

Bhagwati Devi Alias Bhaggo Devi Vs. liird Additional District Judge, Agra and Others

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Court : Allahabad

Decided On : Dec-10-1999

Reported in : 2000(1)AWC549

Judge : A.K. Yog, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 20(2), 20(4) and 30(1); Provincial Small Causes Court Act, 1887 - Sections 25; [Constitution of India](#) - Article 226; [Code of Civil Procedure \(CPC\), 1908](#) - Order 8, Rule 8

Appeal No. : C.M.W.P. No. 36290 of 1999

Appellant : Bhagwati Devi Alias Bhaggo Devi

Respondent : liird Additional District Judge, Agra and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Rishi Chaddha and ;Ravi Kiran Jain, Adv.

Judgement :

A.K. Yog, J.

1. Smt. Angoori Devi and Mahendra Kumar (Respondent Nos. 2 and 3 in the present petition), after serving notice as required under law (Annexure-3 to the writ petition) filed J. S. C. C. Suit No. 483 of 1982 for ejectment, arrears of rent, pendente lite damages for use and occupation of a portion of the ground floor of the premises Nos. 105 and 105/1 situate in Katra Sunaran, Farrukhabad (Agra) in the tenancy of Smt. Bhagwati Devi (petitioner), at the rate of Rs. 32 per month. Details of the plaintiffs case can be had from the plaint; copy of which has been filed as (Annexure-1 to the writ petition).

2. The Defendant-tenant (petitioner) contested the suit by filing written statement (Annexure-2 to the writ petition).

3. After parties had led evidence and were given opportunity to contest the suit on merit. Judge Small Causes Court (hereinafter called the trial court) held that notice WAS legal and valid, but refused to grant relief to the plaintiff for eviction of the tenant and possession of the premises in question to be delivered to the plaintiff. In view of the finding that tenant-defendant had made requisite deposits under Section 20 (4). U. P. Urban Buildings (Regulation of Letting. Rent and Eviction) Act. 1972, U. P. Act No. XIII of 1972 (for short called 'the Act'), trial court relieved the tenant from facing decree of ejectment. Trial court, took the view that 'first hearing' in the instant case, as contemplated under Section 20 (4) of the Act, could not be earlier than March 22, 1983, that defendant had made deposits on 8th February, 1983 which satisfied requirements of Section 20 (4) of the Act.

4. The Plaintiff filed SCC Revision No. 3 of 1995 under Section 25. Provincial Small Causes Court Act and it has been allowed by Respondent No. 1 (IIIrd Additional District Judge, Agra) vide Judgment and order dated 12th August. 1999 (Annexure-6 to the writ petition). As a consequence of the revisional judgment, the Defendant-tenant was directed to hand over possession within thirty days of the accommodation in his tenancy.

5. Feeling aggrieved Smt. Bhagwati Devi alias Bhaggo Devi (Petitioner) has filed this petition under Article 226, [Constitution of India](#), and prayed for a writ, order or direction in the nature of certiorari to quash the impugned Judgment and order dated 12th August. 1999 (Annexure-6 to the writ petition).

6. In the present case, contesting respondent Nos. 3 and 4 (Angoori Devi and Mahendra Kumar) have already appeared as caveators and represented by their counsel Sri Madhav Jain. These respondents subsequently engaged Shri Prakash Gupta, Advocate, who also appeared for the caveator-respondent Nos. 3 and 4. Respondent No. 1 is also served through Chief Standing Counsel on notice being served upon it as contemplated under Rules of Court.

7. All the Respondents are thus duly served and represented.

8. When the matter was taken up at the admission stage all the learned counsel appearing on behalf of respective parties contended that this petition may be finally decided as no counter-affidavit was required to be filed in view of the statement of the learned counsel for the petitioner that he was assailing impugned judgment passed by respondent No. 1 (Annexure-6 to the writ petition) on the sole legal question as to what shall be 'first hearing' in the facts of the present case. Learned counsel for the petitioner unequivocally stated, at the beginning of the arguments, that he is not pressing any other ground mentioned in the writ petition.

9. Learned counsel for the petitioner submitted that in the facts of the instant case, the first date of hearing could not be taken 16th August, 1982 as held by the revisional court. According to the Petitioner, 'first date of hearing could not be any date on or before 22nd March, 1983.

10. Learned counsel for the petitioner drew notice of this Court to the order-sheet of the aforesaid J.S. C. C. Suit No. 483 of 1982 (Annexure-4 to the writ petition). Learned counsel for the petitioner in support of his contention referred to the trial court judgment (Annexure-5 to the writ petition) and referred to the discussion pertaining to Point No. 2 framed by the trial court. Point No. 2 was--Whether Defendant committed default in payment of rent.

11. Relevant discussion regarding first hearing finds place on internal page 7 of the trial court Judgment.

Trial Court has referred to the following decisions :

(1) 1994(1) ARC 88

(2) 1992 (2) ARC 321

Placing reliance on the aforesaid decisions. Trial court held that first hearing under Section 20 (4) of the Act shall be the date when Court for the first time applies its mind to the case.

12. On the other hand, learned counsel appearing on behalf of respondent Nos. 2 and 3 submitted that trial court committed illegality in holding that first date of hearing in the facts of the case was 22nd March, 1983. According to him, reading of Section 20 (4) of the Act and the final proclamation of law through decisions rendered by Apex Court and this Court, the first date of hearing could not be a date other than 16th August, 1982. Learned counsel for the contesting respondent submitted that the judgment of the revisional court was not vitiated. The revisional court referred to the following decisions :-

(i) 1986 ALJ 942

(ii) 1993 ALJ 1250

It will be noted that revisional court also took note of the cases referred by the trial court in its Judgment and has dealt with them.

13. The contention of the petitioner that deposits made through challan (on the basis of the tender passed by the Court) should be treated to relate back to the date of passing of the tender.

14. Learned counsel for the respondent did not dispute the said position in law. Reference may be made to the following decisions in this context-

(i) 1976 AWC 580 (Hon'ble N.D. Ojha, J. as he then was)

(ii) 1977AWC321 (DB)

(iii) 1981 ARC 1 (Paragraph 3)

15. In the present case tender was passed on 8th February, 1983. All the concerned parties agree that date of deposit be taken as 8th February, 1983 in the

present case.

16. Before dealing with the legal position as to what shall be the date of first hearing as contemplated under Section 20 (4) of the Act, it will be noted that the petitioner has not filed copy of the summons for perusal of the Court and, therefore, the case is to be decided on the basis of the record as it stands.

17. Section 20 (4) of the Act quoted for ready reference-

'20. Bar of suit /or eviction of tenant except on specified grounds :

(4) 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 buildings in the same city, municipality, notified areas or town area.

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

(a) the expression 'first hearing' means the first date for any steps 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 Explanation to original Section 20 (4) of the Act has been added vide U.P- Act 28 of 1976 with effect from 5th July. 1976. From the dates mentioned above we are concerned with the amended Section 20 (4) of the Act with Explanation.

18. For convenience, a few chronological dales may be noted :--

(i)

16-08-82

Date shown in summons Defendants sought adjournment for filing W. S. One month for W. S. allowed. Court fixed 8th October, 1982.

(ii)

08-10-82

Case adjourned on Defendant's request fixed 18-10-82.

(iii)

18-10-82

Defendants' 13th December, 1982.

(iv)

13-12-82

Defendants' adjournment.

(v)

13-01-83

Defendants-

(vi)

08-07-83

Tender got passed.

(vii)

Court directed Defendant to file written statement by 15th April. 1983 falling which Court to proceed ex parts under Order VIII, Rule 8. Code of Civil Procedure.

There is no dispute regarding aforementioned dates.

19. At the Bar reference has been made to the following cases :

1. 1981 Allahabad Rent Cases 1 (Ved Prakash Wadhwa v. Vishwa Mohan-- Paragraphs 2 and 3).

The said case is not relevant for the case in hand inasmuch as Supreme Court in Paragraph 3 of the judgment observed 'We must adhere that we are not concerned in this case with the amendment by way of Explanation to Section 20 (4), as the present litigation was antecedent to the amendment.'

Undisputedly, the provision after addition of Explanation is relevant for the present case.

2. Siya Ram v. District Judge. Kheri and others, 1984 (1) ARC 410 (FB)-- Paragraphs 7 to 15).

The Full Court in this case, taking into account the Explanation added by Act 28 of 1976 held that the view taken in the case in Jagannath v. Ram Chand Srivastava. 1982 (1) ARC 665, approved the decision and it was held it is only the date mentioned in summons and not any adjourned date should be treated as the date of first hearing, (see Paragraphs 8 and 9).

3. (Siraj Ahmad Siddiqui v. Ram Nath Kapoor, 1993 (2) ARC 451 (SC)-- Paragraphs 14-16).

Supreme Court took note of the Explanation in Paragraph 6 of the Judgment. In Paragraph 13 of the judgment it observed-

'We are of the view, therefore, that the date of first hearing as defined in the said Act is the date on which the Court proposes to apply its mind to determine the

points in controversy between the parties to the suit and to frame issues, if necessary.'The Supreme Court concurred with the view taken by in the case in Shrinath Agrawal v. Shrinath,1983 (2)ARC 422 and in Paragraph 15 of the judgment noted-

'We are in agreement with the ratio of the judgment in so far as it says that when time is fixed by the Court for filing of the written statement and the hearing, these dates bind, but regardless of the service of the summons and compliance of the provisions of Section 20 (4) of the said Act must be judged upon the basis of the dates so fixed.'4. (Adwatiyanad v. Judge Small Causes Court, Meerut and others, 1985 (1) ARC 563 (SCI----Paragraphs 4. 5 and 6).

In the aforesaid case Adwatiyanand noted case of Siraj Ahmad Siddiqui, Ved Prod Wadhwa and the case of Styra Ram (supra) and in Paragraphs 4. 5 and 6 of its Judgment Supreme Court clarified that the ratio of the Judgment in the case of Shrinath Agrawal was not approved as such, but only to the extent that when time is fixed by the Court for filing of the written statement and the hearing these dates bind the defendant regardless of the service of the summons and that compliance of Section 20 (4) of the Act must be judged on the basis of the dates fixed in the case. In paragraph 10 of the judgment in the case of Adwatiyanad (supra) it is observed. 'The said observations would be construed to mean that the Court has approved the said decision.....'

In Paragraph 6 in the aforesaid case of Adwatiyanad the Apex Court held that the decision rendered in Siraj Ahmad Siddiqui (supra) will be a good law as it could not be said that Supreme Court did not consider the Explanation added to Section 20 (4) of the Act. The Supreme Court went on to observe. 'The said decision shows that even after the insertion of the Explanation, the expression 'first hearing of the suit' in Section 20 (4) means the date on which the Court proposes to apply its mind to determine the point in controversybetween the parties to the suit and to frame issues, if necessary.'

Shyam Lal v. Janki Das, 1997 (2) ARC 607--Paragraph 6--M.C. Agrawal).

The learned single Judge held, on the basis of the decision of Apex Court in the case of Adwatiyanad (supra) that the first hearing of the suit would mean the date on which the Court proposes to apply its mind, i.e., the date fixed for first hearing of the suit and it would be the date fixed for filing written statement in Paragraph 7 of the said Judgment learned single Judge noted that in that petition it was nowhere stated that the summons in question were not issued and fixed 7th December, 1990 for hearing of the matter and that copy of summons was not enclosed. The learned single Judge was, therefore, constrained to observe that finding of the Court below that 7th December, 1990 was the date fixed for hearing of the suit was not challenged. It was further observed that the Court proposed to apply its mind to the matter on the date fixed in the summons and it was another thing that because of the adjournment sought by the defendant-petitioner it could not do so.

The learned single Judge also observed that, according to the decision of the Hon'ble Supreme Court the date on which the Court proposes to apply its mind will be the date of first hearing of suit. It was further noted that the Hon'ble Supreme Court's Judgment cannot be interpreted to mean that the Court actually proceeded to apply its mind to determine the controversy will be the date of first hearing. Therefore, the Judgment of the Hon'ble Supreme Court does not help the petitioner in this case and the finding recorded by the Court below is in order and requires no interference.

6. Virendra Pal Sharma v. Sita Ram Agrawal through LRs., 1998 (2) ARC 93 (Paragraphs 15 to 20).

The case of Virendra Pal Sharma is on entirely distinct facts as will be evident from perusal of Paragraph 16. Learned single Judge, however, in Paragraph J6 of the judgment observed that Supreme Court in the case of Siraj Ahinad did not go into details.

The learned single Judge, however, in the case of Virendra Pal Sharma has relied upon the decision of Supreme Court in the case of Vimal Tripathi v. Additional District Judge vide para 16 of the said judgment. The learned single Judge in this case 'The intention of the legislature is explicit in the incorporation of such situation

which cannot be overlooked. This position was not gone into case of Siraj Ahmad Siddiqui. Apart from it was not necessary to go into the facts and circumstances of the case before the Apex Court which question was not required to be again deliberated in the said decision.

7. (Smt. Chhoti v. XIII Additional District Judge, Agra, 1999 (2) ARC 71 (Paragraphs 3, 4 and 5), Yatindra. J. in the said case took the view taken by Hon'ble M.C. Agrawal. J. in the case of Shyam Lal (supra) lays down correct law.

20. Considering the ratio laid down by the Apex Court in the case of Siraj Ahmad Siddiqui (supra), the concept of first hearing cannot be said to have been changed with the enactment of Explanation. As already noted above, the Court must find out on the facts of each case as to what is the date on which the Court for the first time proposes to apply its mind to determine the points in controversy and this may even including framing of issues, if so mentioned in the summons (para 13) of the judgment in the case of Siraj Ahmad Siddiqui may be referred).

21. In the absence of the copy of summons and no effort being made by the Petitioner to bring the same on record, it cannot be ascertained as to what was mentioned in the summons, which was received by the tenant. The crux of the matter and the answer lies in the fact that Court is not required to ascertain first date of actual hearing. But it required to be found out the first date on which Court proposes to apply its mind for hearing. Keeping in mind the ratio laid down in the case of Siraj Ahmad Siddiqui read along with the case of Shyam Lal, I have no doubt that first hearing in the present case was 16th August. 1982. It may also be noted that in the opinion of this Court, judgment rendered in the case of Virendra Pal Sharma (supra) cannot be said to be wrongly declared in the facts of that case. Moreover, it will be noted that the Judgment in the case of Shyam Lal (supra) was not referred to before the learned single Judge and hence no exception could be taken to the same as observed by another learned single Judge in the case of Smt. Chhoti (supra). In any view of the matter, in view of the decision of the Apex Court in the case of Siraj Ahmad Siddiqui any Judgment of this Court contrary to the above, shall be deemed to have been overruled and need not be followed by this Court.

21. In view of the above. I hold that judgment passed by Revisional Court does not suffer from any manifest error apparent on the face of record. Writ petition, accordingly, fails and is dismissed.

There shall, however, be no order as to costs.

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