

Sushil Sharma Vs. Xiiiith Additional District Judge, Ghaziabad and Others

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Court : Allahabad

Decided On : Feb-23-2000

Reported in : 2000(2)AWC1408

Judge : Sudhir Narain, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 9 and 21(2); [Transfer of Property Act, 1882](#) - Sections 106; [General Clauses Act, 1897](#) - Sections 27; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 2; Post Office Act - Sections 3

Appeal No. : C.M.W.P. No. 9312 of 2000

Appellant : Sushil Sharma

Respondent : Xiiiith Additional District Judge, Ghaziabad and Others

Advocate for Def. : S.C. and ;Anurag Khanna, Adv.

Advocate for Pet/Ap. : Pankaj Mithal, Adv.

Judgement :

Sudhir Narain, J.

1. This writ petition is directed against the order of the Judge Small Causes Court dated 28.4.1999 decreeing the suit for recovery of arrears of rent, ejection

and damages and the order of the revisional court dated 11.2.2000 dismissing the revision against the said order.

2. The landlord-respondent No. 3 filed Suit No. 6 of 1998 in the court of Judge Small Causes, Ghazlabad for recovery of arrears of rent, ejectment and damages against the petitioner from the house in dispute with the allegations that the petitioner was a tenant at monthly rent of Rs. 1,450. The disputed house was not governed by the provisions of U. P. Urban Building (Regulation of Letting. Rent and Eviction) Act. 1972 (in short the Act). His tenancy was terminated by notices dated 9.1.1998 sent on his residential address as well as at his shop but after having received the notices, he had not vacated the same. The petitioner contested the suit. He alleged that the provisions of the Act were applicable. It was denied that he received any notice alleged to have been sent by the plaintiff-respondent. The trial court recorded a finding that the provisions of Act No. 13 of 1972 were inapplicable and the notices were served upon the petitioner. He preferred a revision. Respondent No. 1 has dismissed the revision by the impugned order.

3. The learned counsel for the petitioner. Sri Pankaj Mithal, raised three submissions against the judgments of the Courts below.

4. The first submission is that the suit was valued at Rs. 29,110 while the pecuniary Jurisdiction of the Judge Small Causes Court at Ghazlabad was Rs. 25,000. If the suit was of higher value, then it should have been tried by the Court according to the pecuniary Jurisdiction. The petitioner had admittedly not raised this plea in the Small Causes Court, Section 21(2) of Code of Civil Procedure provides that no objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any appellate or revisional court unless such objection was taken in the court of first instance at the earliest possible opportunity, and, in all cases where Issues are settled, at or before such settlement, and unless there has been a consequent failure of justice. In Brij Kishore Jain v. IInd Additional District Judge, Aligarh and others. 1985 AWC 742, where similar argument was raised with regard to the jurisdiction of the Judge Small Causes Court having no jurisdiction. It was held that he cannot raise such

objection in view of provision of Section 21(2) of the Code of Civil Procedure. Similar view was taken In *Manager. Hardware and Tools Ltd. v. Saw. Smelting Put. Ltd.*, AIR 1983 All 329.

5. The learned counsel for the petitioner has placed reliance upon the decision *Kesar Singh and others v. Sadhu*, JT 1996 (2) SC 334, where the Apex Court held when the matter goes to the root of the jurisdiction, the plea as to the Jurisdiction can be raised. even in the execution proceedings when the judgment is a nullity. In another case In *Urban Improvement Trust. Jodhpur v. Gokul Narain and another*, AIR 1996 SC 1819. It was held that executing court can also examine as to whether the decree is nullity. These cases have no application where the question is that the Judge Small Causes Court had pecuniary jurisdiction to try the case. in view of the provision of Section 21(2) of the Code of Civil Procedure, the Judgment cannot be treated as nullity only on the ground that the Court had no pecuniary jurisdiction. Secondly, the petitioner has not shown that there was failure of justice on account of suit being tried by the Judge Small Causes Court. Admittedly the suit was cognizable by the Judge Small Causes Court as it was in respect of recovery of arrears of rent, ejectment and damages.

6. The learned counsel for the petitioner has assailed the findings recorded by the Courts below on the question of service of notice on the petitioner sent by the plaintiff-respondent. The plaintiff In para 5 of the plaint had stated that he had sent a notice to the petitioner on 9.1.1998 and was served on him on 19.1.1998. He led oral and documentary evidence to prove this fact. It was stated by him that he had sent two registered notices to the petitioner. One at his office address and another at his residential address. He had filed two postal receipts which Indicated that he had sent two separate registered notices. One was paper 8-Ga and another postal receipt was Paper 9-Ga. He also appeared as witness In the case and proved those notices. The registered notice which was sent at the office of the petitioner where he was working was never returned and the notice which was sent at his residential address was returned with the endorsement 'refused' and it was dated 19.1.1998. The plaintiff produced the Postman as P.W.2 who. however, denied that he made endorsement of refusal. He was declared as hostile. The petitioner appeared as D.W. 1 and he denied that he had refused the notice. The trial

considered in detail about the oral evidence of the parties and came to the conclusion that the notice was served upon the petitioner by refusal and also by another notice which shall be deemed to have been served under Section 27 of the General Clauses Act as the notice sent at the office address was never returned.

7. The learned counsel for the petitioner contended that the notice which was sent at the office address cannot be treated as valid service under Section 106 of the Transfer of Property Act. He has placed reliance upon the decision *Dharam Pal Tyagi v. Anil Kumar*, 1986 (2) ARC 121, wherein observation was made that If the notice is sent not at the residential address of the addressee but is sent at the address of the shop where he was carrying on business and It was served on a servant or agent of the addressee and not personally on him, it would be deemed to have been delivered to the addressee within the meaning of Section 3(c) of the Post Office Act but it will still not be a sufficient service as contemplated under Section 106 of the Transfer of Property Act. The provision as to the service under Section 106 of the Transfer of Property Act reads as under :

'Every notice under this Section must be in writing signed by or on behalf of the person giving it and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family members or servants, at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.'

8. The notices which are to be served on the addressee, may be served on the family members or servants. If the notice is to be served personally on the addressee. It may be served either at the residence or at any other place where such addressee is working. The distinction is service on the addressee personally or his family members or servant. In the case of *Dharam Pal Tyagi* (supra), the service was effected on the servant. In any case. It has been found on facts that the notice was served on the plaintiff by both ways. This finding does not suffer from any manifest illegality.

9. The last submission of the learned counsel for the petitioner is that the rate of rent was Rs. 1.450 and the Court has awarded damages at the rate of Rs. 2,000

per month. The Courts below have recorded concurrent findings that the house in question is not governed by the provisions of U. P. Act No. 13 of 1972. In case the accommodation is governed by the Act, the damages was to be awarded at the rate of rent but If the Act is not applicable the damages can be awarded at the market rate. Learned counsel for the petitioner has placed reliance on the decision Union of India and others v. Smt. Urmila Rani Gaur and others. 1983 (2) ARC 304, wherein it was held that the damages should be awarded at the rate of rent and not higher than that. This was a case where the accommodation was governed under the provisions of U. P. Act No. 13 of 1972.

10. I do not find any merit in the writ petition. It is accordingly dismissed.

11. In the end learned counsel for the petitioner prayed that some timemay be granted to vacate the disputed accommodation. Considering the facts and circumstances of the case the petitioner is granted six months' time to vacate the disputed accommodation provided he gives a written undertaking on affidavit before respondent No. 2 within three weeks from today that he will vacate the disputed accommodation within the time granted by this Court and will hand over its peaceful possession to the landlord-respondent.