

Kunwar Baldevji Vs. Xith Additional District Judge and ors.

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Court : Allahabad

Decided On : Mar-27-2003

Reported in : AIR2004All99; 2003(3)AWC2504

Judge : A.K. Yog and ;Ghanshyam Dass, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 15, Rule 5

Appeal No. : C.M.W.P. No. 37571 of 2002

Appellant : Kunwar Baldevji

Respondent : Xith Additional District Judge and ors.

Advocate for Def. : R.B. Singhal, Adv.

Advocate for Pet/Ap. : Rajesh Tandon and ;Som Narain Mishra, Adv.

Judgement :

A. K. Yog and Ghanshyam Dass, JJ.

1. Heard Sri Rajesh Tandon, Senior Advocate along with Sri Som Narain Mishra, advocate on behalf of the petitioners (tenants) and Sri R. B. Singhal, advocate on behalf of the contesting respondents (landlord).

2. Above writ petitions have been listed, before us on a reference made by a learned single Judge. Referring order dated September 10, 2002 is extracted :

'I have heard the learned counsel for both sides.

Order XV, Rule 5, C.P.C. as added in U.P. requires that the tenant/defendant should deposit the arrears of rent which is admitted by him to be due with interest at the first hearing. He should also deposit future rent month to month during the pendency of the suit. Failing such deposit the defence in the suit is liable to be struck off.

In this particular case, the tenant/petitioner in his written statement has denied the relationship of the landlord and tenant, and therefore, obviously no rent could be said to be admittedly due. He did not deposit any amount towards rent. His defence was struck off on the finding that relationship of the landlord and tenant existed.

Learned counsel for the petitioner relies upon the clear words of Order XV, Rule 5 as interpreted by a decision of this Court in the case of Rakesh and Company v. Heera Lal, 2001 (44) ALR 804, for the proposition that only such amount is liable to be deposited which is admitted to be due.

On the contrary, learned counsel for the respondents, Sri R.B. Singhal submits that words 'rent admitted by the tenant to be due' used in Order XV, Rule 5, C.P.C. should be interpreted to mean 'rent found by the Court to be due although not admitted by the tenant to be due.'

Prima facie the rules of interpretation of statutes do not permit of doing such violence to the words of the statute, as to make their meaning just reverse of what the language suggests. Exceptions may be possible (a) where the language used in a statute is ambiguous or capable of two interpretations or (b) where but for such interpretation absurdity or serious anomaly would result.

However, learned counsel for the respondent relies certain single Judge decisions in support of his contention. The decisions are as follows :

(i) Jai Chand Gangwar v. Illrd A.D.J., 1995 AWC 56.

(ii) Guru Charan Lal v. Illrd A.D.J., 1984 (2) ARC 144.

(iii) Kishan Lal v. Ist A.D.J., 1983(2) ARC 453.

(iv) Thakur Prasad v. Guru Prasad, 1979 AWC 183.

.....

Of the above, the case of Guru Charan and the case of Kishan Lal do not deal with the issue directly. The other two cases, namely, Jai Chand Gangwar and Thakur Prasad do support the respondent. However, the only reason that can be spelt out in support of the conclusion or interpretation of Order XV, Rule 5, appears to be the anxiety on part of the learned Judges that the tenant may not deny the liability to pay rent and drag on the proceeding arrears of rent, and (2) secondly regarding the current rent. Both these can be avoided only by denial of the landlord's title, which is highly risky for any tenant as it gives another ground for eviction. Besides as stated above, the language of the statutory provision does not permit of the interpretation. And none of the two decisions aforesaid have considered the said language while giving the interpretation. To my mind, the aforesaid anxiety would not be sufficient justification on part of the Court to adopt an interpretation which is just reverse of the statutory language. In the circumstances being unable to agree with the decision in the two cases of Jai Chand Gangwar and Thakur Prasad, I refer the following question for consideration by a larger Bench :

'Whether the defence can be struck off under Order XV, Rule 5, C.P.C. for non-deposit of rent which is not admitted to be due despite the express words to the contrary in that statutory provision?' Let the papers of this case be placed before the Hon'ble Chief Justice for appropriate orders.

Further proceedings in SCC Suit No. 2 of 2002 will remain stayed till further orders.'

3. To answer the 'referred question' we take Kunwar Baldev Ji v. XIth A.D.J. and Ors..

4. Dr. Subodh Mohan, plaintiff-respondent No. 3 filed S.C.C. Suit No. 2 of 2002 (Dr. Subodh Mohan v. Kunwar Baldevji), for eviction and possession (apart from other usual reliefs) in the Court of Judge Small Causes on the ground that

defendant petitioner Kunwar Baldev Ji was his tenant of the accommodation described in the plaint of the said suit. The defendant, on the other hand, denied landlord-tenant relationship and contended that he admits no rent to be due under Order XV, Rule 5, Code of Civil Procedure.

5. After parties had exchanged pleadings, the plaintiff filed an application (Annexure-1 to the writ petition) before the trial court praying that defence of the tenant was liable to be struck off since the tenant had made no deposit and that the defence be struck off at the time of final decision of the suit. Tenant filed objections dated 27.5.2002 {Annexure-1 to the Supplementary Affidavit) and also an application dated 27.5,2002/Annexure-2 to the writ petition praying for framing and to decide as preliminary issue, whether defence was liable to be struck off under Order XV, Rule 5, Code of Civil Procedure before parties proceeded to lead evidence on other issues.

6. The trial court accepted the contention of the plaintiff, proceeded to decide issue under Order XV, Rule 5, Code of Civil Procedure and found that the tenant failed to comply with the conditions contained under Order XV, Rule 5, Code of Civil Procedure ; and hence his defence was liable to be struck off.

7. The tenant, being aggrieved, filed revision under Section 25, Provincial Small Causes Court Act. The said revision was also dismissed by the Court below. Consequently, the tenants have come before this Court by filing present three writ petitions.

8. At the admission stage, learned single Judge referred aforequoted question to larger Bench.

The Hon'ble Chief Justice thus nominated this Bench to decide the said referred question.

9. The aforesaid question, we may note, need no further deliberations as Division Bench of this Court had already answered it. Order XV, Rule 5, Code of Civil Procedure, as amended in the State of U.P., is reproduced below :

'5. Striking off defence on non-deposit of admitted rent, etc.--(1) in any suit by a lessor for the eviction of a lessee from any immovable property after the determination of his lease, and for the recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease, or of compensation for the use and occupation thereof, whether instituted before or after the commencement of the Uttar Pradesh Civil Laws Amendment Act, 1972, the defendant shall, at or before the first hearing of the suit (or in the case of a suit instituted before the commencement of the said Act. the first hearing after such commencement) deposit the entire amount of rent or compensation for use and occupation, admitted by him to be due, and thereafter throughout the continuance of the suit, deposit regularly the amount of monthly rent, or compensation for use and occupation, due at the rate admitted by him, and in the event of any default in this regard, the Court may, unless after considering any representation made by him in that behalf it allows him further time on security being furnished for the amount, refuse to entertain any defence or, as the case may be, strike off his defence.

(2) The provisions of this rule are in addition to and not in derogation of anything contained in Rule 10 of Order XXXIX.'

10. Sri Rajesh Tandon, senior advocate, appearing for the tenant-petitioner referred to the following decisions :

1. Ladly Prasad v. Ram Shah Billa, 1976 ALJ 494 Pr 6 (DB).

'..... If, however, the defendant does not admit that any amount is due to the plaintiff as rent or damages for use and occupation, he need not make any deposit. At this stage the Court is not required to decide the questions whether any amount is really due and whether the lease has been validly terminated.

.....

2. Sri Surendra Nath Dubey v. Smt. Shankuntla Devi, 1980 AWC 124 Pr 10.

'..... As the defendant in this case did not admit that any amount by way of rent or compensation for use and occupation of the premises was due from him at the

time when the first hearing took place on 16th of September, 1976, no question of his making a representation seeking further time to make such deposit, arose.....' 3. Thakur Prasad alias Bhola Nath v. Guru Prasad, 1979 AWC 183 Pr 5.

'In a case like the present, it is always necessary for a court to determine the question of relationship of landlord and tenant before striking out the defence. if the Court finds that the plea of the defendant to strike off the defence is untenable and that such a relationship existed, it would be justified in recording a finding to that effect and thereafter in making an order striking off the defence under Order XV, Rule 5, C.P.C. if such a course is adopted, that would discourage a frivolous plea which may be taken to avoid consequences of Order XV, Rule 5, C.P.C.' 4. Ami Stigh v. Prakashwati Verma, 1978 ALJ 1310 Pr 5, K.N. Singh, J.

'..... At that stage, the Court is not required to decide the question whether any amount is really due and whether the lease has validly been terminated. The Court cannot compel the defendant to deposit the amount claimed by the plaintiff if the defendant does not admit any amount due from him.' 5. Hoob Lal v. District Judge Mirzapur and Ors., 1985 (2) ARC 21 Pr 4, V. K. Khanna, J. '..... The provisions of Order XV, Rule 5, Civil Procedure Code apply only when the defendant admits his liability for payment of rent to the landlord. As has been stated above in this case the petitioner-defendant does not admit his liability to pay rent to the plaintiff landlord the provisions of Order XV Rule 5, Civil Procedure Code will have clearly no application to the present case and the impugned orders passed by the Judge Small Causes Court and the District Judge Mirzapur are liable to be quashed.'

11. Having considered the aforesaid decisions, we find that the language of Order XV, Rule 5, Code of Civil Procedure is unambiguous, clear and there is no scope of doing violence with it and stretch it to mean that expression 'rent admitted by the tenant to be due' should mean rent found by the Court to be due,.....' Question of interpretation of a statutory provision arises only when it is ambiguous or admits two Interpretations or it is required to save the provision from being declared void. No such contingency exist in the present case.

12. If amount of rent is admitted, then it is not required to be adjudicated by the Court. In case, tenant denies any rent to be due, Court shall be required to decide the same. It is obvious that in such contingency, Court will have to adjudicate and its finding will come subsequent to the 'first date of hearing' contemplated under Order XV, Rule 5, Code of Civil Procedure. It is, therefore, evident that by the time the Court will render its finding, 'first date of hearing'--which is cut off date for depositing rent, shall be over. It also requires no comment that such an issue is first to be framed and thereafter adjudicated after parties have led evidence in accordance with law.

13. In this context, we may refer the case of Hub Lal (supra) and observations made by the Division Bench of our court in the case of Ladly Prasad (Pr. 6), quoted above.

14. The learned single Judge has referred to the two judgments of the learned single Judge, namely, Guru Charan Lal (supra) and Kishan Lal (supra) and observed that these judgments are not relevant. However, other two judgments were referred to in the referring order. We find that Division Bench judgment in the cases of Ladly Prasad (supra) and Hub Lal now relied upon on behalf of tenant were not brought to the notice of the learned single Judge.

15. Learned counsel for the landlord has placed reliance on the following decisions ;

(i) Rakesh and Company and Ors. v. Hira Lal and Sons, 2001 (44) ALR 840, Janardan Sahai, J.

(ii) Jai Chand Gangwar v. IIIrd Additional District Judge, Farrukhabad, 1995 AWC 56, A.B. Srivastava, J.

(iii) Ashma Bibi v. Ahsan Ali and Anr., 1990 (1) ARC 438, M. P. Singh, J.

(iv) Guru Charan Lal v. IIIrd Additional District Judge, Farrukhabad and Ors., 1984 (2) ARC 144, R.B. Lal, J.

(v) Sri Kishan Lal v. Ist Additional District Judge, Saharanpur, 1983(2) ARC 453, U. C. Srivastava, J.

(vi) Maqsood Ali v. Shamsheer Khan, 1983(2) ARC 319, K. C. Agarwal, J.

(vii) Thakur Prasad alias Bholanath v. Gur Prasad, 1979 AWC 183. K. C. Agarwal, J.

16. As already indicated earlier in our order, the aforesaid Judgments have no relevance to the question referred to us.

Writ petition is yet to be decided by the learned single Judge.

17. Our answer to the question referred to us is that Order XV, Rule 5, Code of Civil Procedure does not contemplate that when court decides the question of liability of payment of rent in future, the same should be treated as the admitted rent due within the meaning of the expression contained under Order XV, Rule 5, Code of Civil Procedure.

18. Papers returned with our answer for decision of the writ petition by appropriate Bench.

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