

**Minni Vs. iind Additional District Judge, Hardoi and Others**

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**Court :** Allahabad

**Decided On :** Apr-22-1998

**Reported in :** 1999(2)AWC1239

**Judge :** R.H. Zaidi, J.

**Acts :** Uttar Pradesh Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 12(3), 20(2) and 30; [Constitution of India](#) - Article 226; Provincial Small Cause Courts Act - Sections 25

**Appeal No. :** Writ Petition No. 6477 of 1983

**Appellant :** Minni

**Respondent :** iind Additional District Judge, Hardoi and Others

**Judgement :**

**R.H. Zaidi, J.**

1. Heard the learned counsel for the parties and perused the record.
2. By means of this petition under Article 226 of the [Constitution of India](#), the petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the judgment and order dated 20.1.1981 whereby the trial court had dismissed the suit filed by the petitioner and order dated 30.7.1983 whereby the revisional court had dismissed the revision.

3. The facts of the case in brief are that the petitioner who is admittedly the landlady of the building in question sent a notice dated 7.6.1979 to the respondent No. 3 through her counsel Shri Fasahat Husain, Advocate demanding the arrears of rent from March, 1978 to May, 1979 and also terminating his tenancy. On receipt of notice, the respondent No. 3 gave reply to the petitioner controverting the facts stated in the notice and stating that the amount of rent in question was remitted by money order to the counsel of the petitioner, named above. It was stated that there was no question of default as the tender of the amount of arrears of rent to his counsel was a valid tender. The petitioner thereafter filed S.C.C. Suit No. 3 of 1980 for ejectment of the respondent No. 3 from the building in question and for recovery of arrears of rent in the Court of Judge, Small Causes. Hardoi. The respondent No. 3 on receipt of the summons filed his written statement denying the facts stated in the plaint and pleading that he was not a defaulter, as on refusal by the learned counsel for the plaintiff to accept the amount, he deposited the rent under Section 30 of U. P. Act No. 13 of 1972. Parties produced evidence, for and against. In the trial court. After going through the evidence on the record, it was held that the respondent No. 3 was not a defaulter and that notice of termination of tenancy was invalid. After recording the said findings, the suit was dismissed by Judgment and decree dated 20.1.1981. Aggrieved by the judgment and decree passed by the trial court, the petitioner filed a revision under Section 25 of the Provincial Small Cause Courts Act. The revision filed by the petitioner also met the same fate and was dismissed on 30.7.1983 and findings recorded by the trial court were affirmed.

4. The learned counsel appearing for the petitioner vehemently urged that the tender of amount of rent to the counsel for the petitioner was not a valid tender. The view taken to the contrary by the Courts below is totally erroneous and illegal. It was urged that in the notice, it was specifically indicated that the amount of arrears of rent was to be paid to the landlady, therefore, there was no justification for the respondent No. 3 to remit the amount of rent to the counsel of the petitioner. The learned counsel for the petitioner further urged that the tenancy of respondent No. 3 having been terminated in accordance with law, the suit filed by the respondent No. 3 was liable to be dismissed. On the other hand learned counsel for the contesting respondent submits that the tender of the amount of

arrears of rent to the counsel of the petitioner was a valid tender. The amount having been tendered within the statutory lime the respondent No. 3 cannot be said to be a defaulter. It was urged that Courts below have rightly dismissed the suit and the revision filed by the petitioner, that the findings recorded by the Courts below are based on relevant evidence on the record and call for no interference by this Hon'ble Court in exercise of its power under Article 226 of the [Constitution of India](#) and that the writ petition was liable to be dismissed.

5. I have anxiously considered the submissions made by the learned counsel for the parties.

6. The only question which requires consideration in the present case is as to whether the tender of the amount of rent to the counsel of the petitioner was a valid lender. Both the Courts below held that it was a valid tender and respondent No. 3 cannot be said to be, the defaulter and he was not liable to ejectment from the building in question, as the suit was filed only on the ground of default. The learnedcounsel appearing for the contesting respondent No. 3 has referred to and relied upon a recent decision of the Hon'ble Apex Court of the country in Mahendra Raghunathdas Gupta v. Vishwanath Bhika in Mogul and others, 1998 (16) LCD 275 (SC), equivalent to 1997 (5) SCC 329. In the said case, the question as to whether the tender of amount of rent to the counsel of the landlord was a valid tender came to be considered. After consideration of the submissions made by the learned counsel for the parties, the Supreme Court ruled as under :

9. On the first point, though It was mentioned in the notice that rent be sent to the landlord meaning thereby that the lawyer was not authorised to receive the payment of rent but in the light of the above facts, necessarily. As a prudent man, the appellant, instead of taking a risk to send the rent to a third party, chose to send the arrears of rent in the name of the advocate, who issued notice. Under these circumstances, tendering the amount within 30 days to the agent on behalf of the principal, is a legal tender of the amount of arrears of rent. Thereby, by operation of subsection (3) (a) of Section 12, the appellant has tendered the amount. Thereby, he has not committed any default in the payment of rent on account of which he is not liable to be ejected from the demised premises. The

respondent having purchased the property had not acted as a prudent man by issuing a notice at the earliest to the appellant calling upon him to pay the rents to him. Instead, he waited for two years obviously to create a condition of default and then got the notice issued. His conduct is not worth reckoning.'

In view of the aforesaid decision, the tender of rent to the counsel of the landlady was valid tender. The Courts below were right in holding accordingly. No other point was argued or pressed on behalf of the petitioner.

7. In view of the aforesaid discussions, the writ petition fallsand is dismissed. Considering the facts and circumstances of the case, there will be no order as to costs.

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