the same and decreed the suit for arrears of rent and ejectment. The learned District Judge held that only one room was under the tenancy of the petitioner, but the deposit made under Section 30(1) of the Act had no value as his application under Section 30 (1) was dismissed by the Munsif, therefore, no benefit of the said provision is available to the petitioner. He further held that the rent paid to unauthorised person was not valid payment to the landlord and defendant committed default under Section 20(4) of the Act and further no deposit was made according to the provisions of Order V, Rule 15, CPC, therefore, the finding given by the trial Court was set aside on the point of default. The petitioner has challenged this judgment in the present writ petition.

5. Dr. Maqsood Hussain Khan has challenged this very judgment in Civil Misc. Writ Petition No. 3141 of 1985, inter alia on the ground that the District Judge has failed to consider the material evidence i.e. rent note and application of the petitioner (tenant) under Section 30 of the Act, in which it was accepted by the tenant that Chabutra is part and parcel of his tenancy. The landlord has also challenged the judgment of the revisional authority on the point of accommodation in tenancy on the basis of the report submitted by the Amin, notice given by the petitioner and its reply given by the tenant, and on the contention that the Chabutra was not in the tenancy of the tenant. He has also challenged that under Section 180(d) of the Transfer of Property Act the Chabutra and the construction it shall be deemed to be accession in the property let out and relief of ejectment could not be legally refused. The prayer made by the landlord in this writ petition is that for quashing the order dated 29.11.1984 and 21.9.1984 passed by the respondent Nos. 1 and 2 respectively so far as the relief of ejectment from Chabutra and construction raised over which by the tenant is concerned, which has been refused by both the Courts below. The counter and rejoinder affidavits have been exchanged between the parties.

6. Heard the learned Counsel for the parties at length and I have perused the entire record of both the cases. A perusal of the judgment of the trial Court would show that the trial Court considered the oral evidence adduced on behalf of the parties and also documentary evidence which has been mentioned in details in its judgment. Before the trial Court only two issues were to be decided first with regard to the arrears of rent and default made by the tenant and second with regard to the material alteration made in the tenanted portion, which included the extent of tenanted portion as to whether only one room was given in the tenancy or it included the Chabutra also.

7. The learned Counsel for the petitioner-tenant urged that there was no default made by the petitioner, as the payment of rent has been properly explained and proved. The finding of the trial Court to the effect that there was no default made

by the petitioner, this finding of fact could not have been reversed by the revisional authority exercising powers under Section 25 of the Provincial Small Cause Courts Act. It has further been urged vehemently by the learned Counsel for the petitioner, Sri S.K. Mehrotra, that the trial Court has rightly come to the conclusion on the basis of the evidence in the shape of rent receipt, money orders, and rent deed and other documents that only one room was in the tenancy of the petitioner which is also a finding of fact, it could not be touched and reversed by the revisional authority. He has placed reliance on a case reported in *Sitaram Jaiswal v. Harvind Singh*, 1998 (I) ARC 23. The judgment is very small one. From a perusal of the judgment aforesaid, it is clear that the suit filed by the landlord in this case for ejectment was dismissed and it was partly decreed for recovery of Rs. 2,850 towards arrears of rent. Aggrieved by the aforesaid order, the revision was filed in the High Court itself under Section 25 of the Provincial Small Cause Courts Act, the High Court dismissed the revision. The relevant portion of the judgment is quoted herein below

“The lower Courts' findings that the tenant has not committed any default in payment of rent; has not materially altered the accommodations, and was entitled to relief under Section 20(4) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 are all findings of fact and on being taken through the order of the Court below, I find no illegality in the impugned order. The revision petition is accordingly, dismissed with costs.”

8. The second judgment which has been placed before this Court by Sri S.K. Mehrotra is reported in *Mahendra Nath Tandon v. Vth Addl. District Judge, Kanpur Nagar and others*, 1997 (30) ALR 22. In this case, Sections 20(4) and 30 of the Act No. XIII of 1972 were considered and point was as to whether a deposit made under Section 30 of the aforesaid Act shall be treated to be a valid deposit and the tenant can get the benefit of it when the points of default are being considered or when the provisions of Section 20(4) of the Act is being considered. This Court held that the deposit made under Section 30 of the Act shall be adjusted. While arriving at this conclusion the Court considered the relevant provisions of Section 20 of the Act which is quoted herein below

“20. Bar of suit for eviction of tenant except. on specified grounds. (1) Save as provided in subsection (2), no suit shall be instituted for the eviction of a tenant from a building notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner:

Provided that nothing in this subsection shall bar a suit for the eviction of a tenant on the determination of his tenancy by efflux of time where the tenancy for fixed term was entered into by or in pursuance of a compromise or adjustment arrived at with reference to a suit, appeal, revision or execution proceeding, which is either recorded in Court or otherwise reduced to writing and signed by the tenant.

(2) A suit for the eviction of a tenant from a building after the determination of

his tenancy may be instituted on one or more of the following grounds, namely:

that the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand:

Provided that in relation to a tenant who is a member of the armed forces of the Union and in whose favour the prescribed authority under the Indian Soldiers (Litigation) Act, 1925 (Act No. IV of 1925), has issued a certificate that he is serving under special conditions within the meaning of Section 3 of that Act or where he has died by enemy action while so serving then in relation to his heirs, the words "four months" in this clause shall be deemed to have been substituted by the word "one year".

20 (4) In any suit for eviction on the ground mentioned in clause (a) of subsection (2) if at the first hearing of the suit the tenant unconditionally pays (or tenders to the landlord. deposit in Court) the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof, after deduction therefrom any amount already deposited by the tenant under subsection (1) of Section 30, the Court may, in lieu of passing a decree for eviction on the ground pass an order relieving the tenant against his liability for eviction on that ground:

Provided that nothing in this subsection, shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area.?

9. From the aforesaid provision it is apparent that the Amount deposited by the tenant under Section 30 of the Act is liable to be adjusted in the amount required to be deposited under the said provisions. The Court further placed reliance on case reported in *Krishla Manohar Dhawan v. VIthAddl District fridge, Kanpur*, 1984 ALT 124, where the Court ruled as under

?The very use of word relieving the tenant against his liability for eviction for arrears of rent used in subsection indicates that it is beneficent provision in furtherance of objective of the Act to save tenant from eviction. It has, therefore, to be construed liberal(y in his favour. A tenant should not be denied benefit of this provision for technical omission (or unattended failures. Provision for payment of interest, cost of suit and arrears, having teen held by this Court to include even time bared arrears are by themselves compulsive provisions to keep a tenant on guard. Payment of interest at nine per cent if not penal is certainly harsh. Therefore, it should be construed strictly. And a tenant should not be thrown out even though he bona fide complies with law and in doing to there is some mistake in calculation or some mis apprehension by use of such words as in this case. Action of tenant which may debar him from claiming benefit of this

provision should be decided on anvil of bona fide. Therefore, even if there was some deficiency in payment of interest there is hardly any doubt that opposite party was not only keen but was taking all steps to save him from liability of eviction. This is manifest from payment of even time barred rent or) 18th November, 1877. Failure, therefore, in depositing the interest, if any, was not because the opposite party did not intend to comply with provisions of subsection (4) of Section 20 but because of misapprehensions due to use of words 'settled mutually' in the receipt. j

10. And further the Court has placed reliance on the cases reported in Ram Das v. Additional District Judge, Azamgarh, 1995(2) ARC 188 and Ram Gopal and Others. v. Hari Shankar, 1985 (11) ALR 385. in which the Court came to the conclusion which is quoted below

'In the case of Ram Gopal v. Hari Shankar (supra), it was further held that even if the deposits were illegal even then the same were not required to be deposited again and were adjustable, the tenant was entitled to claim the benefit of such deposits.'

11. Learned Counsel for the petitioner has further placed reliance on a case reported in Ram Prasad v. Padma Lal and Anr, 1997 (31) ALR114, for the purpose that the finding on rate of rent recorded by the Judge, Small Cause Court after examining the evidence on record cannot be reassessed and set aside by the revisional authority exercising power under Section 25 of the Provincial Small Cause Courts Act. Sri Mehrotra further placed before this Court a case reported in Smt. Fatima Begum and Others. v. IVth Addl, District judge, Jhansi and Others., 1998 (32) ALR 486 on the point of jurisdiction of the revisional authority. In this case this Court considered the case reported in Laxmi Kishore v. Har Prasad Shukla, 1981 ARC 545, wherein it was observed that while deciding revision under Section 25 of the Act, the revisional Court has to satisfy itself that the trial Court's decree or order is according to law. If it finds that there is no evidence to sustain a finding on a particular issue of fact, it can ignore that finding and the same will be the case where the finding is based only on inadmissible evidence. In such cases, the Court will be justified in, deciding the question of fact itself because the evidence is all one way. If it finds that a particular finding of fact is vitiated by an error of law, it has power to pass such order as the justice of the case requires; but it has no jurisdiction to reassess or reappraise the evidence in order to determine an issue of fact itself. The Court also observed that a wrong decision on facts by a Competent Court is also a decision according to law. The revisional Court has no power to de novo examine finding of fact reached by the Court. Ultimately, this Court came to the conclusion that the revisional Court has no power to interfere in the Question of fact. The other case cited by Sri Mehrotra is reported in Durga Prasad and Anr. v. VIIIth Addl. District Judge, Kanpur Nagar and Another., where this Court, while discussing the other cases, held as under

'In the present case, the trial Court has categorically found that the deposit

made by the tenant under Section 30(1) of the Act was a valid deposit and the amount due having been deposited by the defendant under Section 20(4), the tenant was relieved of his liability from the eviction. The revisional Court reappraised the evidence and has reversed the aforesaid finding and substituted the same by its own finding of fact which is not permissible in law.?

12. Sri M.D. Singh, assisted by Sri R.K. Pandey, learned Counsel for the respondent replied the arguments of the learned Counsel for the petitioner. His contention was firstly that the petitioner was tenant of one room, Chabutra, Khaprail and a Verandah and he has filed an application under Section 30 of the U.P. Act No. XIII of 1972. He has specifically mentioned the accommodation for which he applied for deposit of rent. A copy of the application has been filed by the landlord in his writ petition No. 3141 of 1985 as Annexure 6 to the said writ petition and particulars of the building as which the rent is deposited, it is mentioned that a house with one Pukka room and a Verandah with Kutcha Chabutra situated in Aliganj, Banda with its boundary mentioned in the application. Therefore, it was urged that this application filed by the tenant on 26.2.1962 is in the shape of admission by the tenant regarding the extent of tenanted portion. He further placed reliance on the Amin's report which has been filed as Annexure 7 to the writ petition wherein a map has been prepared by the Amin on 16.5.1984 and disputed room, Chabutra and Verandah have been shown adjacent to each other. He has further placed before the Court the leased deed, which was executed on 1.2.1973, which has been filed as Annexure 3 to the writ petition. Much emphasis was laid by the learned Counsel for the respondent on para 3 of the said deed, wherein it is mentioned that "YEH KE KAMRON KE HALAT VA BAHAR KHAPRAIL TATHA CHABUTRA JO MAKAN KA JUJ HAL KO USE HALAT PAR BARKARAR RAKHONGA TATHA KISI BHEE TARAH TABDEEL NA KARONGA.?"

13. According to the learned Counsel for the respondent, it was admission regarding the portion, which was given to the petitioner (tenant) for living. He further submitted that when the notice was given by the landlord to the defendant/tenant, the details of the accommodation was mentioned, at the foot of the notice as one room, Khaprail, Chabutra with its boundaries and this notice (Annexure 4) was replied by the tenant on 22.1.1982 which has been filed as Annexure 5 to the writ petition filed by the landlord. It is submitted in the reply by the tenant/petitioner they never disputed the extent of the tenanted portion as mentioned in the notice. He further submitted that the construction which were made by the petitioner (tenant) has been mentioned in the report of the Amin which has been filed as Annexure 7 to the landlord petition, therefore, it is proved beyond the shadow of doubt that the petitioner was given one room, Khaprail and Chabutra in the tenancy, therefore, the finding recorded by the trial Court that only one room was given is a finding against the evidence on record.

14. Learned Counsel for the respondent Sri M.D. Singh further submitted that the deposit, which was made by the petitioner, was not sufficient and this wouldn't

have been adjusted while considering the question of default. Moreover the application under Section 30 of the Act was subsequently rejected therefore, the petitioner cannot be given any benefit for the amount, if any, deposited by him. Sri M.D. Singh further submitted that as the amount deposited under Section 30 of the Act was not to be considered. On the date of notice there were arrears of rent for more than four months and finding to the contrary to it by the trial Court is also illegal. Sri M.D. Singh further submitted that there is distinction between Section 20(4) and Order V, Rule 5, CPC and for that purpose, he has placed reliance on a case reported in Lakhbir Singh v. Sarla Devi and others, 1981 ARC 37, where the Court held that Section 20(4) of CPC does not provide for an order striking off the defence. The provisions of Section 20(4) of the Act are for the benefit of the tenant. The provisions of Section 20(4) of the Act have already been quoted above.

15. He further submitted that if the trial Court giving a finding on the question of subtenancy had erroneous impression of the legal position, then the revisional

Court has jurisdiction to rectify the mistake because it will not amount to reassessment of the evidence but will amount to take into consideration the evidence that has not been looked into by the trial Court. For that purpose, he has placed reliance on Jagdish Prasad v. Smt. Angoori Devi, 1984 (10) ALR 281 (SCK In this case, the Apex Court has observed as under

?The revisional jurisdiction under Section 25 of the Provincial Small Cause Courts Act is not as wide as the appellate jurisdiction under Section 96 of the Civil Procedure Code; yet in a case of this type we do not think fault could be found with the revisional Court for pointing out the legal error committed by the trial Court in its approach to this material aspect. The legal position having been totally misconceived by the trial Court and there being an assumption of the position which the landlord was required to prove by evidence, the revisional authority was entitled to point out the legal error and rectify the defect.?

16. Sri M.D. Singh has placed before the Court a finding recorded by the trial Court as well as finding recorded by the revisional Court. His contention is that the revisional Court was not interfered with the finding of fact given by the trial Court rather has arrived at the conclusion that the trial Court finding is not in accordance with law and further the trial Court has not considered the legal position and since no evidence has been reassessed by the revisional Court, therefore, it cannot be said that the revisional authority had no jurisdiction to pass the impugned order. His submission is that the admission made by the tenant regarding the extent of the tenancy was sufficient to hold that the tenancy was sufficient to hold that the petitioner was given one room along with Verandah and Chabutra.

17. After hearing the learned Counsel for the parties at length, I have gone through the judgment of the trial Court as well as judgment of revisional Court. The trial Court while considering the evidence has mentioned the same in its

judgment and has come to the conclusion that there is no dispute with regard to the payment of rent so far as it relates to the month of April, 1980 and dispute relates to thereafter. The trial Court discussed the evidence of the plaintiff witness Maqsood and came to the conclusion that his father Manzur Husain used to accept the rent on behalf of Maqsood Husain, He also considered the statement made by P.W. 1. (landlord) that in the month of May, 1980 to October, 1980, his father would not be available, therefore, the rent was paid through the servant. He also came to the conclusion that from Ext. A8 it is apparent that tenant remitted the rent of December, 1980 and January, 1981 to May, 1981 which was accepted by the father of the landlord, receipts of which are Ext. A 10 to 17. He also found that the payment of rent for the months of November, December, 1980 and January to May, 1981 is proved by Money Order receipts Ext. A 9 to 19 and from June, 1981 onwards the rent was deposited under Section 30 of the U.P. Act No. XIII of 1972. The notice was given on 15.7.81, therefore, on the date of notice only one month's rent was in arrears so this way the trial Court held that the tenant deposited the entire rent demanded through the notice prior to the first date of hearing and further the defendant filed application under Section 30 to deposit the rent and interest etc. which was tendered by the defendant and deposited rent from June, 1981 till date of filing of the suit i.e. September, 1982 with 9% interest and receipt of the tender was Ext. 33, therefore, the defendant deposited the entire rent prior to first date of hearing. The notice is invalid. On the point of material alteration and extent of tenancy, the trial Court also considered Ext.A8 and boundaries given in the agreement and the statement of the plaintiff himself and come to the conclusion that P.W, 1 has himself admitted in cross examination that there is no latrine in the tenanted room nor any latrine has been constructed on the Chabutra rather in front of Chabutra a latrine has been constructed and that is on the land of the Nagar Palika, therefore, the trial Court came to the conclusion that there is no material alteration, as alleged by the petitioner. He also found from the report of Amin that constructed portion is not being used as latrine. The revisional Court while considering the revision itself framed questions to be answered. From a perusal of the judgment of the revisional Court, it is clear that question for consideration was regarding the extent of the tenancy of the defendant. For that purpose, the revisional Court considered the Ext.A 8, which was the leased deed and considered the boundary and came to the conclusion that only room was given in the tenancy of the defendant and further that Khaprail and Chabotra was not part of the tenancy right. The revisional Court framed second question regarding material alteration and came to the conclusion after perusing the statement of the plaintiff that the construction was made on Nazul land and there was no material alteration and the last point which was framed by the revisional Court was regarding payment of rent. While deciding this point, the revisional Court held that the benefit of provisions of Section 30(1) of the Act would not be available to the defendant. Further that payment made to Rajjab or Manzur Husain, father of the plaintiff, would not be considered to be discharge of payment of rent to the landlord, in absence of any executing of Mukhtare Aam or

authority in favour of any of these persons by the landlord the revisional Court further found that the defendant did not deposit rent in the Court, therefore, he was not entitled for benefit of provisions of Section 20(4) of the Act, as such, the defendant committed default. The revisional Court considering the aforesaid points observed in the following terms:

?In the present case onus lay upon the defendant to prove payment of arrears of rent which was due for more than four months period to the landlord or any of his authorised agent by means power of attorney etc Hence the defendant opposite party had failed to prove payment of rent to the landlord and the discharge of the onus of the proof could not be recorded in favour of the defendant opposite party which was purely a legal question and the learned trial Court had wrongly approached this legal aspect of the case. Hence, this revision application deserves to be dismissed. The learned trial Court also did not decide amount due in favour of the plaintiff payable by the defendant which had been proved in the testimony of Dr. Maqsood Husain as Rs. 620. In the operative portion, the revisional Court has allowed the revision and judgment and decree of the trial Court dated 21.9.84 has been set aside and the plaintiff suit has been decreed for ejectment of the defendant from the disputed room only and for Rs. 620 as arrears of rent mesne profits and costs of the notice of the suit against the defendant.

18. From a perusal of the judgment of the revisional authority, it is clear that the revisional Court while considering the question of extent of tenancy has considered the oral evidence as well as other evidence and for considering the material alteration also, he has discussed the oral evidence affirmed the finding of the trial Court on these two points but while considering the question of default, he in summary manner held that no benefit of default under Section 30 of the Act can be given to the defendant and he has not considered the relevant point on this subject. The argument of the learned Counsel for the respondent, Sri M.D. Singh is that he has not touched the finding of fact and it cannot be accepted to be correct as while arriving at the conclusion on default he has considered though not mentioned in the judgment, the statement of the petitioner, who accepted that his father was realising the rent and some times the rent was sent through the servant but he came to the conclusion that payment made to an authorised person is not a payment. There was a clear cut admission by the plaintiff P.W. 1 Maqsood Husain in his statement, which has been filed as Annexure 8 to the writ petition No. 17349 of 1984 which proved the agreement for lease that he had given this house on rent to the defendant and rent was being accepted sometimes by the plaintiff himself and sometimes by his father. It was admitted to the plaintiff that Maqsood Husain Khan was his MukhtareAam and in the said capacity be used to collect the rent also, apart from other works. He admitted that Mukhtarnama will be registered one.

19. In view of this statement of the plaintiff himself, the finding recorded by the revisional Court that the payment was made to the unauthorised person is

contrary to the admission made by the plaintiff, therefore, the finding of the revisional Court that the defendant had committed default in payment of rent, cannot be said to be without appraisal of the evidence and has discussed the legal point without considering the relevant law on the subject. I am, therefore, of the view that the writ petition filed by the tenant being Civil Misc. Writ Petition No. 17349 of 1984 should be allowed and the matter should be sent back to the revisional Court to decide it afresh in accordance with law and as concurrent finding of fact has been recorded by both the Courts regarding question of tenancy, therefore, the writ petition filed by the landlord for quashing the judgments of the Courts below so far as it relate to the ejectment from Chabutra and construction raised over are concerned, has no merit and is accordingly dismissed. The matter is accordingly being sent back to the revisional Court after setting aside the judgment of the revisional Court Except on the point for which the landlord has filed the writ petition. I direct the revisional Court to restore the revision and decide it afresh in accordance with law, consider the effect of the deposit made under Section 30 of the U.P. Act No. XIII of 1972 as well as after considering the point of default in accordance with law.

20. A certified copy of this order shall be placed in the record of the writ petition No. 3141 of 1981 (Dr. Maqsood Husain Khan v. District Judge, Banda and others.)

Decided accordingly.