
(2009) 08 AHC CK 0213
In the Allahabad High Court
Case No : Civil Revision No.391 of 2007

Urmila Kapoor

APPELLANT

Vs

State of U.P. and another

RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

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

Citation : (2009) 08 AHC CK 0213

Hon'ble Judges : Prakash Krishna, J

Final Decision : Allowed

Judgement

Prakash Krishna,J.

1. Challenging the legality, validity and propriety of the judgment and decree dated 23rd of August, 2007 passed by the Judge, Small Cause Court/Additional District Judge, Court No.6, Muzaffarnagar in SCC Suit No.5 of 2004, the present revision under Section 25 of the Provincial Small Cause Courts Act, 1887 has been filed by the plaintiff. The SCC Suit No.5 of 2004 was instituted by the present applicant against the opposite parties for recovery of arrears of difference in rent for the period 1.6.1998 to 30.11.2002 at the rate of Rs.845/ per month total Rs.45,630/ and arrears of rent since 1st of December, 2002 to 22nd of March, 2004 at the rate of Rs.2,145/ per month total Rs.33,783/, mesne profit from 23rd of March, 2004 to 25th of March, 2004 till the delivery of possession and the damages at the same rate i.e. Rs.2,145/ for use and occupation of the property described at the foot of the plaint. The said suit was filed on the pleas inter alia that the plaintiff is the owner and landlord of the property described at the foot of the plaint wherein the office of Senior Marketing Inspector and the office of Regional Food and Civil Supplies are the tenants. Initially, the rent was Rs.1300/ per month which was enhanced to Rs.2,145/ w.e.f. 1.6.1998 by an order passed under Section 21 (8) of the U.P. Act No.13 of 1972 by the Rent Control & Eviction Officer in Case No.8 of 1998.The said order

was challenged unsuccessfully by the defendants in appeal No.5 of 2001 which was dismissed on 25th of September, 2003. The said judgment of the appellate authority is subjudice in writ petition no.2773 of 2004 before the High Court but no stay order has been passed therein. The defendants are, thus, liable to pay the rent at the rate of Rs.2,145/ which they have failed to pay in spite of notices of demand and termination given under Section 106 of the Transfer of Property Act which was served on 23.1.2004. Requisite notice under Section 80 of C.P.C has also been served. Hence the suit.

2. The suit was contested on the pleas inter alia that the defendants are not defaulters and they are liable to pay the rent/damages only at the rate of Rs.1300/ per month as was agreed between the parties. The rent enhanced by the Rent Control and Eviction Officer to Rs.2,145/ is subject matter of the writ petition no.2773 of 2004 which is pending. The validity of the notice and the jurisdiction of the Small Cause Court to entertain the suit were also questioned.

3. The parties led evidence in support of their respective cases. The plaintiff examined Ramesh Prakash PW/1 and filed the documentary evidence in support of her case. The defendants, on the other hand, produced Brijendra Kumar as DW/1 besides documentary evidence.

4. Before proceeding further it may also be noticed that during the pendency of the suit, the defendants deposited the entire arrears of rent, damages etc. at the rate of Rs.1300/ per month before the trial Court to avail the benefit of Section 20(4) of the Act. An application to strike off the defence filed by the plaintiff for not depositing the rent at the rate of Rs.2,145/ per month was dismissed by the judgment under revision. The Court below was of the view that the dispute regarding the rate of rent still subsists between the parties as the aforesaid writ petition is pending adjudication, no case of striking off the defence has been made out.

5. On the basis of the pleadings of the parties as many as six issues were framed. The issue no.1 relating to the question of grant of benefit under Section 20 (4) of the U.P. Act No.13 of 1972 was framed. The other issues relate to the validity of the notice dated 19th of January, 2004, the validity of notice under Section 80 of C.P.C and jurisdiction of the Small Cause Court to entertain the suit and the suit being bad for joinder of State of U.P. as defendant were framed being issues no.2 to 5. All these issues no.2 to 5 were decided in favour of the plaintiff holding that notice dated 19th of January, 2004 and the notice under Section 80 of C.P.C are valid and the Court has got jurisdiction to entertain the present suit and the suit is not bad for joinder of State of U.P. as one of the parties.

6. The issue no. 1 which relates to the grant of benefit under Section 20(4) of the Act is the material issue so far as the present revision is concerned as the same was decided against the plaintiff, by holding that the defendants have deposited the requisite amount as required under the said Section on the first

date of hearing and as such are entitled to be relieved from the eviction decree.

7. The findings recorded under the said issue are under challenge in the present revision. The trial Court by the judgment under revision dismissed the suit in its entirety.

8. Shri Sumit Daga, the learned Counsel for the plaintiff applicant submits that the finding recorded by the trial Court under the issue no.1 is legally unsustainable. The rent was deposited under the said provision at the rate of Rs. 1300/ per month, besides interest etc. The submission is that the rent was enhanced in the proceedings under Section 21 (8) of the U.P. Act No.13 of 1972 to Rs.2,145/ by the Rent Control and Eviction Officer which was confirmed in appeal being appeal No.5 of 2001. Mere pendency of a writ petition and there being no stay order, the judgment and order of the appellate Court or of the Rent Control and Eviction Officer enhancing the rent to Rs.2,145/ w.e.f. 1st of June, 1998 had come into operation. The trial judge was not right in rejecting the plea of the plaintiff applicant that the benefit of the said provision i.e. Section 20(4) is not available to the defendants as they have not deposited the rent at the rate of Rs.2,145/ per month and have deposited it at the rate of Rs. 1300/ per month instead. It was further submitted that in any view of the matter, the said writ petition has been dismissed by this Court by the judgment and order dated 21st of October, 2007 a copy whereof has been filed along with the supplementary affidavit, the defendants have failed to comply with the provisions of the said Section 20(4). The learned standing Counsel, on the hand, supports the impugned order. However, he did not dispute the factum of dismissal of the aforestated writ petition.

9. Considered the respective submissions of the learned Counsel for the parties and perused the record. The controversy in the present case lie in a narrow compass and the facts are not much in dispute. It is not in dispute that initially the rate of rent was Rs.1300/ per month which enhanced to Rs.2,145/w.e.f. 1st of June, 1998 in a judicial proceeding by the Rent Control and Eviction Officer whose order was confirmed in appeal No.5 of 2001 by the judgment and order dated 25th of September, 2002. It is also not in dispute that against the aforesaid appellate order writ petition No.2773 of 2004 was preferred in this Court which was pending at the time of disposal of the suit but there was no interim order staying the operation of the order of either of the courts below. The writ petition, as has come on record, has been dismissed by this Court by the judgment and order dated 23rd of October, 2007. It is also not in dispute that the rent was deposited for claiming the benefit of Section 20(4) of the Act at the old rate i.e. at the rate of Rs.1300/ per month. In this factual scenario, the finding recorded by the Court below that conditions of Section 20 (4) has been complied with, is to be examined.

10. On the facts which are not in dispute, the finding as recorded by the trial Court extending the benefit of Section 20(4) of the Act cannot be approved. The purpose and object of enacting Section 20(4) of the Act is to give another

opportunity to a tenant to pay the entire arrears of rent etc. unconditionally, at the first date of hearing of the suit. A tenant is required to deposit the entire amount of rent and damages for the use and occupation of the building due from him together with interest thereon at the rate of 9 per cent per annum and the cost of suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under Subsection (1) of Section 30 of the Act. In other words, if the tenant disputes any claim of the landlord as laid in the plaint with regard to the amount claimed in the suit, the benefit of the said Section cannot be extended to such tenant.

11. Coming to the facts of the present case, it was not in dispute that initially rate of rent of Rs.1300/ per month was enhanced to Rs.2,145/ w.e.f. 1st of June, 1998. Admittedly, there was no stay order in the pending writ petition staying the operation of the orders enhancing the rent. This being so, the defendant tenant was under legal obligation to deposit the rent at the rate of Rs.2,145/ in order to avail the benefit of Section 20(4) of the Act. If he has failed to do so, he has incurred the risk. The writ petition having been dismissed subsequently, it cannot be said that the defendant tenant has deposited "entire amount of rent and damages" for the use and occupation of the building due from him. The Court below has lost the sight of the fact that mere pendency of the writ petition would not amount, in absence of stay order, staying the operation of the orders challenged in the writ petition. This being so, the trial Court was not justified in extending the benefit of Section 20(4) of the Act to the defendant tenant.

12. Having it found that notice determining the tenancy and notice under Section 80 of C.P.C are valid and the defendants were in arrears of rent for more than four months, the suit for recovery of arrears of rent, damages, pendente lite future and ejectment, is liable to be decreed.

13. Even otherwise also, since the monthly rent has been fixed above Rs.2,000/, in view of Section 2 of the Act a building fetching monthly rent Rs.2,000/ and above is exempt from the operation of the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The Court below, therefore, was not justified in not granting the requisite as was prayed for in the suit.

14. Before parting with the case, it may be noticed that the trial judge "Shri Ashok Kumar Pathak, has committed an obvious mistake by dismissing the suit in its entirety with cost." At any rate, the trial judge should have passed the decree for recovery of arrears of rent, damages etc. under Section 20(4) of the Act deposited by the defendants during the pendency of the suit. On this ground also, the judgment and decree of the trial Court is liable to be reversed.

15. In the result, the revision succeeds and is allowed with cost throughout. The judgment and decree passed by the Court below is hereby set aside and the suit for recovery of arrears of rent, damages, pendente lite future @ Rs.2,145/per month and eviction of the defendants opposite parties No.1 and 2 is hereby decreed.

16. The time to vacate the disputed accommodation is granted up to 31st of December, 2009 provided an undertaking on affidavit is filed by the defendant no.2 or on his behalf that the vacant possession of the disputed accommodation shall be handed over to the plaintiff landlord on or before 31st of December, 2009. In case of default, it shall be open to the plaintiff to apply for execution of the decree.

17. The revision is allowed with cost throughout.

Revision allowed.