Kailash Chandra and Another Vs. Iiird Additional District Judge, Jalaun and Others

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Court : Allahabad

Decided On : Aug-24-1998

Reported in : 1999(1)AWC302

Judge : J.C. Gupta, J.

Acts : Provincial Small Cause Courts Act, 1887 - Sections 12 and 25; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 20(4), 21(1), 30 and 30(1) and (2); Constitution of India - Articles 226 and 227; Provincial Insolvency Act - Sections 75(1); Uttar Pradesh Amending Act - 1957

Appeal No. : C.M.W.P. No. 6505 of 1980

Appellant : Kailash Chandra and Another

Respondent : iiird Additional District Judge, Jalaun and Others

Advocate for Def. : B.N. Agrawal, Adv.

Advocate for Pet/Ap. : Rajesh Ji Verma, Adv.

Judgement :

J. C. Gupta, J.

1. This is tenants writ petition directed against the judgment and order dated 17.5.1980 passed by respondent No. I in the revision filed by respondent Nos. 2 and 3 whereby revision was allowed and the judgment and decree dated 30.10.78 passed by the Judge. Small Cause Court in S.C.C. Suit No. 17/76 has been set aside and the suit for eviction of the petitioners from the shop in question has been decreed.

2. The dispute relates to a shop detailed at the fool of the plaint filed by respondent Nos. 2 and 3 against the petitioners. The suit was filed with the allegations that the defendants were defaulter in payment of rent and they had paid rent at the rate of Rs. 18 per month upto 31.5.71 only and rent from 1.6.71 was not paid despite several demands, hence the plaintiff served the defendants with a notice of demand and eviction. After the expiry of the notice period the suit for the recovery of rent from 15.12.1973 to 4.1.1975 amounting to Rs. 443.50 p. and for mesne profits from 5.1.75 till 15.12.1976 amounting to Rs. 204.50 p. was filed as rent before 15.12.1973 had become time-barred. It was further alleged that the defendant No. 1 had sublet the shop to defendant Nos. 2 and 3. Therefore. In short the decree for eviction was sought on the grounds of default in payment of rent and subletting. The suit was contested by the defendants and it was pleaded that the shop was let out by Smt. Gaura Devi in favour of defendant Nos. 1 and 2 jointly on 31.3.1971 and receipts were issued in the name of Baldev Prasad who retired from the partnership and defendant Nos. 2 and 3 continued the business in the name of firm Govlnd Kaitash Chandra. In Original Suit Wo. 210/74, Kailash Chandra v. Mukundi Lal, it was held that the contesting defendants were tenants and, therefore, the present suit was barredby the principle of res judicala. The defendants have deposited Rs. 1.510 in Misc. Case No. 594. The trial court framed a number of issues and it would be suffice to mention only those issues, the decision thereon has been challenged in this writ petition.

3. On the issue of default in payment of rent, the trial court came to the conclusion that the defendants committed default. However, the decree of eviction was refused on the ground that the defendants have complied with the provisions of Section 20 (4) of the U. P. Act No. 13 of 1972 by depositing the required amount. On the issue of sub-letting the trial court recorded a finding that it has not been

proved thai the shop in question has been sublet to defendant Nos. 2 and 3. On the question of res judicata the issue had been decided in favour of the plaintiff. The notice was also held to be valid. With these findings the trial court dismissed the plaintiffs' suit for eviction. Aggrieved by the said judgment, the respondent Nos. 2 and 3 preferred revision which came up for hearing before the respondent No. 1. The revisional court came to the conclusion that the defendants were liable to eviction on the ground of denial of title of the plaintiffs. On the question of default in payment of rent, the revisional court agreed with the view of the trial court that the defendants were defaulter. However, while deciding the question whether the benefit of Section 20 (4) of the Act could be extended to the defendants, the revisional court took the view that since the amount deposited under Section 30 (2) of the Act was not a valid deposit, the said amount could not be adjusted while considering the question of deposit made under Section 20 (4) of the Act. It further came to the conclusion that since the tenant has not deposited the time-barred rent under Section 20 (4) along with interest, he was not entitled to be relieved from the decree of eviction. The revisional court further held that sub-letting has been proved by the own admission of the defendants as it was admitted by them that Badri Prasad to whom theshop was let out has left six or seven years before as such, there would be a presumption of sub-letting under Section 25 read with Section 12 of the Act. With these findings, the revisional court has set aside the judgment of the trial court and has decreed the suit.

4. Sri Rajesh Jee Verma, counsel for the petitioner challenged the validity of the judgment of the lower revisional court by contending that the powers of revisional court under Section 25 of the Small Causes Court Act are very limited and in the present case the lower revisional court has exceeded its jurisdiction in reversing the findings of fact arrived at by the Judge. Small Cause Court both regarding the sub-letting the protection extended to the defendant petitioner under Section 20 (4) of the Act. On the other hand learned counsel for the respondents-land lord. Sri B. N. Agarwal argued that in the present case the revisional court has simply rectified the mistakes committed by the trial court in recording the findings as the trial court while recording the said findings totally misconceived the legal position and tt was open for the revislonal court to point out the legal errors committed by the trial court and rectify them and there has not been any re-assessment of evidence.

Both the counsel in support of their respective contentions have relied upon a number of decisions of this Court as well as of the Supreme Court.

5. In order to appreciate the respective contentions raised by the parties' counsel, it may be necessary to examine the question about the scope of powers of the Court while hearing revision under Section 25 of the Small Cause Courts Act. Section 25 reads as under :

'The High Court, for the purpose of satisfying itself that a decree or order made in any case and decided by a Court of Small Causes was according to law, may call for the case and pass such orders with respect there to as it thinks fit.'

6. A plain reading of the above would Indicate that the powersconferred on the revisional court are only supervisory and not like of appellate court. The revisional court can call upon the record for satisfying itself that the decree passed by the Judge, Small Cause Court is according to law and if it is not so. the revisional court can pass such order with respect thereto as it may think fit.

7. In the case of State of Kerala v. K. M. Charia Abdulla, AIR 1965 SC 1585. It was held that the revisional court has power to make such orders as may be just and proper for rectifying the defects in the judgment of the trial court.

8. The Supreme Court in the case of Hart Shanker u. Rao Girdhari Lal Choudhary, AIR 1963 SC 696. considered the phrase 'according to law' occurring in Section 25 and the view taken was that the phrase refers to the decision as a whole and is not to be equated to errors of law or of fact slmpliciter. The overall decision must be according to law. I.e., there should be no miscarriage of justice due to a mistake of law.

9. The phrase 'according to law' similarly occurs in the first proviso to Section 75(1) of the Provincial Insolvency Act and while interpreting the said phrase in the case of Malini Ayyappa Naicker v. Seth Manghraj Udhavdas, AIR 1969 SC 1344, the Apex Court held that while exercising the powers under the said proviso, the High Court is by and large bound by the findings of fact reached by the district court. It even went on to observe that a wrong decision on facts by a competent

authority is also a decision according to law and the Court has no power to examine de novo findings of fact reached by the trial court.

10. Hon'ble K. C. Agrawal, J., in the case of Prem Kumar and others v. Sant Prasad Nigam. 1979 ARC 303, took the view that a Court dealing with revision under Section 25 of the Provincial Small Cause Courts Act has a limited jurisdiction. It cannot assume the function of a Court of appeal and re-appraise the evidence. Further it has no power to look intothe evidence of the case and to decide whether the finding of fact arrived at by the Court below is justified by the evidence on record or not. In the case of Sri Prayag Narain Gaur v. Sri Muneshwar Das and another, 1979 ARC 341, it was held that the decisions of the Supreme Court as also the weight, of judicial authority in this Court clearly show that while it is open to the revisional court under Section 25 to interfere with the decision of the trial court in case the same is not according to law. yet it is not open to the revisional court to substitute its own finding with regard to a question of fact even after deciding to interfere with the decision of the trial Judge. Hon'ble V. K. Mehrotra. J., who decided the aforesaid case was further of the view that if the revisional court is of the opinion that the trial court while recording a particular finding of fact failed to lake into account the documentary evidence on record, the revisional court is competent to set aside the same but it is not open to the revisional Judge to reappraise the entire evidence on record himself and to come to the conclusion of fact different from the one recorded by the trial Judge and in such a situation the appropriate course for the revisional court is to send the case back to the trial Judge for a fresh decision in the light of the guidelines which may be indicated by him in the judgment, if he so chooses.

11. In B. N. Chakrauerty and others v. VIIth Additional District Judge, Allahabad and others, 1980 ARC 556, Hon'ble A. N. Verma, J., took the view that the revisional court is not entitled to go into an issue of fact for the first time in revision and at any rate to decide that issue of fact for itself.

12. The legal position with regard to the powers of the Court in a revision filed under Section 25 of the Provincial Small Causes Courts Act was thoroughly examined and made clear by a Division Bench of this Court in the case of Laxmi

Kishore and another v. Har Prasad Shukla, 1981 ARC 545, and certain guidelines have been laid down with regard tothe powers of revisional court dealing with revisions filed under Section 25 of the Act and it was held :

'If it finds that there is no evidence to sustain a finding on a particular Issue of fact, it can ignore that finding. Same will be the case where the finding is based only on inadmissible evidence. In such cases, the Court will be justified in deciding the question of fact itself, because the evidence is all one way. No assessment is needed. The Court can also decide the revision if only a question of law or some preliminary point of law. viz., validity of notice, is sufficient for its decision.

But if it finds that a particular finding of fact is vitiated by an error of law. It has power to pass such order as the justice of the case requires ; but it has no jurisdiction to reassess or reappraise the evidence in order to determine an issue of fact for itself. If it cannot dispose of the case adequately without a finding on a particular issue of fact, it should send the case back after laying down proper guidelines. It cannot enter into the evidence, assess it and determine an issue of fact.'

13. Another Division Bench of this Court in the case of Ram Narain v. Kanhaiya Lal Vishwakarma, 1965 ALJ 989. held that under Section 25 of the Provincial Small Cause Courts Act as substituted by U. P. Amending Act No. 17 of 1957, the District Judge has power to satisfy himself that a decree or order made in any case decided by the Court of Small Causes was according to law but is not empowered to look into the evidence of the case and to decide whether the finding of fact arrived at by the Court below is justified by the evidence on record or not. Only questions of law can be gone into and the fact that the particular endorsement was made in April or September, 1955 was a pure question of fact and cannot be looked into by exercising powers under Section 25 of the Act.

14. In the case of Om Prakash Misra v. IVth Additional District Judge, Gorakhpur and another, 1989 ID ARC 255, a learned single Judge of this Court was of the view that finding on the question of arrears of rent arrived at by the trial court is a finding of fact based upon the appraisal of evidence which could not of fact based upon the appraisal of evidence which could not be reversed and substituted by the

revisional court on reassessment of evidence.

15. There is a plethora of authorities, namely. Allah Bux v. Ist Additional District Judge, Nainital and another, 1995 (1) ARC 385 : Om Prakash Gupta v. Vth Additional District and Sessions Judge, Aligarh and others, 1996 (2) ARC 532 ; Mart Mohan Dixit v. Additional District Judge/Special Judge (E. C. Act), Jalaun at Orai and others, 1996 (2) ARC 561 and Durga Prasad and others v. VIIth Additional District Judge, Kanpur Nagar and others, 1998 (2) AWC 1161, the gammut of which is that in a revision under Section 25 of the Provincial Small Cause Courts Act, the revisional court has jurisdiction only to see whether the order of the trial court is according to law and it has no jurisdiction to go into the evidence, reappraise the same and re-determine the question of fact for itself which has been already determined by the Court below. In case it finds infirmity in the finding of fact recorded by the lower court and it cannot dispose of the case adequately without a finding on a particular issue of fact, all that it is empowered is to remand the case back to the trial court after laying down proper guidelines.

16. Sri B. N. Agrawal, learned counsel for the contesting respondents supported the impugned order contending that in the present case the revisional court has acted within its jurisdiction in pointing out the mistakes and errors of law committed by the trial court in not recording findings on the relevant issues which on correct application of law necessarily and conclusively flowed from undisputed and admitted filets existing on the record whichwere completely left out from consideration by the trial court under an erroneous impression of the legal position. In reality there has been no re-assessment or reappraisal of evidence by the revisional court and this Court in its writ jurisdiction should not interfere. In support of his argument he placed reliance on a Supreme Court decision in the case of Jagdish Prasad v. Smt. Angoori Devi. 1984 (1) ARC 679. In this case before the Supreme Court, decree for eviction was sought on the ground that the tenant has created a subtenancy in favour of M/s. Pawan Trading Company. The tenant denied the allegation of subletting. The trial Judge decreed the plaintiff's suit holding that the burden was on the defendant to explain the circumstances under which a partner of the Pawan Trading Company was sitting in the accommodation and he presumed subletting merely from the presence of the son

of the proprietor of the Pawan Trading Company in the premises of the tenant. In revision the Additional District Judge took note of the erroneous approach of the trial court and it was held by the learned Judge that it was not at all admitted by the defendant that Pawan Trading Company or any member of the said company has been carrying on business in the shop along with him or by himself and mere presence of a member of Pawan Trading Company in the shop at, a certain point of time could not he sufficient to hold that the business was being carried on by Pawan Trading Company in the shop. It was for the plaintiff to lead good and positive evidence to prove that the business in fact at thai shop was being carried on by the Pawan Trading Company and not by the defendant himself. The revisional court thus reversed the finding of the trial court and held that subletting was not proved. Aggrieved by the said order, the landlord approached the High Court and the writ petition was allowed and it was held that the question whether the defendant had sublet the shop was determined by the trial court on the basis of the direct oral and documentary evidence adduced by theplaintiff to the effect that in point of fact it was the proprietor of M/s. Pawan Trading Company who was doing business in the shop in question instead of the defendant and since it was a pure and simple finding arrived at on the analysis of the evidence on record, the lower revlsional court exceeded its jurisdiction under Section 25 of the Provincial Small Cause Courts Act in substituting the finding of the trial court on reappraisal of the evidence on the record. The Apex Court held that the allegation that the premises had been sublet to the Pawan Trading Company had to be proved as a fact by the landlord and merely on the basis of the photograph showing the presence of the son of the proprietor of Pawan Trading Company within the room, sub-letting could not be presumed. The approach of the trial Judge was totally vitiated as merely from the presence of a person other than the tenant in the shop, sub-letiing could not be presumed. The Additional District Judge rightly took exception to this approach to the matter by the trial court and since the evidence of the plaintiff had not been scrutinised under the erroneous impression of the legal position, the same was looked into to find out whether the claim of the sub-tenancy had been established. It was held that the revlsional Jurisdiction under Section 25 of the Provincial Small Cause Counts Act is not as wide as the appellate jurisdiction under Section 96 of the Civil Procedure Code, yet in a case of this type

it was open for the revislonal court to point out the legal error commuted by the trial court in its approach to this material aspect. The legal position having been totally misconceived by the trial court therefore, there was nothing wrong or Illegal in the revisional authority to rectify the defect in the conclusions drawn by the trial court. It was further held in the said decision that the High Court in exercise of writ jurisdiction should not interfere in such matters especially when the lower revisional court has merely corrected a defect in ihe trial court's judgment which was based on wrong assumption of factand there has been no reassessment of the evidence.

17. The next case relied upon by the counsel for the respondents is Rameshwar and others v. IInd Additional District Judge, Muzaffarnagar, 1982 ARC 412. In this case a suit for ejectment was filed on the ground that the tenant without the consent of the plaintiff landlord unlawfully sublet a portion of the accommodation. The trial court dismissed the suit holding that subletting by defendant No. 1 to defendant Nos. 2 and 3 was not proved. On a revision filed by the plaintiff, the revisional court set aside the finding of the trial court and held that on the facts and circumstances established on the record it was proved that defendant Nos. 2 and 3 were sub-tenants of defendant No. 1 and accepting the case of the plaintiff about illegal subletting decreed the suit. In the writ petition filed before this Court it was contended that the revisional court had no jurisdiction, having regard to the scope of Section 25 of the Small Cause Courts Act to set aside the finding recorded by the trial court on the issue of sub-letting. This Court found no merit in the said submission as in its opinion, the revisional court had set aside the finding of the trial court on the ground that the same was based on misreading of evidence and was contrary to law. This Court observed that the revisional court was right in taking the view that the decision of the trial court was contrary to law inasmuch as defendant No. 1 was admittedly in possession of the house as a tenant when the defendant Nos. 2 and 3 are alleged to have come to occupy a part thereof. There was nothing on the record to suggest whether, when and how defendant No. 1 had surrendered any part of the tenancy rights entitling the plaintiff to admit defendant Nos. 2 and 3 as tenants over a portion of the building. This Court further found that apart from the errors pointed out by the revisional court, the decision of the trial court was based on entirely unwarranted conjectures and surmises. After

examination of record this Court held that the conclusionsreached by the revisional court were perfectly sound and proper, legally as well as based on the evidence which called for no interference.

18. Hon'ble A. N. Verma. J., of this Court in Copal Krishna Andley v. Vth Additional District Judge. Kanpur and others, 1982 ARC 45, held that the jurisdiction of a revisional court exercising powers under Section 25 of the Provincial Small Causes Courts Act to set aside the decree or order passed by Small Cause Court on the ground that the decision of the latter is perverse and is vitiated by misreading of material pieces of evidence on the record has never been doubted. It is hardly necessary to add that a decision which is perverse and is found upon misreading of the evidence on record or disregard thereof would clearly be contrary to law and the revisional court is fully competent to set aside the said decision. In this case also on behalf of the petitioner it was convasscd before this Court on the basis of the Division Bench decision of this Court in Lakshmi Kishore and another v. Har Prasad Shukla (supra), that the revisional court did not have any power to decide an issue of fact itself. It can only remand the case to the trial court where the issue requires reassessment of the evidence on record. While from the side of the contesting respondents it was vehemently contended that the aforesaid view expressed in Lakshmi Kishore, (supra) was manifestly unsustainable and was opposed to the plain and unambiguous language of Section 25 which was expressed in very wide terms. In the alternative it was argued that even if the aforesaid view of this Court in Lakshmi Kishore (supra) was followed, this Court as of course in a writ of certiorari which is not a writ of right, is not bound to quash the order even where this Court finds that the conclusion reached by the revisional court was Just and proper. The learned single Judge held that though technically the proper course for the revisional court was to remand the case to the trial court but as no other conclusion was really possible except the one reached by the revisional court on the factsestablished on record, interference bythis Court in writ jurisdiction was notnecessary.

19. in the light of the authorities mentioned above, the powers of High Court or of the District Court while hearing revisions under Section 25 of the Small Cause Courts Act may be elucidated and summarised as under :

(i) such powers are only supervisory and limited and the Court while exercising such powers cannot assume the function of a Court of appeal and reappraise the evidence ;

(ii) the revisional court is by and large bound by the findings of fact reached by the trial court as even a wrong decision on fact by a competent authority is also a decision according to law and the Court has no power to examine de nova findings of fact reached by the trial court ;

(iii) it has no power to examine and scrutinise the evidence meticulously to decide whether finding of fact arrived at by the Courts below is justified by the evidence on record or not ;

(iv) that it is open to the revisional court to make Interference with the decision of the trial court in case the same is not found to be according to law yet it is not open to it to substitute its own finding with regard to the question of fact already determined by the Court below. Despite finding that interference was necessary, the revisional court should not go into an issue for the first time and at any rate to decide that issue of fact for itself ;

(v) cases where the revisional court can ignore the finding of fact recorded by the trial court and record its own finding are :

(a) where the finding of the trial court is based on no evidence or in other words there is absolutely no evidence on record to sustain a particular finding of fact ;

(b) where the finding is solely based on inadmissible evidence, or

(c) where the finding is perverse in the sense that no reasonable man could have ever reached to the conclusion arrived at by the Court below.

(vi) the revisional court is also empowered to point out the legal errors committed by the trial court in its approach while recording a particular finding of fact and if the legal position has been totally misconceived, there is nothing illegal in the revisional authority to rectify the defect in the conclusions drawn by the trial court.

(vii) finding of fact recorded by the trial court is also vitiated in law if it is based on misreading of evidence and/or on conjectures and surmises. Where finding suffers from the defect of non-consideration of vital and material evidence or is based on consideration of irrelevant and extraneous material, the revisional court can interfere ;

(viii) the power of revisional court even where it makes interference in finding of fact, is that it should not substitute its own finding of fact for that recorded by the trial court unless or course the evidence was all the one way and there has been no assessment of the same by the trial court, where the court finds that a particular finding of fact suffers from an error of law the revisional court has the power to pass such orders as the justice of the case requires but it hasno jurisdiction to reassess or reappraise the evidence in order to determine an issue of fact for itself. The appropriate course in such circumstances is to send the case back to the trial court for fresh decision after laying down appropriate guidelines.

20. The power of the High Court exercising jurisdiction under Section 25 of the Small Cause Courts Act is, however, different from the one it exercises under Articles 226/227 of the Constitution of India against the orders passed by the Revising Authority under Section 25 of the Small Cause Courts Act inasmuch as under the former, the High Court examines the question whether the decree passed by the trial court is contrary to law while in the latter jurisdiction, the powers of the High Court are of Judicial Review only as a finality is attached to the orders passed by the lower revisional court under Section 25 of the Act because no appeal or second revision is provided under the statute against such orders. The High Court while exercising powers in such matters does not sit in as a Court of appeal and does not take upon itself the task of reappraising the evidence. The power of judicial review is not concerned with the merits of the decision but with the manner in which the decision was taken. Where the order of the revisional court made under Section 25 of the Provincial Small Cause Courts Act is challenged in writ jurisdiction on the ground that the Court exceeded its power in recording a finding of fact, this Court will not necessarily quash the said order if in its opinion the conclusions reached by the revisional court were perfectly sound and proper as well as based on legal evidence on the record, because in such a

case no fruitful purpose will be achieved by just remanding the case to the trial court as it would further delay the matter. Where in exercise of powers in writ jurisdiction this Court finds that on the evidence on record, no other reasonable conclusion was really possible as has been arrived at by the revisional court on the factsestablished writ of certiorari is not to be issued as a matter of course. The real test in such matters is whether justice has been done to the parties or not. Where the Court finds that on account of wrong approach of the revisional court, miscarriage of Justice has resulted, interference by this Court is a must.

21. In the backdrop of the above proposition of law, I now proceed to examine the facts of the present case. The decree for eviction of the respondents was sought by the landlord on the grounds of default in payment of rent and sub-letting. The rent was alleged to be due from 1.6.1971 which was not paid despite service of notice of demand and eviction. The suit for recovery of rent from 15.12.1973 to 4.1.1975 amounting to Rs. 4,043,50 p. and mesne profit thereafter was instituted. The decree for rent before 15.12.1973 could not be claimed as the same had become barred by time. On the issue of default, the trial court had also recorded a clear finding of fact that the defendants committed default but the defendants were relieved of the decree of eviction on the basis that they have complied with the provisions of Section 20 (4) of the Act by making the required deposit. On the issue of subletting the trial court recorded a finding in the negative and with these findings the suit for eviction was dismissed. The revisional court has reversed the findings of the trial court both on the issue of default as well as of subletting.

22. As far as finding of the revisional court on the issue subletting is concerned, there appears to be force in the submission of the learned counsel for the petitioner as the finding recorded by the trial court on the question of sub-letting was based on appraisal of evidence which could not be re-appratsed by the revistonal court for substituting its own finding in place of the finding recorded by the trial court, if the revisional court found some error or infirmity in the finding recorded by the trial court, the proper course for it was to have remanded the case tothe trial court for recording a fresh finding, after laying down the proper guidelines.

23. However, the impugned judgment is still sustainable as the revisional court has rightly held that the defendants petitioner were not entitled to the protection embodied in Section 20 (4) of the Act. The revisional court on the undisputed facts came to the conclusion that the deposit made under Section 30 (2) of the Act was not valid as there was no bona fide doubt or dispute regarding the relationship of landlord and tenant between the parties. It may be noted here that sub-section (4) of Section 20 provides that while making compliance of the requirements prescribed in the said provision, any rent already deposited by the tenant under sub-section (1) of Section 30 is liable to be adjusted. Thus, the subsection makes a specific reference to the deposits made under Section 30 (1) of the Act and not to the deposit made under sub-section (2) of Section 30 of the Act. The intention of the Legislature thus appears to provide benefit to the tenant of the deposits made under Section 30 (1) of the Act and not to the rent deposited under sub-section (2) of Section 30. In view of this position of law. any rent deposited by the tenant under Section 30 (2) of the Act by the petitioner-tenant could not be deducted from the amount required to be deposited under Section 20 (4) of the Act.

24. In any view of the matter even if the rent deposited under Section 30 (2) of the Act by the tenant petitioner is adjusted towards the amount required to be deposited under Section 20 (4) of the Act, it would be further be found that the rent which was not claimed in the plaint as having become barred by time was not deposited by the petitioner. Even the trial court had recorded a clear finding that the defendants committed default in payment of arrears of rent which was due from 1.6.1971. It appears that the trial courj. while extending the benefit of the provisions of Section 20 (4) of the Act to the tenant petitioner proceeded on the assumption that thepetitioner was liable to deposit under Section 20 (4) of the Act only that rent as was claimed by the plaintiff in the suit totally ignoring the undisputed position that the rent for the period from 1.6.1971 to 14.12.1973 was neither paid to the plaintiff nor deposited under Section 20 (4) of the Act. This approach of the trial court was based on an erroneous impression of the legal position because under Section 20 (4) of the Act, it is obligatory upon the tenant even to deposit a time-barred rent before asking for relieving him from a decree of eviction.

25. Under sub-section (4) of Section 20, the tenant gets relieved from a decree of eviction only if at the first date of hearing of the suit, he 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 together with interest thereon at the rate of 9% per annum and the landlord's costs of suit in respect thereof. This sub-section confers a special benefit upon a tenant of getting relieved against his liability from eviction on the ground mentioned in clause (a) of sub-section (4) of Section 20 which he can get only if he strictly complies with the requirement of making necessary deposits as contemplated under the said provision. It is now well-settled law that even a time-barred arrear of rent continues to remain an undischarged debt and would be included in the phrase 'entire amount of arrears of rent due'. Though the remedy is barred, the debt remains and is not extinguished as has been held in a number of decisions and I may refer to some of them only. Khddi Gram Udyog Trust v. Ram Chandm Ji Sarsaiya Ghat, Kanpur, 1978 ARC 59 (SC) ; S. K. Mukherji v. Kabiraj B. M. Bhattacharya and others. 1970 ARC 74 and Subhash Chandra Jain v. Ist Additional District Judge, Saharanpur and others, 1989 SC and Full Bench Rent Cases 174.

26. In the case of Mahesh Chandra v. 1st Additional District Judge, 1996 (1) ARC 2, this Court held that it is true that sub-section (4) ofSection 20 of the Act has been enacted for the benefit of a tenant and it should be construed liberally in his favour but howsoever liberal approach may be, the express provision contained in the statute cannot be ignored. This provision requires the tenant to pay the entire arrear of rent and if he fails to do so, he cannot get the benefit conferred by the said provision. When a benefit is conferred on a person or class of persons subject to certain conditions, unless those conditions are satisfied, they cannot get benefit. Equitable consideration cannot be made applicable in such cases. Equity cannot operate to annul a statute.

27. Neither before the Court below nor before this Court it could be disputed from the petitioner's side that the defendants had made no deposit of the arrears of rent which had become barred by time and for that reason, the said arrears were not claimed in the suit by the plaintiff. the trial court's finding extending the benefit of Section 20 (4) of the Act was contrary to law and the lower revisional court has

merely corrected the said mistake committed by the trial court. It is not a case where the finding has been reversed on reappraisal of evidence but the right and only logical conclusion deducible from the undisputed facts has been arrived at by the revisional court which was within its competence.

28. In view of the fact that the amount of rent which was deposited by the tenant under Section 30 (2) of the Act, on.a plain reading of Section 20 (4] could not be deducted or adjusted while making compliance of the requirements contemplated under sub-section (4) as the provision makes reference only to adjustment of rent deposited under Section 30 (1) and not to deposits made under Section 30 (2) of the Act, the finding of the trial court extending benefit to the tenant of Section 20 (4) by taking into account the rent deposited by the tenant under Section 30 (2) suffered from an apparent error of law. which error has been corrected by therevisional court by excluding from consideration the said deposit for the purposes of judging the compliance of the provisions of sub-section (4) of Section 20 of the Act.

29. Even for equitable reasons, if the amount of rent deposited by the petitioner under Section 30 (2) is deducted from the amount required to be deposited under Section 20 (4) of the Act, still the view taken by the trial court was not in consonance with law because even as per the finding of the trial court, the rent was due from 1.6.1971 and the tenant deposited under Section 20 (4) of the Act, only that much of rent which was claimed in the suit, that is, from 15.12.1973. The rent from 1.6.1971 to 15.12.1973 was not claimed by the plaintiff on account of the same having become time-barred. Undisputedly this time-barred rent was neither paid nor deposited by the tenant under Section 20 (4) of the Act, yet the trial court relieved the tenant from the decree of eviction seemingly on an erroneous assumption that for claiming benefit under Section 20 (4), the tenant was obliged to deposit only the rerit claimed in the suit by the plaintiff and not the rent which had become time-barred and for that reason could not be claimed in the suit. This approach of the trial court was totally fallacious and unjustified. The view taken by the revisional court that the tenant was not entitled to claim benefit of the protection under Section 20 (4) of the Act was the only logical and Justifiable conclusion which could be drawn from the admitted and undisputed position of

facts.

30. For the reasons advanced above, no interference in the impugned order is required and the writ petition deserves to be dismissed and is accordingly dismissed with costs made easy. Stay order granted earlier stands vacated.