
(2002) 04 AHC CK 0044

In the Allahabad High Court

Case No : Civil Revision No. 119 (Defective) of 2001

Union of India (UOI) and Another

APPELLANT

Vs

Sudarshan Lal Talwar

RESPONDENT

Date of Decision : 03-04-2002

Acts Referred:

Transfer of Property Act, 1882 — Section 113
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2, 20(4)

Citation : AIR 2002 All 212 : (2002) 3 AWC 1881

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : S.N. Srivastava, for the Appellant; Amit Krishan, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Rathi, J.—This revision has been preferred u/s 25 of Provincial Small Causes Court Act against the judgment and decree for eviction and recovery of. arrears of rent passed in S.C.C. Suit No. 6 of 2001 by XIth Additional District Judge, Kanpur Nagar on 20.8.2001.

2. The facts in brief are as follows :

The opposite party filed suit for eviction and recovery of arrears of rent. It was alleged in the plaint that the revisionists were tenant of the disputed premises No. 7/258 old and 7/213 new, Swaroop Nagar, Kanpur Nagar at rental of Rs. 15,000 per month ; that the premises is non-residential ; that the tenancy has been terminated by notice dated 5.7.2000 which was served on revisionist No, 2 on 7.7,2000 ; that the premises has not been vacated, hence the suit was filed.

3. The defence taken in the written statement filed by the revisionist No, 1 through revisionist No. 2 is that the rent has been accepted after termination of the tenancy and, therefore, the notice stands waived and the tenancy is still subsisting ; the locus standi of the so-called authorised attorney through Sri R. P.

Gupta is also challenged.

4. It appears that in the trial court, point No. 2 that Sri R. P. Gupta is not an authorised attorney of the opposite party was not pressed. This point has also not been pressed in this revision. The trial court, therefore, held that only one point arise for decision in this case and that is whether the notice has been waived? If so, its effect? The trial court recorded a finding that the notice has not been waived. It has, accordingly, decreed the suit. Aggrieved by it, the present revision has been preferred.

5. I have heard Sri Ajit Kumar, learned counsel for the revisionists and Sri Ravi Kant, Senior Advocate assisted by Sri Amit Krishna, learned counsel for the opposite party.

6. In view of the above pleadings of the parties, the only point that arises for decision in this revision is as to whether the notice u/s 106 of T. P. Act sent by the opposite party to the revisionists has been waived? There is absolutely no dispute regarding the facts of this case and it has been admitted that even after the service of notice of termination of tenancy, the rent has been accepted. Not only this, it is also admitted that the rent was paid during the pendency of the case before the trial court and the same was accepted by the opposite party. Therefore, the question for consideration is as to whether the acceptance of the rent after the termination of the tenancy and during the pendency of the case amounts to waiver of the notice. This is pure question of law and I have heard the learned counsel on this point at length.

7. Sri Ajit Kumar, learned counsel for the revisionists firstly relied on the decision of this Court in P. N. Shah v. Brijendra Nath. 1982 ALJ 719, decided by Hon"ble Mr. Justice T.S. Misra. The learned counsel has relied on the head note prepared by the reporter which appears to be quite inconsistent with the judgment. A perusal of paragraph 3 of the Judgment shows that one notice of termination of tenancy was served on 10.6.1966. The premises was not vacated and thereafter the rent was accepted. Thereafter, second notice was served on 2.8.1967. On these facts, it was held that the first notice stand waived. Therefore, this decision is of no help to the revisionists.

8. The other decision referred to is Om Prakash Saxena v. Raja Babu Saxena 1974 ALJ 364. In this case, it was observed that where the landlord accepts rent, which is for a period beyond the date when the tenancy stands terminated, it has the effect of waiving the notice, for by this act he has shown his willingness to accept rent and continue the tenancy. This finding was recorded in the circumstances of the case that the rent was paid by the tenant in advance where it was observed that when the rent was accepted in advance, the tenancy could not be terminated in the period for which the rent was accepted. Besides this in large number of cases decided subsequently, the otherwise view was taken which I shall refer just now. Therefore, the law laid down in this case cannot be followed.

9. The other two cases relied on by Sri Ajit Kumar, are : (1) Manicklal Dey Chaudhuri v. Kadambini Dassi AIR 1926 SC 763 and (2) Rom Dayal v. Jawala Prasad AIR 1966 AP 623.

10. The above two decisions no doubt support the argument of the learned counsel, Sri Ajit Kumar, but they have been subsequently dissented and, therefore, cannot be followed.

11. There is an important decision of the Supreme Court in the case of Associated Hotels of India Ltd., Delhi Vs. S.B. Sardar Ranjit Singh, . It was observed in this case that "a waiver is an intentional relinquishment of a known right. There can be no waiver unless the person against whom the waiver is claimed had full knowledge of his rights and of facts enabling him to take effectual action for the enforcement of such rights". After referring to this decision and several other decisions of this Court and the Apex Court, the Hon"ble Mr. Justice Sudhir Narain in Antsh Ahmod u. Special/Additional District Judge, Saharanpur 1997 AWC (Supp) 215 : 1997 (2) ARC 32, has held that if the landlord accepts the rent for the period subsequent to the date of termination of tenancy, that does not amount to waiver of notice, unless there are other compelling circumstances to indicate that there was intention of the landlord to treat the lease as subsisting.

12. It was further observed that for waiver u/s 113 of T. P. Act there are two essential ingredients (i) the intention of the landlord was to treat the lease as subsisting and (ii) he had a knowledge of the fact that this conduct amounts to waiver.

13. It may also be mentioned that the case of Ram. Dayal v. Jwala Prasad (supra No. 2) was distinguished in this case. The decision of Hon"ble Mr. Justice Sudhir Narain is direct on this point. Therefore, the law laid down in the case of Ram Dayal cannot be followed.

14. The other decision on the point is in the case of Dr. A.S. Raj v. District Judge, Lucknow. 1982 ARC 515. In this case, the question of waiver of notice was considered in detail by Hon"ble Mr. Justice S.C. Mathur and after considering various decisions on this point, it was observed that "in the present case the landlord is claiming ejectment of the tenant on the basis of forfeiture and, therefore, the question of waiver has to be determined with reference to Section 112 of the Transfer of Property Act. The second proviso to the section specifically provides that acceptance of rent after the institution of the suit will not amount to waiver of the forfeiture. It does not provide that the forfeiture may be waived by issuance of any notice. The language of Section 112 also indicates that there should be intention on the part of the landlord to waive his right of ejectment. Therefore, merely from the fact of issuing notice dated 20th May. 1978 it cannot be said that the landlord waived the notice of termination of tenancy served by him on 17.6.1975. It is, therefore, apparent that merely on the basis of the second notice issued while the plaintiff was actively pursuing his remedy of

ejectment, the notice on the basis of which the suit was filed, cannot be said to have been waived. The element of intention to waive the determination of tenancy is completely lacking in the present case.

15. The next Important decision on this point is in the case of Jhamman Das v. Ram Krishna 1986 (1) ARC 427. It was held that simply because after the institution of the suit, the rent for the period subsequent to the date of termination of the tenancy deposited by the tenant is withdrawn by the landlord, it cannot be said that there was an intention to waive the notice.

16. In the case of Khumani Vs. Sakthey Lal, it was held that if the landlord actively continues the prosecution of the case or appeal with regard to the ejectment of the tenant, mere acceptance of rent by him cannot be treated as waiver so as to deprive him of the right of ejectment in pursuance of the decree which he had obtained. It may be mentioned that the case of Manicklal Dey Chaudhari v. Kadambini Dassi (supra No. 1) was also considered in this case and was disagreed. Therefore, the decision of Calcutta High Court relied on by the learned counsel for the revisionists cannot be followed.

17. The Division Bench of this Court in Hart Shanker v. Chatanya Kumar 1968 ALJ 387 found that after the Institution of the suit, the plaintiff accepted rent from the defendant for certain months. The defendant pleaded that it amounted to the waiver of the notice to quit. It was held by the Division Bench of this Court that mere acceptance of rent after institution of suit for a period after the time mentioned in the notice had expired did not amount to waiver of the notice to quit u/s 113 of the T. P. Act. In this case also, the decision of Ram Dayal v. Jwala Prasad (supra) was not accepted.

18. In the light of these decisions I, therefore, find that mere acceptance of rent after the period of termination of the tenancy does not amount to waiver of notice to quit. There must be some intention of waiver. In the present case, the opposite party actively prosecuted the suit for ejectment filed by him. Therefore, it cannot be accepted that the notice has been waived. I, accordingly find that the trial court has rightly held that the notice to quit has not been waived and, therefore, the revisionists are liable to ejectment.

19. Before parting with the judgment, it may also be mentioned that Sri Ajit Kumar, learned counsel for the revisionists has unnecessarily argued that the rent claimed is not due and that the suit is barred by Section 20 (4) of U. P. Act No. XIII of 1972 and taken me through the judgment of the trial court and wasted lot of precious time. He has also argued that the plaintiff has not come in the witness box and, therefore, the suit cannot be decreed. These points have been argued without considering the law and the controversy involved in the suit. The agreed rent is Rs. 15,000 per month. Therefore, U. P. Act No. XIII of 1972 does not apply. Therefore, there is no question of application of Section 20 (4) of the Act. The amount of rent due claimed in the plaint has not been challenged in the written statement and, therefore, this question was

unnecessarily raised by the learned counsel.

20. There is no law requiring the plaintiff to come in the witness box. The facts can be proved by any person, who had a knowledge of those facts, apart from this no question of fact was involved in the case. Therefore, it was not at all necessary for the plaintiff to enter into the witness box. All these arguments of the learned counsel are baseless and misconceived.

21. No other point arise for decision in this revision.

22. The revision fails and is hereby dismissed.