

Gopal Yadav Vs. Special Judge (Anti-corruption) and ors.

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Court : Allahabad

Decided On : Dec-05-2001

Reported in : 2002(1)AWC487

Judge : A.K. Yog, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 20(4)

Appeal No. : C.M.W.P. No. 39963 of 2001

Appellant : Gopal Yadav

Respondent : Special Judge (Anti-corruption) and ors.

Advocate for Def. : Faheem Ahmad, S.C.

Advocate for Pet/Ap. : Ajay Kumar Singh, Adv.

Disposition : Petition dismissed

Judgement :

A.K. Yog, J.

1. Heard Sri Ajay Kumar Singh, learned counsel for the petitioner and Sri Faheem Ahmad, advocate on behalf of respondent Nos. 2 and 3 and perused the record.

2. Gopal Yadav, tenant-petitioner, has approached this Court by filing present writ petition under Article 226, Constitution of India, seeking to challenge judgment and order dated August 22, 2001 (Annexure-1 to the writ petition) passed in S.C.C. Revision No. 17 of 1999 passed by Additional District and Sessions Judge, Varanasi, exercising revisional jurisdiction under Section 25, Provincial Small Causes Court Act, whereby the revision filed by landlord-plaintiff/respondent Nos. 2 and 3 was allowed the judgment and order dated 30.1.1999 passed by Judge Small Causes Court in J.S.C.C. Suit No. 18 of 1987, Naseem Ahmad v. Gopal Yadav, was modified and the said suit was dismissed to the extent of the relief sought by the plaintiff for evicting the tenant-petitioner (Annexure-4 to the writ petition).

3. The tenant-petitioner had earlier filed Writ Petition No. 4587 of 2001. Gopal Yadav v. Special Judge (A.C.)/Additional District and Sessions Judge. Varanasi--(exercising powers of revisional court under Section 25, Provincial Small Causes Court Act) against the revisional judgment and order dated 4.11.2000. This writ petition was allowed by this Court vide judgment and order dated 12.2.2001 with the direction to the revisional court to decide afresh specifying separately different heads under which deposit is to be made towards 'cost of the suit' contemplated under Section 20 (4) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. U. P. Act No. XIII of 1972 (for short called 'the Act'). The revisional court, in compliance to the said judgment and order dated 12.2.2001 decided the revision afresh, the present impugned judgment and order dated 22.8.2001 (Annexure-1 to the writ petition).

4. The petitioner has annexed copies of the charts--submitted by the tenant (petitioner) and the landlord (contesting respondent) indicating the amount required and deposited according to them under Section 20 (4) of the Act (Annexure VI and VII respectively).

5. Comparing these two charts annexed with the writ petition. It is clear that there is no dispute about the amount of rent due for 18 months (1.7.1983 to 30.4.1988) at the rate of Rs. 15 per month. Both the plaintiff-landlord and the defendant-tenant have shown it as Rs. 870. The defendant-tenant (petitioner) in his chart has

shown, under the head 'cost of suit' claims to deposit of certain amounts in lieu of towards court-fee, lawyers fee, process fee and registry (postage charges). The said chart does not include or refer to the amount of expenses incurred by the landlord towards stamp on vakalatnama, the clerkage and the typing charges.

6. Learned counsel for the petitioner attempted to demonstrate that the amount of interest deposited by the tenant was short by a very-very thin margin i.e., Rs. 7.48 paise only and that certain amounts, like clerkage and typing charges, were not required to be deposited by the tenant as costs of the suit under law.

7. Learned counsel for the petitioner has failed to dispute the proposition that 'cost of suit' shall include 'court-fee' paid by the plaintiff and lawyers 1/2 fee on contested side.

8. Learned counsel for the petitioner, however, submitted that the amount of court-fee required to be deposited under Section 20 (4) of the Act ought to be the amount of court-fee which would have been payable on the basis of amount of rent claimed by the defendant as also subsequently found to be correct by both the courts below and not the actual amount of court-fee paid by the plaintiff-landlord as per his pleadings and the reliefs claimed by him.

9. The question for consideration of this Court is as to whether, the 'cost of suit', apart from others include (i) actual amount of court-fee paid by the plaintiff, and (ii) 1/2 counsel fee on a contested suit (as submitted by the learned counsel for the landlord-respondent) or the amount of court-fee which would have been payable on the basis of the 'rate of rent' pleaded by the defendant in the written statement (and, after parties have lead evidence. Court finally found to be correct).

10. The learned counsel for the petitioner has referred to the case of Lakshmi Narain Sharma v. Arjun Deo Dhawan and Ors., 1981 ARC 502 (Hon'ble N. D. Ojha, J.) wherein the Court had an occasion to consider the meaning, extent and scope of the expression 'amount of rent due from him'. The Court had no opportunity to consider the question now posed before it in the present case and referred to above. The tenant shall run a risk of being deprived of protection of the Section 20 (4) of the Act.

11. Paras 3 and 4 of the Judgment in the case of Lakshmi Narain Sharma's for convenience, reproduced :

'3. Having heard counsel for the parties, I am of the (view that) submission made by counsel for respondent No. 1 is well founded. Two requirements of Section 20 (4) of the Act are of significance. One is that the payment, tender or deposit of the amount mentioned in the said sub-section has to be made by a tenant 'unconditionally' and the other is that what is to be deposited by the tenant is to be amount 'due from him'. In this connection, it would be useful to refer to Sub-section (6) of Section 20 of the Act which reads as follows :

(6) Any amount deposited by the tenant under Sub-section (4) or under Rule 5 of Order XV of the First Schedule to the Code of Civil Procedure, 1908, shall be paid to the landlord forthwith on his application without prejudice to the parties' pleadings and subject to the ultimate decision in the suit.' To me it appears that the purpose of Sub-sections (4) and (6) of Section 20 read together is that whatsoever amount was due from the tenant according to him has to be deposited unconditionally so that the said amount may be paid to the landlord forthwith. If in regard to a particular item mentioned in Section 20 (4) there was a dispute, it was open to the tenant to deposit such amount which according to him was due from him and not necessarily the amount claimed by the landlord. In respect of such a deposit if ultimately the benefit of Section 20 (4) of the Act, notwithstanding the fact that the deposit made by him was not of the whole amount claimed by the landlord, because the amount deposited by him would in view of the finding recorded in the suit represent the amount due from the tenant. If on other hand, his defence is found to be false and the amount claimed by the landlord is found to be correct, the tenant would be denied the benefit of Sub-section (4) notwithstanding the deposit of the lesser amount which he may have made under Section 20 (4) of the Act. In *Har Prasad v Dharma Deo*, 1981 ALJ 216 : 1981 ARC 26, it has been held that (at p. 217) : (at p. 26 of Alld. Rent Cases).

The test that seems to have been laid down by the Supreme Court as well as by the learned single Judge, in the cases relied upon by the respondent, is that the money deposited should be readily available to the landlord. A reading of original

suit and Sub-section (4) of Section 20 leads to the same conclusion. It waives ejectment, 'if the tenant unconditionally pays or tenders to the landlord or deposits in Court the entire amount of rent and damages for use and occupation of the building'. It is clear that the amount has to be paid to landlord or at least to be tendered to him or it has to be deposited in the Court. Subsection (6) of Section 20 lays down that if any amount has been deposited by tenant either under Sub-section (4) of that section or under Rule 5 of Order XV, C.P.C. that has to be paid to the landlord without prejudice to the parties pleadings and subject to the ultimate decision of the suit. The amounts so deposited are certainly available to the landlord as soon as the deposit is made.'4. As is apparent on the plaint language of Sub-section (4) of Section 20 of the Act it contemplates payment, tender or deposit not only of the amount of rent due but also damages for use and occupation of the building calculated at the same rate as rent and payable up to the date on which the deposit under the said sub-section is made. The petitioner at no point of time seems to have disputed his liability to pay damages at the rate of Rs. 8 p.m. which was the admitted rate of rent, from the date of the institution of the suit till the date of the deposit under Section 20 (4) of the Act. Consequently, the said amount was admittedly, due from him. He no doubt deposited this amount but attached a condition even in regard to this amount that the same may be kept in deposit meaning thereby that the same may not be paid to the landlord respondent No. 1 till the suit was finally decided. The deposit even of the admitted amount of damages as such was not made by the petitioner unconditionally even though it was due from him. Further even in regard to the arrears of rent claimed by the landlord in the notice of demand, the finding recorded by the authorities below is that the petitioner had failed to substantiate his defence that he had paid the said amount to the Munim of the respondent No. 1. The precondition attached by the petitioner that the said amount may be kept in deposit till the suit was decided was, therefore, even in regard to this amount not justified. For all these reasons I am of the view that the respondent Nos. 2 and 3 cannot be said to have committed either any manifest error of law or error of jurisdiction in taking the view that the deposit made by the petitioner had not been made unconditionally as contemplated by Section 20 (4) of the Act and that he was consequently not entitled to the benefit of the said subsection in the matter of passing a decree for

eviction against him.'

As noted above, the aforesaid decision does not deal with the question in hand.

12. Learned counsel for the petitioner also referred to the following decisions. Relevant extracts/passages, for convenience quoted.

1. 1981 (7) ALR 225, Rama Kant v. Surya Nath Nagar, (Hon'ble S. D. Agarwal, J.)

'.....The question as to whether a tenant is entitled to the benefit of Sub-clause (4) and whether he should be relieved from his liability for eviction has to be considered, after the Court on examining the evidence on record, comes to the conclusion that the amount legally due has been paid, tendered or deposited by the tenant as prescribed by Sub-clause (4) of Section 20 of the Act.The Court has to decide the question of the applicability of Section 20. Sub-clause (4) of the Act only after the evidence has been recorded in a case where there is a dispute in regard to the rate of rent and then only after determining the rate of rent, could further determine whether the benefit can be given or not under Sub-clause (4) of the Act. The Court has to record a finding as to what was the rate of rent and then only determine whether the benefit of Sub-clause (4) could be given to the tenant or not. The above intention of the Legislature is clear from another provision, namely. Order XV, Rule 5, C.P.C. added by the State of Uttar Pradesh in relation to striking off defence for non-deposit of admitted rent.....'

Under Order XV, Rule 5. C.P.C., the tenant is obliged to deposit only the rent admitted by him to be due. This means that even if the landlord claims a higher amount of rent the tenant is liable to deposit such rent as has been admitted by him in the written statement to be due. Once he deposits that amount his defence cannot be struck off. Under this provision, however, no adjudication is necessary by the Court on the basis of evidence, neither any evidence need be recorded for determining the question whether the defence should be struck off or not. If the tenant deposits the admitted rent as stated in the written statement then his defence cannot be struck off.

The specific words used in Order XV, Rule 5, C.P.C. 'admitted by him to be due' indicates that in the absence of such words in clause (4) of Section 20 of the Act it was not intended that the tenant was obliged only to deposit the rent at the admitted rate. In my opinion what has to be deposited under Sub-clause (4) of Section 20 of the Act is what is legally due from the tenant and then only he can be relieved of the liability for eviction against him. If the landlord claims more amount than what was due it need not be deposited by the tenant

(2) 1986 (1) ARC 195, Kachan Singh v. Additional District and Sessions Judge, Dehradun and another, (K. C. Agarwal, J.).

'3.On the first date of hearing, the petitioner deposited the sum of Rs. 530. The details of the deposit, as mentioned by the petitioner himself were as follows :

(a) Rent demanded

(b) Interest.....

(c) Cost of the suit

(d) Counsel's half fee

(8) Next comes the question of compliance of Sub-section (4) of Section 20 of the ActIn the counter-affidavit, the break up given by respondent No. 2 is of the following items :

(a) Court fee paid on the plaint.....

(b) Rent and damages.....

(c) Cost of notice ;

(d) Interest of 9 per cent per annum on item (b).....

(e) Counsel fee ;

(f) Cost of Regd. A/D envelope meant for service of summons ;

(g) Process fee ;

(h) Court-fee paid on 5-C 2 ;

(i) Court-fee paid on 6-C 2 ;

(j) Court-fee paid on 7-C 2 ;

(k) Typing charges of plaint and copies and application.....

10. Respondent 2 had claimed the cost of the notice in the suit. There was no specific denial to this para in the written statement. That apart, the question is as to what is the amount which the tenant will be obliged to deposit under Sub-section (4) of Section 20 in order to avail the benefit conferred by it. The liability upon tenant is to deposit the landlord's costs of the suit..... If a tenant wants to get the benefit, he has to deposit the amount claimed by the landlord, unless it is demonstrated that any one of the items made in the suit were frivolous or wholly unfounded. If that is not done, the tenant would not be entitled to get the benefit of Sub-section (4) of Section 20. The Legislature did not intend to any adjudication by the landlord * (to be read as Court *) at the first date of hearing. The provision was made for the benefit of the tenant, and to give another opportunity to save his tenancy. If the tenant wants to save his tenancy he will have to deposit the amount claimed in the suit but if the amount is frivolous, the tenant may not be denied of the benefit of Sub-section (4) of Section 20 on the ground of having not deposited the amount. But where, as here, the cost of the notice was Rs. 50 and nothing could be shown to me that it was frivolous amount, non-deposit of the same appears to me is fatal to the petitioner. The expression 'landlord's cost in respect thereof' would Include the cost of the notice also. Apart from the aforesaid item of Rs. 50, the defendant further did not deposit the item claimed by the plaintiff respondent 2 at item Nos. (f) to (k) in the judgment. Even the amount of interest deposited was deficient by Rs. 3.48. In this view the deposits made by the defendant could not confer upon him the benefit of Sub-section (4) of Section 20 (Emphasis laid by me on italicised portion)'.

(3) 1996 (2) ARC 188, Sardar Amrik Singh v. IVth Additional District Judge, Kanpur Nagar and others (Sudhir Narain, JJ

'5.The second submission of the learned counsel for the petitioner is that the petitioner had deposited the entire arrears of rent with cost etc. prior to the first date of hearing and was entitled to the benefit of Section 20 (4) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972..... He has given the details of the amount which he was required to deposit under Section 20 (4) of the Act..... The trial court held that the amount deposited by the petitioner was conditional one and therefore, he was not entitled to the benefit of the deposit made by him under Section 20 (4) of the Act. The petitioner in his written statement has stated that the rate of rent was Rs. 175 per month and not Rs. 300 per month as claimed by the plaintiff. He in the written statement, however, did not state that he had deposited amount under Section 20 (4) of the Act conditionally.

6. In paragraphs 15 to 45 he categorically stated that after service of summons on him. He deposited entire amount in the Court before first date of hearing and is entitled to get benefit of Section 20 (4) of the Act.....The petitioner had deposited rent for the period 1.10.1985 to 31.8.1988 as claimed in the suit at the rate of Rs. 300 per month. The view taken by respondent Nos. 1 and 2 that the petitioner had deposited the rent at the rate of Rs. 300 per month conditionally, is not correct.

7. Learned counsel for the respondent then urged that the cost of the suit was not correctly included by the petitioner. Cost of the suit should be taken as given in the decree after it is passed by the Court. This contention of learned counsel for the respondent is not correct. Clause (b) of explanation added to Sub-section (4) of Section 20 of the Act provides that the expression.....' 'cost of the suit' includes one half of the amount of counsel's fee taxable for a contested suit. Cost of the suit will be such as the plaintiff might have incurred by the date of first hearing which includes court fee, counsel's fee and other expenses incurred by the plaintiff.....(italicized by me to lay emphasis)

(4) 1980 ALJ 384, Kailash Chandra Nigam v. Smt. Gayatri Deui (Hon'ble N. D. Ojha, J.).

'3. The only point which has been urged by the counsel for the applicant in support of this revision is that the applicant was not required to deposit costs of the suit insofar as the relief for arrears of rent and damages was concerned. According to counsel for the applicant, Section 20 (4) contemplates deposit of only such costs which had been incurred by the plaintiff-landlord on the relief for eviction only.

4.Considerable emphasis is placed by the counsel for the applicant on the circumstance that in the opening para of Section 20 (4) the words used are : 'in any suit for eviction' and not in any suit for eviction, arrears of rent and damages.' The expression 'cost of the suit' has been defined in Explanation (b) of Section 20 (4). According to that definition this expression includes one-half of the amount of counsel's fee taxable for a contested suit. The cost of the suit contemplated, by Section 20 (4) would, therefore, be half of the amount of counsel's fee taxable for a contested suit plus the amount of court-fee paid by the plaintiff and as such other cost as he may have incurred up to the date of the first hearing of the suit. What Section 20 (4) of the Act contemplates is that if the entire amount of the rent and damages for use and occupation of the building due from him together with interest thereon at the rate of nine per cent per annum and the landlords' costs of the suit in respect thereof after deducting therefrom any amount already deposited under Section 30 (1) of the Act is paid or deposited by him at the first hearing of the suit, the tenant was entitled to an order relieving him against his liability for eviction When the plaintiff has been driven to file a suit for ejectment as well as arrears of rent and damages on account of the conduct of the tenant in not complying with the notice of demand, there appears to be no reason to hold that the Legislature contemplated deposit of only such amount towards the item of court-fee paid by the plaintiff which was payable on the relief of eviction only and not that portion thereof which was payable for the relief of rent and damages (italicised by me to lay emphasis).

5.Consequently I am of the opinion, that the expression 'cost of the suit in respect thereof, used in Section 20 (4) of the Act includes the amount of court-fees paid by the plaintiff not only on the relief for eviction but also on the relief for arrears of rent and damages.'

13. I find no relevance of the aforesaid decisions as the Court had no occasion to consider the question in the light of the submission of the learned counsel for the petitioner in the present case. However, the underlined passages in the aforequoted passages of the above decisions 'suggest' an answer against the contention of the petitioner.

14. Section 20 (4) of the Act reads :

'In any suit for eviction on the ground mentioned in Clause (a) of Sub-section (2), if at the first hearing of the suit the tenant unconditionally pays or (tenders to the landlord or deposits in Court) the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under Sub-section (1) of Section 30, the Court may. In lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground :

Provided that nothing in this sub-section, shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area.

(Explanation. -- For the purposes of this sub-section--

(a) the expression 'first hearing' means the first date for any step or proceeding mentioned in the summons served on the defendant ;

(b) the expression 'cost of the suit' includes one-half of the amount of counsel's fee taxable for a contested suit.)

The relevant portion of Section 20 (4) of the Act has been italicised :

15. The Legislature has used the expression '.....Landlord's costs of the suit....' and that it avoided to use expression 'which would have been finally found

payable' or 'which should have been finally found to be payable on the reliefs granted by the Court'.

16. Learned counsel for the petitioner submitted that the aforesaid provision is beneficial piece of legislation to confer benefit upon the tenant and it should be interpreted accordingly.

17. In my considered opinion aforesaid provision is not solely aimed to confer benefit upon 'tenant' only but to confer benefit upon both landlord and tenant. Secondly, this Court cannot do violence with a given statutory provision while interpreting it and particularly when there is no ambiguity in the language requiring interpretation.

18. Perusal of the impugned judgment and order, with reference to the charts annexed with the writ petition as Annexures-6 and 7 to the writ petition, clearly show that considerable amount of court-fee as well as half lawyers on taxable side and clerkage have not been deposited by the tenant-petitioner.

19. It is abundantly clear that tenant has not deposited the required amount towards 'landlords' costs of the suit contemplated under Section 20 (4) of the Act and, therefore, he cannot claim benefit of Section 20 (4) of the Act and protect, himself from eviction from the accommodation in question.

20. In view of the above. I find no manifest error apparent on the face of record in the Impugned judgment and order dated 22.8.2001 (Annexure-1 to the writ petition) passed by Special Judge (Anti-Corruption)/Additional District and Sessions Judge, Varanasi/Respondent No. 1. Petition lacks merit.

21. Consequently, writ petition is, accordingly, dismissed.

22. No order as to costs.