
(2012) 12 AHC CK 0141
In the Allahabad High Court
Case No : Civil Revision No. 660 of 2012

Yasin and Another

APPELLANT

Vs

Murari Lal

RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 50 Rule 1(a)
Provincial Small Cause Courts Act, 1887 — Section 15

Citation : (2012) 12 AHC CK 0141

Hon'ble Judges : Pankaj Mithal, J

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—Tenants of a shop have preferred this revision under Section 25 of the Provincial Small Causes Court Act, 1887 against the judgment and order dated 9.11.2012 of the Small Causes Court decreeing the respondentlandlord's suit for arrears of rent, eviction and damages.

2. I heard Sri B.B. Paul, learned counsel for the tenants and Sri Kunal Ravi Singh, learned counsel for the landlord.

3. Sri Paul in attacking the order impugned contended that the court below had decreed the suit without framing issues; it had wrongly disbelieved the rent deed dated 26.2.1998 (paper No.39G); the tenants had not defaulted in payment of rent and the evidence regarding sending the rent by money order could not be brought on record in the court below but can be taken on record under Order 41 Rule 27 C.P.C.; and the damages awarded at the rate of Rs.1000/ per month is more than the rate of rent.

4. The suit in question is one under Section 15 of the Act and is of a summary nature. It is well settled that in a suit of such a nature it is not mandatory to frame issues. The provisions of Order XIV C.P.C. relating to settlement of issues are not applicable to proceedings before Small Cause Court in view of Order L Rule 1(a) C.P.C. as has been held in Dau Dayal Tandon Vs. Additional District Judge, Naini Tal and others 1982 ARC 356 and a series of decision thereafter. The

only thing required is that the court below on consideration of the plaint case and the defence may indicate the points which arise for consideration.

5. All points which arose in the suit have been dealt with by the court below one by one and the tenants have addressed the court on all those points.

6. In view of the above, the decision of the suit without actually framing issues is not perverse or erroneous and cannot be said to have caused any prejudice to the tenants.

7. The rent deed dated 26.2.1998 (paper No.39Ga) has been disbelieved for the reason that the court below on consideration of the opinion of the handwriting experts and otherwise had come to a finding that it does not bear the signatures of the landlord. Even otherwise, it is admitted that the said rent deed was in connection with an adjoining shop different from the shop in question and in case tenants had made payment of any amount as per the said rent deed in connection with the tenancy of the adjoining shop and the same was not actually let out to them their remedy lies elsewhere, may be in a suit for recovery of the amount alleged to have been paid. The amount, if any, paid under the said rent deed was not in connection with the tenanted shop and could not have been adjusted against its arrears. The said rent deed therefore, has no bearing on the result of the present suit.

8. It is not in dispute that the tenants failed to adduce sufficient evidence to prove that they paid rent of the shop in question for the period claimed at the rate of Rs.600/ per months which is admitted as per the statement of one of the tenants Yaseen in crossexamination.

9. Along with the revision the tenants have filed four receipts of money order in original along with an application to take them on record as part of the evidence under Order 41 Rule 27 C.P.C. On plain reading of the application and the affidavit in support thereof reveal that the tenants have not made out any case for accepting the above money order receipts in additional evidence. The ingredients necessary for accepting the additional evidence envisaged under Order 41 Rule 27 have not been satisfied. Moreover, the said rent receipts are also not of sufficient amount so as to satisfy the entire arrears of rent.

10. In view of the above, I am of the opinion that the said money order receipts cannot be taken on record and even if considered would not alter the result of the suit. The court below on the basis of the evidence before it had rightly held the tenants to be defaulters and in arrears of rent.

11. The rent of the shop in question w.e.f. 26.2.1998 is admitted to be Rs.600/ per month. The landlord has claimed arrears of rent w.e.f. 26.3.2004 to 25.3.2007 at the above rate and the damages thereafter at the rate of Rs.2000/ per month. The court instead of allowing damages at the rate of Rs.2000/ per month awarded damages only at the rate of Rs.1000/ per month. The said award of damages is based upon the judgment and order of the court below in one

another Case No.506 of 2005 in which one of the tenants was a party. It was in respect of another shop in the same locality. The tenant therein had agreed for payment of rent at the rate of Rs.2000/ per month in respect of identically and similarly situated shop.

12. In view of the above, the award of damages at the rate of Rs.1000/ per months is based upon cogent evidence. There was no contrary evidence from the side of the tenants.

13. In view of the aforesaid facts and circumstances and the findings returned by the court below which are all findings of fact there is hardly any scope for me under Section 25 of the Act to intervene in the matter.

14. The revision, therefore, has no force.

15. Sri Paul in the end requested for some reasonable time of about a year be allowed for vacating the shop. The request though opposed, was left upon the discretion of the Court.

16. In the facts and circumstances of the case, I consider it to be fair and reasonable to allow six months time to the tenants in place of 60 days as granted by the court below to vacate the shop on usual conditions of giving an undertaking on affidavit by the tenants in the court below that they will vacate and handover peaceful possession of the shop in question to the landlord before the expiry of the above period and deposit the arrears as well as the damages as per the award including the extended period of four months.

17. The revision is dismissed.

18. No order as to costs.