

Allah Bux Vs. Ist Additional District Judge and Others

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Court : Allahabad

Decided On : Jan-04-1995

Reported in : AIR1996All49

Judge : A.B. Srivastava, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972 - Sections 20, 20(4) and 30; Provincial Small Cause Courts Act - Sections 25

Appeal No. : Civil Misc. Writ Petition 10996 of 1981

Appellant : Allah Bux

Respondent : ist Additional District Judge and Others

Advocate for Def. : S.C. and ;A.N. Bhargava, Adv.

Advocate for Pet/Ap. : R.H. Zaidi, Adv.

Judgement :

ORDER

1. This writ petition is directed against a judgment and order D/-21-5-1981 of the Additional District Judge, Nainital, whereby allowing the revision of the respondent No. 2 the landlord, he decreed the suit for ejection, arrears Of rent and damages against the petitioner-tenant.

2. The suit was filed by the plaintiff-respondent with allegation that the petitioner was a tenant of the shop in question since the times of its previous owner Kala Devi on Rs.6/- per month rent, from whom the respondent purchased it by sale deed dated 6-6-1972, and by a deed of assignment dated 5-9-1972 she assigned the right of recovery of rent from the petitioner who was, in arrears since 2-7-1955. On 2-3-1973 the respondent sent a notice of demand and termination which was served on the petitioner on 5-3-1973 but he failed to comply and rendered himself liable to ejection. Leaving the claim for the period which had become time barred, arrears of rent was claimed w.e.f. 25-8-1970.

3. The suit was contested by the petitioner-defendant who pleaded that the rate of rent was Rs. 10/- and not Rs. 6/- per month since 1979, the defendant-tenant was not in arrears of rent from 2-7-1955 rather had paid the rent up to 5-6-1972 to Smt. Kala Devi. After the purchase of the building by the respondent tendered, and thereafter sent by money order three months' rent, which was refused, whereupon Rs.40/- rent for four months was deposited under Section 30 of Act 13 of 1972 and thereafter further rent was deposited in the following manner:--

Rs. 60/- rent from 6-10-1972 to 5-3-1973 on 6-3-1973

Rs. 30/- rent from 6-3-1973 to 5-6-1973 on 3-6-1973.

Rs.80/- rent from 6-6-1973 to 5-2-1974 on 5-1-1974

4. The petitioner thus did not commit any default yet, however, he deposited the entire rent demanded along with interest and costs etc. in the Court on the first date of hearing and is liable to be saved from ejection.

5. The learned J.S.C.C. held the rate of rent to be Rs.10 per month, that the plaintiff has failed to prove that the defendant did not pay rent from 2-7-1955 to 5-6-1972 to Kala Devi, and She did not legally transfer her right to recover rent for the said period to the plaintiff, the defendant tendered the rent Rs. 30/- from 6-3-1972 to 5-6-1972 and on his refusal to accept the same deposited it as well as rent up to 5-3-1973 under Section 30 on 6-3-1973 as per challan. The defendant though in arrears for six months on 2-3-1973, the date of notice, deposited the

same within-one month under Section 30, he did not commit any default within the meaning of Section 20 of Act 13 of 1972 and was not liable to ejectment. He accordingly dismissed the suit.

6. The revisional Court held the rate of rent to be Rs. 6/- per month, as per endorsement on the back of the rent note, rent only up to 2-7-1955 was paid to Kala Devi, the petitioner-defendant was in arrears since 2-7-1955, the assignment in favour of the respondent was valid, the defendant did not tender or pay the rent due after service of the notice on 5-3-1973 to the respondent and had no right to deposit the same under Section 30 thereafter, he thus was a defaulter, the deposit of Rs. 179.77 was not sufficient to claim the benefit of Section 20(4) of the Act.. With these findings he disagreeing with the J.S.C.C. decreed the suit.

7. Learned counsel for both the parties -have been heard and the material placed on record perused.

8. On behalf of the defendant-petitioner, it is contended that the revisional Court acted beyond its jurisdiction in re-appraising the evidence to disturb the finding of the J.S.C.C, on the various questions of fact. It had no jurisdiction to disturb the finding of the J.S.C.C that the rent up to 5-6-1972 stood paid to the previous landlord Kala Devi, and consequently there could be no assignment of the right to recover the rent of the said period by her to the plaintiff-respondent, and that the rent after the period 5-6-1972 was validly deposited under Section 30 of the Act 13 of 1972.

9. The contention on behalf of the respondent on the other hand in that the revisional Court's finding regarding the rate of rent being Rs. 5/- per month, contrary to what was held by the J.S.C.C. is against law, but rest of the finding regarding the petitioner-defendant being in arrears and a defaulter, not entitled to the benefit of Section 20(4) of the Act are perfectly valid.

10. There is good authority on the point that in a revision under Section 25 of the Provincial Small Cause Courts Act revisional Court has jurisdiction only to see whether the order of the J.S.C.C. suffers from any illegality, it has no jurisdiction to go into the evidence itself to determine the question of fact already determined by

the J.S.C.C. In case it finds re-appraisal necessary under law, in the facts & circumstances of the case, all that it is empowered is to remand the said questions to the Court of Small Causes for decision after keeping in view the principle of law enunciated.

11. In the instant case the conclusions of the J.S.C.C. regarding rate of rent being Rs.10/- the same having been paid to Kala Devi for the period up to 5-6-1972, was a finding of fact, in so doing the J.S.C.C. considered the evidence led by the parties in this behalf, merely because there was no endorsement on the back of the rent note of the rent after 2-7-1955, it does not necessarily mean that all other evidence on record stood countered. The conclusions of the revisional Court on these two points, therefore, are unsustainable, and the findings of the J.S.C.C. that the rent was Rs. 10/-per month and was paid up to 5-6-1972 is to be restored.

12. The more important question in this matter, however, is whether the defendant was in arrear of rent for four months or more on 5-3-1973 the date of service of notice of demand and termination, and failed to pay the same despite such demand. In this regard, however, the conclusions of the revisional Court are perfectly in accordance with law. As per the own finding of the trial Court, the defendant was in arrears of rent for six months on the date of notice, the rent for the period prior to it having been deposited under Section 30 of the Act on account of the refusal of the plaintiff respondent, as evident from the money order coupons filed before the trial Court. It has been brought on record of this petition that the relevant Natthi of the lower Court record having been weeded out after statutory period the said money order coupon is now not available. Be that as it may, this part of the finding also being on a question of fact, has to be accepted.

13. The moot question which falls for determination however, is whether the deposit under Section 30 of the rent for the period due on the date of service of notice despite the demand having been made by the landlord could be treated as compliance thereof. A perusal of Section 30 of the Act would go to show that it permits deposit of rent, in the event of refusal by the landlord, till the landlord by notice in writing to the tenant signifies his willingness to accept it.

14. In the instant case the demand of rent by the landlord by means of the notice served on 5-3-1973 clearly signifies his willingness to accept the rent. That despite the same instead of paying the rent to the respondent landlord, the petitioner tenant chose to deposit the same in the Court of Munsif under Section 30 of the Act shows his failure to comply with the said notice, as after service of the demand notice, no right was available to him to deposit the same under Section 30. The said deposit thus has to be ignored and the defendant held defaulter liable to be ejected.

15. Now coming to the question of benefit of Section 20(4) claimed by the petitioner-tenant, admittedly the petitioner in order to claim benefit thereof deposited a sum of Rs. 179.77 on 8-1-1974. As per the detail supplied by the affidavit of Mukhtar Ahmad, filed on behalf of the petitioner before this Court, the break-up of the same was as follows.

The amount of rent for 10 months Rs.114.00

costs of suit Rs. 51.77

Amount of interest Rs. 14.00

16. As per the conclusion above, the rent payable by the petitioner being Rs. 10/- per month, the amount deposited was short both in respect of the amount of rent, as well as the interest @ 9% per annum. It being so and the difference of amount not being negligible, the petitioner's claim of having complied with Section 20(4) of the Act was rightly rejected by the learned revisional Court. The petitioner was not entitled to be relieved of ejection and the decree in this regard passed by the learned Additional District Judge does not suffer from any legal or factual infirmity, so as to call for any interference. The writ petition is devoid of merit.

Accordingly the writ petition is hereby dismissed. No order as to costs is made.

17. Petition dismissed.