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**(2005) 11 AHC CK 0194**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 10446 of 1967

Sri Tapeshwari Prasad

APPELLANT

Vs

VIth Addl. Distt. Judge and Others

RESPONDENT

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**Date of Decision :** 24-11-2005

**Acts Referred:**

Uttar Pradesh Civil Laws (Amendment) Act, 1972 — Section 9

**Citation :** (2006) 2 AWC 1630

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

**Bench :** Single Bench

**Advocate :** Rajeshwari Prasad and P.K. Sinha, for the Appellant; K.L. Grover and S.C., for the Respondent

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## **Judgement**

S.U. Khan, J.—This is tenant's writ petition. Original landlord respondent No. 3 R.N. Shukla since deceased and survived by legal representatives filed suit for eviction against tenant Gajadhar Prasad who died during the pendency of the proceedings before the Courts below and was survived by petitioner and pro forma respondents No. 4 to 6. The suit was filed before Munsif City, Kanpur in the form of O.S No. 508 of 1969. The suit was later on transferred to the Court of IV Additional Munsif, Kanpur by District Judge through order-dated 28.5.1970. After coming into force of U.P. Civil Laws Amendment Act of 1972, District Judge transferred the suit to the Court of Additional JSCC, Kanpur who decreed the same on 7.11.1973. Against the said judgment and decree Civil Revision No. 223 of 1973 was filed. II Additional District Judge, Kanpur through judgment and order dated 17.1.1976, allowed the revision only on the ground of lack of jurisdiction on the part of Additional JSCC. U.P. Civil Laws Amendment Act 1972 came into force with effect from 20.9.1972. Through the said Act, it was provided that the suits for eviction of tenants pending immediately before the said date in a Court where it was filed shall stand transferred to the Court of JSCC. On the said date the suit in dispute was not pending before the Court where it was filed i.e. Munsif but before IV Additional Munsif as on the administrative side prior to the said date District Judge had transferred the same

to IV Additional Munsif. In an authority of this Court reported in K.K. Saxena v. S.N. Misra 1975 ALR 360, it was held that only those suits stood transferred to the Court of JSCC which were pending before 20.9.1972 before the Court where they were filed. In view of the said authority of K.K.Saxena, revisional Court allowed the revision on 17.1.1976. Through the said order matter was remanded to the Court of Munsif City, Kanpur. Thereafter Section 9 of U.P. Civil Laws Amendment Act 37 of 1972 was amended through U.P. Act No. 28 of 1976 and the lacuna in the earlier Act as pointed out by the authority of K.K.Saxena was removed and it was provided that even the suits pending before transferee Court stood transferred to the Court of JSCC. The said amendment was made retrospective. In view of the said amendment, District Judge transferred the suit to the Court of Additional JSCC. Again before the Additional JSCC, question of jurisdiction was raised by the original tenant Gajadhar which was rejected by Additional JSCC on 11.2.1978. Against the said order Civil Revision No. 79 of 1978 was filed which was dismissed on 27 3.1978. During the pendency of the suit revision Gajadhar the original tenant died and at his place his two sons and one daughter who are petitioner and respondents 4 and 5 in this writ petition were substituted. Thereafter an objection was raised by the substituted defendants that their mother was also one of the tenants after the death of their father Gajadhar and suit was defective as she was not impleaded or substituted. Thereafter plaintiff filed substitution application for substituting Jagat Rani the widow of Gajadhar i.e. respondent No. 6 also along with application for condonation of delay. The said application was allowed and widow of original tenant Suit Jagat Rani Respondent No. 6 was also unpleaded/ substituted. Against that order also Civil Revision No. 111 of 1980 was filed which was dismissed on 19.2.1982.

2. After so much litigation on preliminary issues the suit was heard and decided on merit by Additional JSCC, Kanpur. Through judgment and decree dated 23.12.1982, the suit was decreed for eviction and recovery of arrears of rent and mesne profit pendente lite and future at the agreed rate of rent of Rs. 12.50/- per month. Against the said judgment and decree SCC Revision No. 15 of 1983 was filed which was dismissed by VI Additional District Judge, Kanpur through judgment and order dated 30.4.1987 hence this writ petition.

3. Property in dispute is a shop situate in Kanpur. Original tenant Gajadhar according to the landlord had not paid the rent since 28.6.1960 hence the notice terminating the tenancy and demanding the rent was issued on 27.12.1968, which was served upon the tenant on 1.1.1969. The original tenant Gajadhar stated that until November 1968 he had paid the rent and that notice was not served upon him. It was further pleaded and tried to be proved by the original tenant that the signature on the Acknowledgment Due (A.D. in short) were not his signatures and the plaintiff in collusion with the postman had got that signature and endorsement made by some other person and that notice was not sent through registered post on the correct address of the tenant. During the pendency of the suit no amount of rent was paid. Original tenant stated that

previous rent was paid by him to the landlord in the presence of two persons. However none of those persons was examined by the tenant. No receipt was filed by the tenant. The tenant stated that landlord did not issue any receipt. The Courts below rightly recorded the finding that rent had not been paid by the tenant, I do not find any error in the said finding which is also a finding of fact.

4. The only point on which great emphasis was laid before the Courts below as well as this Court is service or non-service of notice. Both the parties examined their handwriting experts. The trial Court discussed the evidence of both the handwriting experts and also compared the signatures by himself. Trial Court recorded the finding that the signatures on the AD were those of the tenant and he had tried to make his signatures on the said AD in such manner that it could not be easily tallied with his normal signatures. Revisional Court also agreed with the said finding. In the said finding also I do not find any error much less an error of law requiring interference in exercise of writ jurisdiction.

5. Learned Counsel for the petitioner has vehemently argued that the registered letter was not sent on the correct address of the tenant hence no presumption of service could be drawn. In this regard firstly the Courts below have found that it was sent on correct address. Secondly this point is not much important as Courts below have found, and in my opinion rightly, that notice was actually served upon the tenant and he put his signature on the AD. Learned Counsel for the petitioner has argued that in Para 18 of the writ petition, it has clearly been stated that the address on which notice was sent was not correct address of the original tenant Gajadhar and as no counter affidavit has been filed hence the said version must be taken to be correct. In this regard two authorities have also been cited first is Dr. B.L. Agarwal v. V.C. 2003 AWC 1016 and second is Dinesh Chand v. Mulraj 2002 (2) ARC 339. However when notice was personally served upon Gajadhar, it was not necessary to decide as to whether the address on which notice was sent was correct address of the tenant or not.

6. Accordingly I do not find any error in the impugned judgments, decree and order. Writ petition is therefore dismissed.

7. The property in dispute is a shop situate in Kanpur. Tenancy is continuing since 1940. Rent of Rs. 12.50/- is virtually as well as actually no rent. It has been held by the Supreme Court in Smt. Chander Kali Bai and Others Vs. Shri Jagdish Singh Thakur and Another, and Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd., that with effect from decree of eviction passed by the first Court damages at higher rate than the agreed rate may be awarded. In this case the trial Court decreed the suit on 23.12.1982. With effect from said date, tenant is liable to pay proper damages. Even in 1982 a shop could not be available in Kanpur for less than Rs. 1000/- per month.

8. Accordingly it is directed that with effect from the date on which suit was decreed i.e. 23.12.1982, till 31.12.2005 tenant petitioner and proforma respondents shall be liable to pay rent to the landlord respondent at the rate of

Rs. 200/- per month.

9. Tenant/ petitioner and proforma respondents are granted time till 31.12.2005 to vacate. In case they do not vacate by 31.12.2005 then they shall be liable to pay damages at the rate of Rs. 1000/- per month with effect from 1.1.2006 till the date of actual vacation.