Anwar UddIn Vs. Ist Additional District Judge, Aligarh and Others

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Court : Allahabad

Decided On : Dec-21-1998

Reported in : 1999(2)AWC1332

Judge : S. Rafat Alam, J.

Acts : Uttar Pradesh Buildings (Regualtion of Letting, Rent and Eviction) Act, 1972 - Sections 20(2) and (4) and 24; Provincial Small Cause Courts Act, 1887 - Sections 25; Code of Civil Porcedure, 1908 - Sections 104(1) and 115 - Order XV, Rule 5; Constitution of India - Article 226

Appeal No. : C.M.W.P. No. 1259 of 1986

Appellant : Anwar Uddin

Respondent : ist Additional District Judge, Aligarh and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : S.A. Shah, Adv.

Judgement :

S. Rafat Alam, J.

1. This istenant's petition under Article 226 of the Constitution for quashing the Judgment and order of the learned 1st Additional District Judge, Aligarh, dated

5.11.1985 allowing the revision of the landlord and decreeing the suit for ejectment.

2. The short and admitted facts of the case are that the accommodation in question bearing House No. 5/28, Saral Babu, Rasalganj. Call Laxmipuri. Aligarh was let out to the father of the petitioner tenant on a rent of Rs. 20 per month. The respondent landlord filed a suit against the petitioner's father for his ejectment as well as for recovery of arrears of rent and damages, inter alia, on the grounds that the tenant has committed default in payment of rent for the period from May, 1972 to 22.11.1976 and in spite of notice of demand, failed to pay the same nor vacated the premises ; that the tenant has, without permission in writing of the landlord, made certain construction and material alteration in the building which has diminished, its value and also disfigured it, and thus he is liable to be evicted under the provisions of U. P. Urban Buildings (Regulation of Letting. Rent and Eviction) Act, 1972 [hereinafter referred to as Act No. 13 of 1972). The tenant filed written statement and contested the suit alleging that he has not committed any default in payment of rent, inasmuch as arrears of rent has been deposited at the first hearing of the suit and, therefore, he is entitled to get protection under sub-section (4) of Section 20 of Act No. 13 of 1972. The allegation of material alteration without the consent of the landlord was also denied.

3. It appears that before the learned Judge, Small Cause Court, the landlord raised objection that the tenant is not entitled to protection under sub-section (4) of Section 20 of Act No. 13 of 1972 on the ground that his two sons have acquired residential accommodation in the same city. However, the learned Judge. Small Cause Court, havingappreciated the evidence and the provisions of the Act, repelled the contention of the landlord that the tenant is not entitled to protection under sub-section (4) of Section 20 of Act No. 13 of 1972. On the question of material alteration, the learned Judge. Small Cause Court was of the view that the landlord failed to prove the alleged material alteration made in the building, hence dismissed the suit with cost by his judgment and order dated 14.12.1977. The landlord being aggrieved with the aforesaid judgment and order of the learned Judge. Small Cause Court, preferred Revision No. 7 of 1978 before the learned District Judge. Aligarh, which was allowed and the suit Was decreed with cost

throughout by the learned IInd Additional District Judge, Aligarh vide his judgment and order dated 24.4.1980. It appears that the revisional court was of the view that since one of the sons of the defendant acquired a vacant house in the same municipality in the year, 1974 after commencement of U. P. Act No. 13 of 1972, the defendant tenant cannot get protection of sub-section (4) of Section 20 of the Act No. 13 of 1972 in view of proviso of sub-section (4) which provides that sub-section (4) shall not apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state of has got vacated after acquisition any residential building in the same city, municipality, notified area or town area.

4. The learned revisional court further found from the record that monthly rent of October, 1977 was not deposited on due dale, i.e., November, 1977 and the rent of October and November was deposited in December, 1977 but the learned Judge. Small Cause Court condoned the delay without there being any representation by the tenant defendant giving material explanation in that behalf within ten days of the first hearing and, therefore, it did not exercise its discretion in a judicial manner. In that view of the matter, the revisional court was of the view that the defence of the tenant-defendant is liable to be struck off in view of the provisions of Order XV,Rule 5 of the Code of Civil Procedure which provides striking of defence for failure to deposit the admitted rent and regularly deposit of the monthly rent due within a week from the date of its accrual. However, the revisional court did not enter into the finding of the Judge Small Cause Court on the question of material alteration alleged by the plaintiff-landlord as the defence of the tenant-defendant was struck off. Consequently, the revision was allowed and the suit was decreed with cost throughout and the tenant-defendant was allowed three months' time to vacate the building.

5. The tenant defendant challenged the aforesaid judgment and order of the revisional court in Civil Misc. Writ Petition No. 4290 of 1980 before this Court.

6. This Court having heard the parties, upheld the view taken by the revisional court that the provision of sub-section (4) of Section 20 of the Act No. 13 of 1972 not attracted in the facts of the case, and thus the finding of the learned revisional

court on the point of default was affirmed. However, on the question of striking off defence of the tenant, it was held that the revisional court acted illegally in striking out the defence in revision and, therefore, vide judgment and order dated 2.9.1982 partly allowed the writ petition and remitted back the case to the revisional court for disposal of the revision on merit on other issue, i.e., alleged material alteration in the building which has diminished its value or utility or disfigured it.

7. After remand by this Court, the revision was again heard on merit and by judgment and order dated 5.11.1985, the revisional court from a comparison of the maps filed by the parties and the map prepared by the Commissioner, i.e., paper 20/C, found that the allegation of material alteration which has diminished the value and utility and disfigured the building, has fully been established and proved, and as such the defendant-tenant is liable to be ejected. It accordingly allowed the revision after setting, aside the judgment and decree under revisionby Judgment and order dated 5.11.1985 which has been impugned in the present petition, inter alia, on the ground that the revisional court has committed error of law by re-appreciating the evidence and thereby decreeing the suit.

8. Sri S. A. Shah, learned counsel appearing for the petitioner urged that the revisional court while exercising its jurisdiction under Section 25 of the Provincial Small Cause Courts Act (for Short the Act), has no jurisdiction to disturb and set aside the finding of fact arrived at by the learned Judge, Small Cause Court and to substitute its own finding. It is argued that the finding on the question of material alteration is a finding of fact arrived at by the learned Judge, Small Cause Court on appreciation of evidence and considering the facts and circumstances of the case and the revisional court cannot disturb it by substituting its own finding. It is further submitted that if the revisional court was of the view that the finding of fact recorded by the learned Judge. Small Cause Court is erroneous or is vitiated by any error of law then it ought to have remanded the case to the Small Cause Court for deciding the same afresh in accordance with law. Learned counsel also placed reliance on a Division Bench judgment of this Court rendered in the case of Lakshmi Kishore and others v. Har Prasad Shukla and others, 1981 ARC 545 ; and Judgment of the single Judge of this Court rendered in the case of Om Prakash Gupta v. Vth Additional District Judge, Aligarh, 1996 (2) ARC 532 :

Manmohan Dixit v. Additional District Judge. 1996 (2) ARC 561 ; Smt. Fatima Begam v. IVth Additional District Judge, Jhansi and others, 1997 (2) ARC 107, Learned counsel further argued that for maintaining a suit for ejectment under Section 20 (4) of Act No. 13 of 1972, it is the condition precedent that the tenant must be in arrears of rent for not less than four months and the Court is required to record a clear finding that the tenant was in arrears of rent for not less than four months and in spite of notice served on him he failedto deposit or pay the rent. It is contended that in the absence of such finding recorded by the Court below, the judgment/order became lacunic and on that basis the tenant cannot be evicted.

9. On the other hand. Sri S. U. Khan, learned counsel appearing on behalf of the landlord, vehemently opposed the writ petition and submitted that the Judgment and order of the learned Judge. Small Cause Court was perverse, inasmuch as, he has not correctly appreciated the evidence on record as well as law and, therefore, the revisional court has rightly exercised jurisdiction under Section 25 of the Act and allowed the revision ; that the impugned judgment and order of the revisional court does not suffer from any manifest error of law justifying interference in writ jurisdiction of this Court.

10. I have heard the learned counsel for the parties and perused the Judgment and order of the learned Judge, Small Cause Court dated 14.12.1977 and also the impugned judgment of the learned revisional court dated 5.11.1985.

11. So far as the firstcontention of the learned counsel for the petitioner about the scope of interference on the finding of facts by reappreciating the evidence on record by the revisional court, it is settled legal position that the revisional court while exercising revisional power under Section 25 of the Act, normally will not set aside the finding on the question of fact to substitute its own finding, but it is also equally settled that where the revisional court finds that the judgment under revision suffers from the vice of perversity or it is based on wrong appreciation of evidence, the revislonal court will interfere with the same and set aside such finding. Similarly, if it is found that the judgment of the Small Cause Court is not according to law, the revisional court will set aside such a judgment because the exercise of power of revision under the Act is wider in scope than that of Section

115 of the Code of Civil Procedure where the scope of revision is limitedto correct error of jurisdiction only. Whereas under Section 25 of the Act, the revisional court is required to examine the order under revision as a whole and to be satisfied that it does not suffer from error of law as well as of fact and is according to law. The judgment and decree of the Court of Small Cause is final and against it no appeal lies except from certain orders specified under clause (ff) or clause (h) of sub-section (1) of Section 104 of the Code of Civil Procedure as provided under Section 24 of the Act, and is only revisable under Section 25 of the Act if it is not according to law. Thus, if the order under revision under Section 25 of the Act is found to be perverse or based on wrong conclusion of legal question or some gross injustice has been done, the revisional court has ample powers to set aside such judgment and decree which is causing injustice to the party and is not supported with good reasons. However, it should not disturb the finding of fact on flimsy grounds by re-assessing or reappraising the evidence in order to determine the issue of fact for itself, unless it is perverse based on wrong appreciation of evidence or misinterpretation of law.

12. Now coming to the case in hand, from a perusal of the plaint, a copy of which has been filed as Annexure-1 to the counter-affidavit. It is apparent that the landlord has made a categorical statement in paragraph 2 of the plaint that the' tenant (defendant) did not pay any amount of rent to the landlord (plaintiff) from May. 1972 to 22.11.1976. This fact has been admitted by the tenant in paragraph 2 of his written statement wherein it has been stated that para 2 of the plaint is admitted. But the learned Judge, Small Cause Court did not pass the decree of eviction by wrongly giving benefit of Section 20 (4) of Act No. 13 of 1972. However, this issue has been finally decided by this Court in the order dated 2.9.1982 in Civil Misc. Writ Petition No. 4290 of 1980 wherein this Court upheld the finding of the revisional court that the tenant is not entitled to get benefit of subsection (4) of Section 20 of the Act.

13. It is further apparent fromthe perusal of the impugned judgment and order dated 5.11.1985 that the original tenant Imamuddin (defendant), though alive during the pendency of suit, did not examine himself as a witness. However, his son Zulfiqar Uddin was examined as D.W. 1 who also admitted the existence of a

room and a toilet in the courtyard, and has further stated that except the eastern room, the Commissioner has rightly shown the rest of the constructions in his map, i.e., paper No. 20/C, Therefore, the learned revisional court in view of admission as well as on a comparison of the map prepared by the Commissioner (Paper No. 20/C) and the map filed by the parties (Paper No, 38/C and 30/C), found that material alteration which has diminished the value and utility and disfigured the building as alleged in para 7 of the plaint, has fully been proved. The revisional court was further of the view that the learned Judge, Small Cause Court lost sight of these material alterations made by the tenant. Therefore, no consideration of map filed by the landlord resulted in gross injustice to the landlord. Therefore, in my view, in the facts and circumstances of the case, the learned revisional court was justified in interfering with the finding, which was based on non-appreciation of evidence. Besides, the landlord can seek eviction on one or more of the grounds mentioned in sub-section (2) of Section 20 of Act No. 13 of 1972. In the instant case, the landlord sought eviction of the tenant on two grounds ; viz., (i) that the tenant is in arrears of rent from May, 1972 to 22.11.1976 and (ii) that the tenant has, without permission in writing of the landlord, made construction and alteration in the building which has diminished its value. The finding of the learned revisional court regarding arrears of rent was upheld by this Court in earlier Writ Petition No. 4290 of 1980 and the same has become final. Thus, even if the other ground of material alteration is not successfully established by the landlord, the tenant can be evicted on the groundof default which has been upheld by this Court.

14. The contention that if the finding recorded by the learned Small Cause Court was erroneous, the revisional court ought to have remanded the case to the Small Cause Court for deciding the same, has also no merit, because evidence was already on record which was not correctly appreciated by the learned Small Cause Court and, therefore, in such a situation, the learned revisional court was justified in deciding the issue itself on the basis of material and evidence on record, instead of remanding back the matter to the learned Small Cause Court. The authorities cited by the learned counsel for the petitioner do not apply in the facts of the present case. That apart, this Court while disposing of the earlier Writ Petition No. 4290 of 1980 of the petitioner, vide order dated 2.9.1982. remitted the case to the learned revisional court for disposing of the revision on merit. Therefore, the

learned revisional court has not committed any error or illegality in deciding the issue in terms of the direction of this Court.

15. During the course of argument, learned counsel for the petitioner relying on a decision rendered in the case of Zarif Khan v. Mukhtar Kahan, 1964 ALJ 148 and also a decision rendered in the case of Faiyaz Ahmad v. B. N. Goel. 1969 ALJ 365, sought to argue that for eviction under Section 20 of Act No. 13 of 1972, the tenant must be found in arrears of rent for not less than four months and the Court is required to record a finding thereof ; and that in spite of notice the tenant has failed to deposit or pay rent. In my view, this submission has also no merit because the default alleged in the plaint from May. 1972 to 22.11.1976 has been admitted by the tenant in his written statement and this Court in its earlier judgment dated 2.9.1982, has upheld the finding of the learned revisional court that the provision contained in sub-section (4) of Section 20 of Act No. 13 of 1972 is not attracted in the facts of the case and that finding has become final.Therefore, in view of admission by the tenant in his written statement about default, this submission cannot be accepted. As discussed above, the allegation of material alteration has fully been proved by the evidence on record. Therefore, in my view, the learned revisional court has rightly allowed the revision and set aside the Judgment and decree of the learned Judge. Small Cause Court and consequently, decreed the suit of the landlord. The impugned Judgment and order dated 5.11.1985 of the learned 1st Additional District Judge, in my view, does not suffer from any patent error justifying interference under the writ Jurisdiction of this Court.

16. There is no merit in the writ petition and it is, accordingly, dismissed without cost.