
(2010) 08 AHC CK 0241

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 52154 of 2010

Vijal Prakash @ Lalla (Tea-Wala)

APPELLANT

Vs

Addl.District Judge, Agra and others

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Citation : (2010) 08 AHC CK 0241

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record.

2. Brief facts of the case are that the petitioner claims that he was tenant of a shop at ground floor in the property no. 30/97, Peepal Mandi, Agra, at the rate of Rs.65/ per month including all taxes with the previous owner. Thereafter, the house was purchased by Rajendra Prasad Gupta, respondent/plaintiff including the shop in dispute in the year 1994. The petitioner/defendant whereupon started depositing of rent in the court of Civil Judge (Junior Division), Agra in Misc. Case No. 20 of 2006: Shri Lalla Vs. Sri Rajendra Prasad Gupta, under Section 30 (I) of the U.P. Urban Buildings (Regulation of Letting, Rent And Eviction) Act, 1972, hereinafter referred to as "Act,.

3. The plaintiff/respondent filed suit no. 20 of 2009: Sri Rajendra Prasad Gupta Vs. Vijai Prakash @ Lalla, in the court of Judge, Small Causes Court, Agra. It appears that the petitioner had deposited Rs.4000/ as arrears of rent in the court on 28.5.2009 and also filed written statement in the suit on 29.5.2009. Subsequently, Judge Small Causes Court decreed the suit for ejectment vide judgment and order dated 25.2.2010.

4. Aggrieved by the aforesaid judgment dated 25.2.2010, the petitioner/defendant preferred revision no. 12 of 2010: Vijai Prakash Vs. Rajendra Prasad Gupta in the court of District Judge, Agra which was rejected by the Addl. District Judge, Court No. 20, Agra on 15.7.2010 to whom the case was

transferred.

5. In the aforesaid backdrop of the case, this writ petition has been filed by the petitioner challenging the validity and correctness of the impugned judgment and orders dated 25.2.2010 and 15.7.2010 passed by Judge, Small Causes Court, Agra and Addl. District Judge, Court No. 2, Agra respectively.

6. In this regard, learned counsel for the petitioner has relied upon the following extracts of the judgment in the revision;

7. Per contra, learned counsel for the respondent has relied upon further extract of the judgment in the revision, quoted below:

8. Learned counsel for the respondent has also submitted that even if contention of learned counsel for the petitioner that he had deposited Rs.4000/ as arrears of rent on the first date of hearing, is to be taken as gospel truth, yet he has failed to deposit the entire arrears of rent amounting to Rs.4,800/, as such the revisional court has rightly confirmed the decree of the court below.

9. In rebuttal, learned counsel for the petitioner has further submitted that the petitioner had claimed only Rs.3,219/ as arrears of rent etc. which is evident from prayer no. (B) in the plaint, whereas the respondent has deposited Rs.4,000/ and as such it cannot be said that there is shortage in payment of arrears of rent.

10. He has further relied upon prayer no. C & D made in the plaint which are reproduced for ready reference:

(C) That a decree for pendente lite and future damage @ Rs.500/ per month be passed against the defendant in favour of the plaintiff for illegal use and occupation in the shop in suit;

(D) That the cost of the suit be awarded to the plaintiff against the defendant.

11. Learned counsel for the respondent has also submitted that legal notice was given to the petitioner for payment of Rs.4,800/ which he had received and since the petitioner did not pay the said amount on the first date of hearing after filing written statement, therefore, it cannot be said that there is any shortfall in payment of arrears of rent.

12. No other point has been argued by the parties.

13. The only contention of learned counsel for the petitioner that he had deposited arrears of rent on the first date of hearing and, therefore, he is entitled to the benefit of Section 20 (4) of the Act is not acceptable in view of ratio laid down by the Apex Court judgment in Ashok Kumar & others Vs. Rishi Ram & others reported in AIR 2002 SC 2320, wherein it has been held that;

"The date of first hearing of a suit under the Code is ordinarily understood to be the date on which the court proposes to apply its mind to the contentions in the pleadings of the parties to the suit and in the documents filed by them for the

purpose of framing the issues to be decided in the suit. Does the definition of the expression "first hearing" for the purposes of S. 20 (4) mean something different? The step or proceeding mentioned in the summons referred to in the definition should, we think, be construed to be a step or proceeding to be taken by the court for it is, after all, a "hearing" that is the subjectmatter of the definition, unless there be something compelling in the said Act to indicate otherwise; and we do not find in the said Act any such compelling provision. Further, it is not possible to construe the expression "first date for any step or proceeding" to mean the step of filing the written statement, though the date for that purpose may be mentioned in the summons, for the reason that, as set out earlier, it is permissible under the Code for the defendant to file a written statement even thereafter but prior to the first hearing when the court takes up the case since there is nothing in the said Act which conflicts with the provisions of the Code in this behalf. We are of the view, therefore, that the date of first hearing as defined in the said Act is the date on which the court proposes to apply its mind to determine the points in controversy between the parties to the suit and to frame issues, if necessary."

14. It appears from the record and hearing of the counsel for the parties, as well as on perusal of law, aforesaid, that petitioner had deposited only Rs.4,000/ towards arrears of rent on 28.5.2009 before the date of filing of written statement which in fact was 29.5.2009, hence though the deposit of arrears of rent was made before the date of first hearing, yet there was considerable shortfall in the rent so deposited under Section 20 (4) of the Act.

15. It is accepted by the petitioner that he had received legal notice for payment of Rs.4000/ towards arrears of rent and, therefore, findings of the revisional court at this stage are liable to be upheld as the petitioner has not deposited the entire arrears of rent.

16. For all the reasons stated above, the Court is of the view that petitioner is not entitled to get the benefit of Section 20 (4) of the Act.

17. The writ petition is, accordingly, dismissed.