

Wali Mohammad Vs. liird Addl. District Judge and anr.

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Court : Allahabad

Decided On : Jan-22-2007

Reported in : 2007(2)AWC1505

Judge : S.U. Khan, J.

Appellant : Wali Mohammad

Respondent : iird Addl. District Judge and anr.

Disposition : Petition dismissed

Judgement :

S.U. Khan, J.

1. At the time of hearing no one appeared on behalf of the legal representatives of respondent No. 2 in spite of sufficient service. Accordingly only the arguments of the learned Counsel for the petitioner were heard.

2. This is tenant's writ petition. Original landlady-respondent No. 2, Shrimati Shakila, since deceased and survived by legal representatives, instituted suit for eviction and recovery of arrears of rent against the original tenant-petitioner since deceased and survived by legal representatives, which was registered as Suit No. 110 of 1971. The suit was dismissed with costs by J.S.C.C., Agra, on 17.5.1979. Against the said judgment and decree Civil Revision No. 183 of 1979 was filed by

the original landlady. Illrd A.D.J., Agra, allowed the revision through judgment and order dated 13.1.1986. The learned A.D.J. set aside the judgment and decree passed by the trial court and decreed the suit for eviction and recovery of arrears of rent. This writ petition is directed against the said revisional court's judgment.

3. Admittedly U.P. Act No. 13 of 1972 was applicable to the building in dispute, when the suit was filed.

4. The trial court held that the tenant had paid rent till 12.5.1971. Trial court further held that it was not necessary to decide as to whether the notice of termination of tenancy and demand of rent sent by the plaintiff to the defendant on 6.1.1971 was actually refused by the tenant on 8.1.1971 as reported by the postman or not. The trial court held that as after the notice plaintiff received the rent, hence the notice stood waived.

5. Suit had been filed on 11.4.1971 and rent was accepted on 12.5.1971 and 18.5.1971.

6. In the notice as well as in the plaint it was stated that the default was with effect from 20.10.1969. Admitted rate of rent was Rs. 40 per month.

7. Revisional court held that earlier also tenant was in default, hence suit for recovery of rent was filed which was decreed and the decretal amount had not been paid by the tenant which fact was also admitted by him, hence for nonpayment of the said rent he was the defaulter. In this regard learned Counsel for the tenant-petitioner has cited two authorities-one of the Supreme Court and the other of this High Court. The Supreme Court authority is represented in *Ramdeo v. Umrao* AIR 1980 SC 332. The High Court authority is in *Kohinoor Cable Industries v. Dayanand Garg* 1983 ALJ 594. In the Supreme Court authority it was held that after agreement for payment of arrears of rent their character as arrears of rent is lost and they assume the character of consolidated debt. In the Allahabad authority it was held that the arrears of rent regarding which earlier a decree had been passed on the basis of compromise, did not remain arrears of rent.

8. In the above back drop, the view of the revisional court that the tenant was defaulter for non-payment of the rent regarding which earlier a decree had been passed is not correct.

9. Regarding service of the notice no finding had been recorded by the trial court. The revisional court, after discussing the evidence in detail, came to the conclusion that the assertion of the tenant that at the time when notice was shown to have been refused by him, he was at Ajmer was not correct. Accordingly, revisional court held that notice was actually refused by the tenant.

10. Learned Counsel for the petitioner has argued that the finding of the revisional court on the question of service of notice is erroneous in law and, in any case, revisional court was not authorized to record the finding of fact for the first time. The Supreme Court in Jagdish Prashad v. Angoori Devi : [1984]3SCR216 (para 2), has held that revisional court hearing revision under Section 25 Provincial Small Causes Court Act can consider the evidence, which has not been looked into by the trial court and this does not amount to reassessment of evidence. Moreover, as admittedly the U.P. Act No. 13 of 1972, applies to the building in dispute, hence service of notice for termination of tenancy is not an absolute must for filing suit for eviction, as held by the Supreme Court in Shanti Devi Nigam v. Madan Lal Gupta 2004 (2) ARC 1118 (SC).

11. After recording the finding that entire arrears of rent had not been paid by the tenant, including the rent regarding which earlier decree had been passed, the revisional court held that there was no question of waiver of notice.

12. It has been held by the Supreme Court in S.S. Gupta v. S.J. Singh : AIR 2006 SC1734 , that in case Rent Control Act applies to a building, then acceptance of rent either before filing of the suit or even after filing of the suit does not waive the notice and for waiver of notice apart from balance of rent some thing more must be shown. The Supreme Court held that if rent is accepted before filing the suit, then the fact that subsequently suit was filed clearly shows that landlord did not have any intention of waiving the notice. It has further been held that even if rent is accepted after filing of the suit but thereafter the suit is prosecuted, it shows the intention of the landlord that he did not waive the notice.

13. Accordingly the question that earlier arrears of rent regarding which decree had been passed did not remain arrears of rent is decided in favour of the tenant, the question of waiver of notice is decided in favour of the landlord. Admittedly at the time of notice tenant was in arrears of rent for more than four months (as required by Section 20(2)(a) of U.P. Act No. 13 of 1972) even after excluding the unpaid rent regarding which decree had already been passed. The finding of service of notice through refusal recorded by the revisional court is confirmed. It is further held that notice of termination of tenancy was not necessary.

14. Accordingly judgment of the revisional court decreeing the suit for eviction is maintained. Writ petition is dismissed.

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