

(1998) 09 AHC CK 0012
In the Allahabad High Court
Case No : C.M.W.P. No. 29322 of 1998

Yaseen

APPELLANT

Vs

VIth Addl. District Judge, Bulandshahr and others

RESPONDENT

Date of Decision : 10-09-1998

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (1998) 4 AWC 192 : (1998) AWC 192

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : Rajesh Tandon, for the Appellant; Km. Anu Jaiswal and Manju Chauhan and S.C., for the Respondent

Judgement

J.C. Gupta, J.—Heard Sri Rajesh Tandon appearing for the petitioner and Km. Anu Jaiswal appearing for the respondent No. 2. Km. Anu Jaiswal gives a statement that she does not intend to file any counter-affidavit and this writ petition may be heard and disposed of finally. With the consent of parties' counsel and in the circumstances of the case, this writ petition is disposed of finally.

2. Respondent Nos. 3 and 4 filed suit-for rent and ejectment against the petitioner on the ground of default of payment of rent alleging therein that the defendant-petitioner was in arrears of rent from 1.10.87 which remain unpaid despite service of notice of demand on 6.9.1993. The petitioner contested the suit alleging that no amount of rent was due as he had paid entire rent to the plaintiffs but no receipt was issued therefore. The trial court did not accept this assertion of the tenant about the payment of rent to the landlords and recorded a finding that the defendant-petitioner was a defaulter. The trial court, however, decreed suit for arrears of rent only and dismissed the same for ejectment on the ground that notice of demand and termination was not proved to have been duly served upon the petitioner. Against the judgment of the trial court, the landlords preferred revision which has been allowed by the impugned order and the

plaintiffs suit has been decreed in toto.

2A. Learned counsel for the tenant-petitioner argued before me that the revisional court has acted beyond its powers in making interference in the finding of fact recorded by the trial court regarding service of notice, which was based upon appraisal of evidence. He argued that it was found by the trial court that it was not fully established that the notice of demand and termination was tendered to the tenant and the same was refused by him. This finding of the trial court has been reversed by the revisional court on the ground that the evidence was not properly assessed and appreciated by the trial court.

3. The position with regard to the scope of powers of the Court hearing revisions u/s 25 of the Provincial Small Causes Court is well-settled, Such powers are only supervisory and the revisional court has not been invested with the powers which are possessed by Appellate Court, as far as the matter of appreciation of evidence is concerned. The revisional court has a limited jurisdiction to examine the legality of the decree passed by the trial court. It has no power to examine the evidence of the case in order to decide whether or not the finding of fact recorded by the trial court is justified or not. nor the revisional court can substitute its own finding of fact for the one recorded by the trial court. If certain piece of evidence and material has been not taken into consideration by the trial court, which, in the opinion, of the revisional court was necessary, the appropriate course in such a situation is to send the case back to the trial court for a fresh decision in the light of guidelines which may be indicated by the revisional court in its judgment. In this connection, a reference may be made to the Division Bench case of this Court in Laxmi Kishore and another v. Har Prasad Shukla and others 1981 ARC 545 ; Durga Prasad and others Vs. VIIth Addl. District Judge, Kanpur Nagar and others, ; Jaidev Mishra v. District Judge, Faizabad and others J 998 (1) ARC 354 and the decision in Writ Petition No. 6505 of 1980, Kailash Chandra and another v. Illrd Addl. Judge, Jalaun, Orai and others, decided on 24.8.1998.

4. In the instant case, it appears that the revisional court was not satisfied with the manner in which the evidence on record was assessed by the trial court in not taking into consideration various important aspect of the matter. In such circumstances, the revisional court should have remanded the case to the trial court for a fresh decision instead of reappraising the evidence itself and substituting its own finding of fact. Learned counsel for the respondents, however, argued that in the written statement, the defendant has not specifically denied the averment made in the plaint that a notice was duly served upon the defendant and none of the Courts below have taken into account this important factor while answering the question of service of notice. What is the effect of the pleadings of the parties in the present case, in the light of evidence on record, has not been considered by either of the Courts below and this Court in its writ jurisdiction does not decide a disputed question of fact. In the present case, on one hand the revisional court has acted beyond its powers in substituting its own

finding of fact for the one recorded by the trial court after reappraisal of evidence but at the same time, it is also clear that the trial court did not appreciate the evidence adduced by the parties on the question of service of notice in its right perspective and it also lost sight of the fact that the observations made in another suit with respect to the statement of the postman who was produced as a witness in that case were neither relevant nor could be read in evidence in the present case. If a witness is disbelieved in one case. it does not mean necessarily that he is a liar forever or that his evidence is to be discarded on that ground alone. It appears that on account of this wrong approach and legal misconception, the mind of the trial Judge was to a great extent influenced by this irrelevant factor while making assessment of the evidence on record. The finding of the trial court, therefore, on the question of service of notice also gets vitiated.

5. From the above discussion. it follows that the findings recorded by the trial court as well as by the revisional court on the question of service of notice cannot be sustained and for this reason, the order of the revisional court as well as the decree of the trial court are set aside and the case is sent back to the trial court for a fresh decision on the question of service of notice only. The other findings recorded on the question of default, etc. are maintained and they shall not be touched again while deciding the case afresh. The trial court is directed to decide the case in accordance with law for a fresh decision in the light of observations made above, expeditiously. preferably within a period of three months from the date of production of certified copy of this order.

6. For the reasons stated above, this writ petition is allowed.