

(1989) 12 AHC CK 0021

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 10880 of 1983

Sunnu Lal Gupta

APPELLANT

Vs

The 1st Addl. District Judge and Others

RESPONDENT

Date of Decision : 02-12-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 15 Rule 5
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(2), 30, 30(1)

Citation : (1990) 1 AWC 517

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : B.N. Agarwal, for the Appellant; A.K. Srivastava and Swami Dayal, for the Respondent

Final Decision : Allowed

Judgement

Om Prakash, J.—A short question for consideration in this writ petition filed by the Petitioner, is whether the learned 1st Additional District Judge, Jhansi (Respondent No. 1) rightly affirmed the order of the Judge Small Causes Court (Respondent No. 2) striking off the defence of the Petitioner under Order 15 Rule 5 Code of Civil Procedure. The Respondent No. 2 struck off the defence holding that the Petitioner neither deposited the admitted rent on or before the first date of hearing nor made regular deposits during the pendency of the suit. The Petitioner is the tenant of the Respondent No. 3. The latter filed the suit for the ejectment of the former who filed a written statement. During the pendency of the suit, an application was made by the Respondent No. 3 for striking off the defence of the Petitioner on the ground that he failed to make the payments of rent as contemplated by Order 15, Rule 5 CPC which was allowed by the Respondent No. 2 and consequently the defence of the Petitioner was struck off. The Petitioner filed a revision before the Respondent No. 1 which too was dismissed on the grounds: (1) that the Petitioner continued to deposit the rent in Misc. Case u/s 30(1) of the U.P. Urban Buildings (Regulation of Letting, Rent and

Eviction) Act, 1972 (for short, the Act, 1972) before the Munsif "even after continuance of the suit" and (2) that no representation was filed by the Petitioner within the prescribed time.

2. Sri. Swami Dayal, learned Counsel for the Respondent No. 3 made following submissions before me supporting the orders of the authorities below:

(1) that the deposits contemplated by Order 15, Rule 5 CPC were belatedly made;

(2) that the Petitioner continued to make the deposits in the Misc. Case even after having had the knowledge of the institution of the suit by the Respondent No. 3;

(3) that the deposits made u/s 30(1) of the Act, 1972 could not be said to be valid, inasmuch as they were not made before the Court in which the suit was instituted by the Respondent No. 3;

(4) that even if the deposits made by the Petitioner are taken to be valid, still it could not be said that he made complete deposits, inasmuch as the interest was not paid.

3. First, I take the submissions Nos. 1 and 2 for discussion. The Petitioner has given the chart showing the period of rent and dates of deposit. The rent for the period from 13-9-1979 to 12-12-1979 was deposited on 21-11-1979 and the rent for the period from 13-12-1979 to 12-3-1980 was deposited on 9-2-1980. The rent for the periods from 13-3-1980 to 12-6-1980, 13-6-1980 to 12-9-1980, 13-9-1980 to 12-11-1980 and 13-11-1980 to 12-1-1981 was, admittedly deposited within the time and for some period even before the rent became due. So far as the first two deposits are concerned, admittedly, there was delay of one month and 19 days respectively. The suit was instituted on 22-5-1978. Summons was issued at the first instance fixing 20-10-1979 as the date of hearing, but the Court ordered to reissue the summons inasmuch as the summons in the first instance was sent without copy of the plaint. Second summons was issued duly accompanied by a copy of the plaint fixing 30-11-1979 as the date of hearing. The submission of Sri. Swami Dayal is that from the first summons fixing 20-10-1979 as the date of hearing which was served upon the Petitioner, a clear inference could be drawn that the Petitioner had got the knowledge on that date about the institution of the suit and yet he deposited the rent upto December, 1979 u/s 30(1) of the Act, 1972 in the Court of Munsif. The submission of Sri. B.N. Agarwal, learned Counsel for the Petitioner is that the first date of hearing in this case was 30-11-1979 as that date alone was mentioned in the second summons which was duly served upon the Petitioner and that being so the Petitioner was not required to deposit any rent before the Respondent No. 2 prior to 30-11-1979. Upon a perusal of the Order 15, Rule 5 CPC it clearly appears that the said provision enjoins upon the Petitioner to make the deposit of admitted rent on or before the date of first hearing and that does not refer to the date of knowledge of the institution of the suit. So what is material is the date of first hearing fixed in the case and not the date of knowledge of the institution of

the suit. The date of first hearing communicated by a valid summons served upon the Petitioner was 30-11-1979 and no rent was deposited after that date by the Petitioner u/s 30(1) and, therefore, the validity of the deposit cannot be impugned by the Petitioner on the ground that the Petitioner continued to deposit the rent u/s 30(1) before the Munsif even after having acquired the knowledge of the institution of the suit.

4. Then, the question is whether the defence can be struck off on account of the delay that occurred in regard to the deposit made during the pendency of the suit. Admittedly, no representation was made by the Petitioner and hence no proper explanation was given for the delay in deposit. The question is whether the defence will be necessarily struck off as and when there is delay in the deposit of rent. In *Bimal Chand Jain v. Sri. Gopal Agrawal* 1981 AWC 529, the Supreme Court giving sufficient guidelines in this regard said:

It must be remembered that an order under Sub-rule (1) striking off the defence is in the nature of a penalty. A serious responsibility rests on the Court in the matter and the power is not to be exercised mechanically. There is a reserve of discretion vested in the Court entitling it not to strike off the defence if on the facts and circumstances already existing on the record, it finds good reason for not doing so. It will always be a matter for the judgment of the Court to decide whether on the material before it, notwithstanding the absence of a representation under Sub-rule (2), the defence should or should not be struck off.

5. The delay that occurred in deposit of rent in the instant case has to be seen in the light of the above principles, enunciated by the Supreme Court. As already stated, the Petitioner made deposits of rent for the subsequent period not only in time but the rent for some period was deposited much before the due date. That clearly shows that there was no contumacious conduct of the Petitioner for the delay caused in the initial deposits. The Respondent No. 1 ought to have taken this important circumstance into consideration but he was wrongly swayed by the fact that no representation was made within the prescribed time by the Petitioner to explain the delay in deposits. The facts emerging from the record clearly indicate that there was no intentional delay on the part of the Petitioner in making the deposits of rent and, therefore, undue importance should not have been attached to the fact that no representation was made by the Petitioner within time to explain the delay. It is not necessary to file a representation always to explain the delay but the material already on record and the facts and circumstances of the case should be taken into consideration in entirety to come to the conclusion whether delay in deposits was intentional on the part of the tenant. If the facts and circumstances of the case show even in the absence of representation that the delay was not intentional and that there was no guilty mind of the Petitioner in making late deposits then there would be an error on the part of the Court in laying down undue emphasis on the omission of the representation or on the representation being filed belatedly. On the facts of the instant case, it must be held that the defence of the Petitioner could not be

struck off merely on the ground of delay in making deposits, inasmuch as the Petitioner succeeded in establishing from the facts and circumstances of the case that the delay was not deliberate.

6. Then, Sri. Swami Dayal urged that the deposits made u/s 30(1) before the Munsif could not be said to be valid, inasmuch as the Petitioner was required to make the deposits on or before the first date of hearing in the Court in which the suit was instituted. In *Gyanendra Lal v. Bishun Narain Misra* 1985 LRJ 356, learned single Judge of Lucknow Bench observed in para 7 on page 358:

If the landlord refused to accept the rent, when tendered by the tenant, the only forum available to the tenant for depositing the rent in order to save the mischief of Section 20(2)(a) of the Act, was to deposit the amount in the Court of concerned Munsif at least till service of summons upon him of the suit filed by the landlord. If the deposit thus made in the Court of Munsif is not given credit to for the purposes of deposit under Order XV, Rule 5 Code of Civil Procedure, the tenant would have to make a double deposit, namely, to make a deposit over again of the amount already deposited u/s 30 of the Act. That could not be the intention of the Legislature in enacting the provision of Order XV, Rule 5 Code of Civil Procedure. The object thereof was to ensure the deposit of the rent to the landlord and not merely to provide a penalty against the tenant.

7. I am in full agreement with these observations. Unless a valid summons in the suit filed before the Judge Small Causes Court is served upon a tenant, deposit of rent in the said Court could not be conceived and before the service of the summons, the only forum to deposit the rent is the Court of Munsif u/s 30(1) of the Act, 1972 and, therefore, the deposit u/s 30(1) will have to be taken into account to see whether or not admitted rent has been deposited on or before the first date of hearing within the meaning of Order XV, Rule 5 Code of Civil Procedure. The deposits made u/s 30(1) coupled with the deposits made in the Court of the Judge Small Causes Court represented the full deposit of the rent.

8. Lastly, the submission is that only rent was deposited and there was no deposit of interest and, therefore, the deposit made by the Petitioner could not be said the deposit of full amount. This submission is not tenable, inasmuch as the Respondent No. 2 in his order simply reproduced the language of the Statute and no details have been given by him as to how much interest was due from the Petitioner on the deposits made. Also this point was not made a ground by the Respondent No. 1 in revision for affirming the order of the Respondent No. 2 striking off the defence.

9. At the end of the arguments Sri. Swami Dayal also urged before me that the benefit of deposits could inure to the Petitioner only when they were validly made and no advantage can be taken of invalid deposits. In *Rajendra Prasad @ Lallan v. III Additional District Judge Jaunpur* 1989 AWC 352, a learned single Judge held in para 13 on page 353:

The question whether the deposit is valid or not is relevant for determining the

question whether the Petitioners can be held to be defaulters or not in the eye of law, but so far as Order XV Rule 5 of CPC is concerned, the only requirement is that the tenant has to deposit the amount on or before the first hearing of the suit. If the deposit has been made u/s 30 of the Act then it will enure to the benefit of the landlord. In the circumstances, the question of validity of deposit is not relevant for the purposes of Order XV Rule 5 of the Code of Civil Procedure. It will be open to the Court while deciding the suit to determine the validity of the deposit to examine the question as to whether the Petitioners were defaulters or not in the eye of law.

10. I being in respectful agreement with these observations hold that the validity of the deposits made u/s 30(1) could be gone into only at the stage of the suit being decided finally on merits and not when the payments are considered for the purposes of Order XV Rule 5 Code of Civil Procedure.

11. In the result, the writ petition succeeds and is allowed and the orders passed by the Respondents Nos. 2 and 1 being Annexures 3 and 4 respectively to the writ petition are quashed and the Respondent No. 2 is directed not to strike off the defence of the Petitioner. No order as to costs.