

(2000) 08 AHC CK 0127
In the Allahabad High Court
Case No : Writ Petition No. 9190 of 2000

Uttam Chand and another	Vs	APPELLANT
VIth Addl. District Judge, Jhansi and others		RESPONDENT

Date of Decision : 04-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Transfer of Property Act, 1882 — Section 106, 20, 21(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(3), 30

Citation : (2000) 4 AWC 2822

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : V.D. Ojha and Pranav Ojha, for the Appellant; N.B. Nigam and S.C.,
for the Respondent

Final Decision : Dismissed

Judgement

R. H. Zaidi, J.—By means or this petition filed under Article 226 of the Constitution of India, the petitioners who happen to be tenants of house and shop, i.e., 29, Mohalla Subhash Ganj, Jhansi, (for short "the building in question"), pray for issuance of a writ, order or direction in the nature of certiorart quashing the judgment and decree dated 11.3.1999 whereby the suit filed by the respondent No. 2, Judge Small Cause Courts, was decreed, the judgment and order dated 10.2.2000 whereby the revision filed by the petitioners against the judgment and decree passed by the trial court was dismissed by the revisional court (respondent No. 1) and the order dated 14.2.2000 whereby the review application filed by the petitioners was dismissed by the revisional court.

2. The relevant facts of the case giving rise to the present petition, as set out in the pleadings of parties (writ petition and counter-affidavit) and other material on the record, in brief, are that the respondent No. 3 filed S.C.C. Suit No. 80 of 1997 for ejectment of the petitioners from the building in dispute and for

recovery of arrears of rent and damages. It was stated that the building in question was originally owned by Shri Khushal Rai. Plaintiff respondent No. 3, Shri Vinod Kumar Jain, purchased the same from Shri Khushal Rai through a registered sale deed dated 23.2.1987. At the time of sale, the building in question was in occupation of the petitioners as a tenant at the rent of Rs. 40 per month which was, by agreement of the parties, enhanced to Rs. 550 per month. Thereafter, a notice dated 26.3.1993 is alleged to have been sent to the petitioners intimating him about the aforesaid transaction of sale and asking for payment of rent. Thereafter, two more notices dated 28.9.1995 and 29.2.1996 were alleged to have been sent to the petitioners by the respondent No. 3 of which no reply was received. Consequently, it was on 13.3.1997 that a notice of demand and termination of tenancy was sent to the petitioners by the respondent No. 3 demanding arrears of rent from 23.2.1987 to 01.4.1997 which was not received by the defendant petitioners and was returned to respondent No. 3 with the endorsement that the postman went to the house of the petitioners at the correct address on 14.3.1997, 15.3.1997, 17.3.1997, 19.3.1997, 20.3.1997, 21.3.1997 and on the last on 23.3.1997 to deliver the said notice to the petitioners and on enquiry, he came to know that the addressee was not met. It was on 14.3.1997 that a cheque of Rs. 4,880 plus Rs. 40, total Rs. 4920, was given to the respondent No. 3 which was presented for encashment before the bank but the same was dishonoured on 17.6.1997. Therefore, the respondent No. 3 filed a suit for the abovementioned relief. On receipt of the summons from the trial court, petitioners filed their written statement pleading that they were in occupation of the building in question as a tenant at the rent of Rs. 40 per month, which they used to pay to Shri Khushal Rai. the original owner ; that the rate of rent was never revised or enhanced to Rs. 550, that the allegation made to the contrary was incorrect ; that the notice dated 26.3.1993 was replied through one Shri Brij Kishore, Advocate. In reply of the notice, the respondent No. 3 was also asked to supply a copy of the sale deed alleged to have been executed in his favour by Shri Khushal Rai but which was never sent to the petitioners by the said respondent. It was on 14.3.1997 that a cheque of Rs. 488 was given to the respondent No. 3. which covered the amount of rent from 1.2.1987 to 31.3.1997. Thereafter, money order for an amount of Rs. 40 was also sent in the month of May, 1997 as the aforesaid money order was returned to the petitioners and cheque was not honoured by the bank and the amount of Rs. 4,920 was deposited in the Court u/s 30 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. (for short, "the Act"), in the name of the respondent No. 3, which was permitted to be deposited by the Court concerned at the risk of the petitioners : that in view of the aforesaid facts and circumstances, the petitioners committed no default and the suit was liable to be dismissed.

3. On the basis of the pleadings of the parties, the trial court framed three issues which related to the sufficiency of service of the notice of termination of tenancy and demand, default in payment of rent committed by the petitioners and the

relief. Parties, in support of their cases, produced evidence, oral and documentary. The trial court, after hearing the parties and perusing the entire evidence on record, recorded clear and categorical findings on all the three issues in favour of the plaintiff respondent No. 3. It was held that the notice of demand and termination of tenancy was duly served upon the petitioners through the post office and by affixation on the building in question, but inspite of service of notice, the amount of rent was not paid to him by the petitioners within the statutory period. The petitioners, therefore, was a defaulter within the meaning of the term used under Clause (a) of subsection (2) of Section 20 of the Act. Therefore, the respondent No. 3 was entitled to the relief claimed by him. Having recorded the said findings, the suit for ejectment and recovery of rent and damages was decreed by the trial court by its judgment and decree dated 14.5.1999. Challenging the validity of the judgment and decree passed by the trial court, petitioners filed a revision before the Court below. The Court below has also affirmed the findings recorded by the trial court and dismissed the revision by its judgment and order dated 10.2.2000. The petitioners thereafter filed a review application before the Court below, which was also dismissed on 14.2.2000, hence the present petition.

4. Learned counsel for the petitioners vehemently urged that the notice of demand and termination of tenancy was never served upon the petitioners and that the petitioners never committed default in payment of rent, therefore, the findings recorded by the Courts below, to the contrary, are perverse and the judgments and decrees passed by the Courts below were liable to be quashed.

5. On the other hand, learned counsel appearing for the contesting respondent No. 3 submitted that the findings recorded by the Courts below are concurrent findings of fact which are based on relevant evidence on the record and do not suffer from any illegality or infirmity. The present petition was therefore, liable to be dismissed with cost.

6. I have considered the submissions made by learned counsel for the parties and also perused the material on the record carefully.

7. Admittedly, the suit for ejectment and recovery of rent/ damages was filed by the respondent No. 3 on the ground of default in payment of rent alleged to have been committed by the petitioners. The petitioners could not be held to be a defaulter unless the notice of demand was proved to have been served in accordance with law. A notice issued u/s 106 of the Transfer of Property Act terminating the tenancy and notice of demand u/s 20 of the Act are required to be served in accordance with the provisions of Section 106 of the Transfer of Property Act, 1882, which reads as under:

"106. Duration of certain leases in absence of written contract of local usage.-

.....

Every notice under this section must be in writing, signed by or on behalf of the

person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or if such tender or delivery is not practicable, affixed to a conspicuous part of the property."

8. In the present case, according to the findings recorded by the Courts below, notice shall be deemed to have been served personally and by affixation on the conspicuous part of the building in question. As stated above, the postman attempted several times to serve the notice in question upon the petitioners personally but the notice could not be delivered to the petitioners as they had been avoiding to receive the same, therefore, in view of the decisions of the Apex Court and this Court referred to and relied upon by the Courts below, the notice was rightly held/deemed to have been served. The said finding is a concurrent finding of fact which is based on relevant evidence on the record. The Courts below also held that the notice in question was also affixed on the conspicuous part of the building, the said finding is also a finding of fact which is also based on relevant evidence on the record.

9. In *M/s. Madan and Company v. Jaiveer Chand* AIR 1989 SC 63. the Supreme Court, while interpreting the provisions of Section 11 of the Jammu and Kashmir House and Shops Rent Control Act, which is analogous to provision of Section 106 of the Transfer of Property Act, ruled that the word "served" is to be read as sent by post correctly and properly addressed to the tenant and the word "receipt" as tender of the letter by the postman at the address mentioned in the letter. Relying upon the said decision, this Court in *V. K. Srivastava v. Avinash Chandra and another* 1994 AWC 1229, while interpreting the provisions of Section 21(1), first proviso, held that mere denial of the receipt of a notice sent by registered post at correct address is not enough for rebuttal of presumption of service. Postal endorsement of registered cover to the effect that despite repeated information, neither the addressees were met nor anyone there disclosed where they could be met, it appears that the addressees were avoiding to receive the notice, therefore, the Appellate Authority rightly held that the notice was presumed to be served by refusal. The findings recorded by the Courts below regarding the service of notice in any view of the matter, cannot be said to be perverse or illegal. The notice was not only served by registered post at correct address but also by affixation of the notice on the conspicuous part of the house of petitioners.

10. So far as the question of default is concerned, clause (a) of sub-section (2) of Section 20 of the Act reads as under :

"20. Bar of suit for eviction of tenant except on specified grounds.--(1)

.....

(2) A suit for the eviction of a tenant from the building after the determination of his tenancy may be instituted on one or more of the following grounds, namely :

(a) 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."

11. The necessary conditions for declaring a tenant as a defaulter within the meaning of the term used under clause (a) of sub-section (2) of Section 20 of the Act, are that the tenant should be in arrears of rent for not less than four months and from the date of notice of demand is served upon him, the tenant should have failed to pay the arrears of rent within one month. In the present case, the notice of demand was served on 14.3.1997, whereby rent for the period 23.2.1987 to 1.4.1997 was demanded. The petitioners, even after receipt of the said notice, did not pay the arrears of rent within statutory period of 30 days. The amount in question alleged to have been tendered by means of a cheque. In law is not a valid tender. Further, the cheque in question was dishonoured by the bank for shortage of money in the account of the petitioners. Petitioners also cannot take advantage of money deposited u/s 30 of the Act as such deposit was made on 13.6.1997, i.e., after 30 days of the receipt of notice. Cheque was for an amount of Rs. 4,920 while in the bank account of the petitioners, there were a balance of Rs. 2,511.87 only. Even the money order which is alleged to have been sent in the month of May, 1997, by which an amount of Rs. 40 only is alleged to have been sent, was of no consequence. The Courts below did not commit any error of law in holding that the petitioners were defaulters and on the said ground, they were liable to be ejected from the building in question. The petitioners having committed default in payment of rent were, therefore, legally liable to be ejected from the building in question. The trial court rightly decreed the suit and the revisional court rightly dismissed the revision and the review application filed by the petitioners.

12. In view of the aforesaid discussion, no case for interference under Article 226 of the Constitution of India is made out. The writ petition has got no merits.

The writ petition fails and is dismissed with cost.