Rauf Vs. Iiird Additional District Judge, Deoria and Another

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Court : Allahabad

Decided On : May-16-2001

Reported in : 2001(3)AWC1852

Judge : O.P. Garg, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 3, 5 and 20 (1), (2) and (4), 24 and 25; Provincial Small Causes Courts Act, 1877 - Sections 15(1) and 25; Constitution of India - Article 226; East Punjab Urban Rent Restriction Act - Sections 9; Code of Civil Procedure (CPC), 1908 - Sections 104(1) 115;

Appeal No. : C.M.W.P. No. 5056 of 1980

Appellant : Rauf

Respondent : iiird Additional District Judge, Deoria and Another

Advocate for Def. : U.S.M. Tripathi, Adv. and; S.C.

Advocate for Pet/Ap. : H.S.N. Tripathi, Adv.

Judgement :

O.P. Garg, J.

1. A.S.C.C. Suit No. 114 of 1973 for ejectment of the present petitioner from the tenanted accommodation and for recovery of arrears of rent and mesne profits was instituted by the respondent No. 2 -Ganesh Das. The said suit was dismissed by the trial court on 15th December, 1975. The respondent No. 2 - landlord preferred a revision application No. 11 of 1976 under Section 25 of the Provincial Small Causes Courts Act. It was allowed by order dated 8.2.1977 by the then IIIrd Additional District and Sessions Judge, Deorta. Accordingly, suit for ejectment of the petitioner from thedisputed accommodation and for realization of Rs. 526.08 N.P. was decreed, besides mesne profits with Interest at the rate of 9 per cent per annum. It is this revisional order which has been challenged by the petitioner-tenant in writ jurisdiction under Article 226 of the Constitution of India.

2. The petition was dismissed on 3.1.2001 as even after the revision of the list, none appeared on behalf of the petitioner. Thereafter, an application supported by an affidavit for recall of the aforesaid order as well as for condonation of delay was moved. With the consent of the learned counsel for the parties, the writ petition was listed for hearing on merits and the dispossession of the petitioner pursuant to the decree passed by the revisional court was stayed. The order dated 3.1.2001 dismissing the petition is hereby recalled and the petition is restored to its original number for hearing on merits.

3. Ganesh Prasad, landlord-respondent No. 2 died on 16.5.1982. An application for substitution was moved. Vijay Kumar, son of late Ganesh Prasad has also moved application for his impleadment as the sole legal heir on the basis of a will in his favour. His name has been substituted by the Executing Court in Execution Case No. 9 of 1980 (new number 9 of 1989) in place of the original decree holder. Accordingly, Vljay Kumar is substituted in the writ petition in place of the deceased landlord-respondent No. 2 - Ganesh Prasad.

4. Put briefly, the facts of the case are that the petitioner-Rauf Mian was originally a tenant in the disputed accommodation at a monthly rent of Rs. 19 prior to the commencement of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. 1972 (Act No. XIII of 1972) (hereinafter referred to as 'the Act'). The case of the landlord is that after the commencement of the Act w.e.f. 15.7.1972, he was

entitled to the enhancement in the amount of rent to the extent of 25% under Section 5 of the Act and conse-quently, the rate of rent payable by the petitioner w.e.f. 15.7.1972 came to Rs. 23.75 n.p. per month. The tenant-petitioner did not pay the same. Consequently, a notice of demand and to quit dated 23.8.1973 was sent by the landlord-respondent No. 2 to the petitioner by registered post. The arrears of rent for the period 1.1.1973 to 31.7.1973 at the rate of Rs. 19 per month amounting to Rs. 361 were claimed besides a sum of Rs. 324 as being rent for the period 1.8.1972 to 23.9.1973 at the rate of Rs. 23.75 n.p. per month totalling to Rs. 685.75 n.p. After adjusting a sum of Rs. 107.75 n.p. paid by the tenant-petitioner, the landlord claimed Rs. 575 as arrears, of rent. The landlord-respondent No. 2 filed a suit for ejectment of the petitioner on the ground that he has committed default in payment of arrears of rent within the meaning of Section 20 (2) (a) of the Act. Mesne profits for the period after determination of tenancy with interest on the outstanding amount were also claimed.

5. The petitioner as tenant took the plea that the enhancement of the rent from Rs. 19 to Rs. 23.75 n.p. per month was not automatic and a notice was required to be served on the petitioner before enforcing the enhancement and since no notice of enhancement was ever served on the petitioner, the landlord-respondent No. 2 was not entitled to demand the enhanced amount of rent. It was also pleaded that after 1.1.1971, the petitioner has paid a sum of Rs. 350 to the landlord himself and said Rs. 228 to one Baccha Ram, an employee of the landlord. According to the petitioner, since a total sum of Rs. 578 had been paid by him, in the manner specified above, rent for the period up to July, 1973 stood paid and consequently, on the date of the notice dated 23.8.1973 he was not in arrears of rent.

6. The pleas taken by the petitioner-tenant found favour with the trial court and, as said above, the suit was dismissed. The revision application filed by the landlord, however, was allowed.

7. Counter and rejoinder-affidavits have been exchanged. Heard Sri H. S. N. Tripathi, learned counsel for the petitioner as well as Sri V. S. M. Tripathi assisted by Sri H. P. Misra, learned counsel for the respondent No. 2, Vijay Kumar at some length.

8. At the outset, it may be mentioned that there is a dispute between the parties with regard to the enhancement of the rent under Section 5 of the Act. The two courts below have not dealt this point. Since it is a pure question of law. I proceed to examine it. Admittedly, the agreed rate of rent payable by the petitioner prior to the commencement of the Act was Rs. 19 per month. The landlord has claimed arrears of rent at the enhanced rate of Rs. 23.75 n.p. w.e.f. 1.8.1972 to 23.9.1973 - in view of the provisions of Section 5 of the Act. In the written statement, it has been asserted by the petitioner that he was never prepared to pay enhanced amount of rent as the enhancement was not automatic and could be enforced only after adopting procedure prescribed under Section 5 of the Act. Sri Tripathi, learned counsel for the petitioner maintained that the theory of automatic enhancement and the demand of enhanced rent made by the landlord was wholly untenable. This submission was repelled by Sri V. S. N. Tripathi, learned counsel for the respondent. With a view to sift this controversy, it would be proper to make a reference to Section 5 of the Act. which runs as follows :

'Rent payable in case of old buildings. In the case of a tenancy continuing from before the commencement of this Act, in respect of a building to which the old Act was applicable, the landlord may. by notice in writing, given within three months from the commencement of this Act, enhance the rent payable therefor to an amount not exceeding the standard rent and the rent so enhanced shall be payable from the commencement of this Act.'

The expression 'standard rent' has been defined under clause (k) of Section 3 of the Act to mean :

(i) in the case of building governed by the old Act and let out at the time of the commencement ofthe Act : (a) where there is both an agreed rent payable therefor at such commencement as well as a reasonable annual rent (which in this Act has the same meaning as in Section 2 (ft of the old Act, reproduced in the Schedule), the agreed rent, or the reasonable annual rent plus 25 per cent thereon, whichever is greater.

The cumulative effect of the expression 'standard rent' and the provision of Section 5 is that tenant of a building which is governed by the old Act No. III of 1947 is also

liable to pay enhanced rent from the date of the commencement of the Act, provided the following four conditions are satisfied, viz.,

(1) it must be a building which was governed by the old Act,

(2) the tenancy was continuing on the commencement of the Act,

(3) the landlord had given a notice in writing to the tenant enhancing the rent, and

(4) that amount does not exceed the standard rent.

If all these conditions were fulfilled, then the tenant would be liable to pay the said rent from the date of the commencement of the Act, i.e.. 15th July, 1972. The words 'the rent so enhanced shall be payable' make it clear that the enhanced rent, le., rent not exceeding the standard rent is payable by the tenant from the commencement of the Act. In other words, the tenant is liable to pay the enhanced rent. See Ram Gopal v-District Judge. Banda, 1981 AWC 615. The aforesaid decision has been followed in Chander Sain v. IIIrd Additional District Judge, 1983 ARC (1) 328.

9. Section 9 of the East Punjab Urban Rent Restriction Act also contains similar provision with regard to enhancement of rent by service of a notice. Relying upon the decision of a Division Bench of Punjab and Haryana High Court in Puran Chand v. Mangal. 1969 RCJ 268. it has been held in Hirday Ram v. Somnath and others. 1969 RCJ 776, that there is no automatic increase in the rent and the landlord has to take steps by sending demand notice to that effect. This Court in Jainendra Dass Jain v. IIIrd Additional District Judge, Bijnor and others, 1981 ARC 571, has taken the view that plain language of the provision for issuing a notice cannot be violated. Thus, the notice as contemplated under Section 5 of the Act should be strictly in accordance with the provision of the Act for enhancement of rent to the extent of 25 per cent.

10. In the background of the above legal position, it is crystal clear that the enhancement of rent under Section 5 of the Act with a view to conform to the standard rent by increasing the agreed rent by 25 per cent is not ipso facto. The enhancement has to be done in the light of the provisions of Section 5 of the Act.

The basic requirement is that the landlord must give notice in writing to the tenant to enhance the rent. In the instant case, though there is a bald assertion of the landlord that he had given a notice before the enhancement of the rent, there is nothing on record to corroborate his statement. The fact remains that no notice as required under Section 5 of the Act was ever served by the landlord and the demand of enhancement of rent was straight away made in the impugned notice of demand and to quit dated 23.8.1973. There can, therefore, be no escape from the conclusion that the landlord has failed to comply with the provisions of Section 5 of the Act and consequently, he could not have demanded the enhanced rent at the rate of Rs. 23.75 n.p. for the period 1.8.1972 to 23.9.1973 as demanded in the notice. Nevertheless, liability of the petitioner to pay agreed rate of rent at Rs. 19 per month remains undisputed.

11. It is an indubitable fact that the parties are not at variance on that rent upto 31.12.1970 has been paid. The landlord, therefore, demanded the rent for the period 1.1.1971 onwards till 23.9.1973 on which date, one month's period of notice dated 23.8.1973 expired. Section 20 (2) (a) of the Act clearly provides that a suit for eviction of a tenant can be filed if the tenant is in arrears of rent for not less than four months and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand. The notice of demand would be invalid and could not be considered to be a notice of demand under Section 20 (2) (a) of the Act if the tenant was not in arrears of rent for more than four months. In the Instant case, the specific plea of the landlord is that the petitioner did not pay rent w.e.f. 1.1.1973 onwards and on the date of notice of demand dated 23.8.1973, the tenant was in arrears of rent for a period of more than four months. In contra-distinction in this assertion of the landlord, the petitioner-tenant has taken the case that after 1.1.1971 he had otherwise paid the rent on occasion amounting to Rs. 350 to the landlord himself and thereafter a sum of Rs. 228 to Bacchu Ram and, in this manner, by paying a total sum of Rs. 578 the rent upto July had been cleared and consequently, on the date of the alleged notice of demand, he was not in arrears of rent even for a period of one month. The defence of the petitioner was that when in August, 1973, he asked for a receipt of the rent paid by him, the landlord demanded enhanced amount of rent of Rs. 23.75 n.p. per month and when he (the tenant) refused to oblige him, the

landlord, out of sheer infuriation, served the notice and filed the present suit.

12. Sri H. S. N. Tripathi, learned counsel for the petitioner made a feeble attempt to argue that the notice of demand and to quit was never served on the petitioner. This submission is clearly in teeth of the plea taken by the petitioner in paragraph 8 of his written statement. The contents of the said paragraphclearly imply that the petitioner accepts that a notice of demand was sent by the landlord thought it was the outcome of the fact that he refused to pay enhanced rent. The landlord has proved the service of. notice on the petitioner. Even otherwise, it was sent by registered post on his correct address and consequently, the service of the notice by registered post has to be presumed. Now it is too late to argue that it was a case where even notice of demand and to quit was not served.

13. After having cleared the decks with regard to the rate of rent payable by the petitioner to the landlord and the fact that a notice of demand and to quit had, in fact, been served on the petitioner as well as the fact that the petitioner was in arrears of rent w.e.f. 1.1.1973 onwards, the moot question for consideration and determination Is as to who had to establish the plea of payment of rent. The question of burden of proof, in the present case, is all important for the obvious reason that the order passed by the trial court was set aside by the revisional court primarily on the ground that the trial court had wrongly decided that the landlord has to shoulder the burden to disprove the payment of rent. Sri H. S. N. Trlpathi, learned counsel for the petitioner appeared to be of the view that the question of burden of proof pales to insignificance where both the parties have led evidence and in support of his contention, he placed reliance on the recent decision of this Court in Abdul Raseed and others v. Anwar Ahmad, 2001 ACJ 237. In the said case, the question was with regard to the burden of proof of a deed, the genuineness of which was challenged on variety of grounds. Both the parties had led evidence and In that context, it was held that the question of burden of proof lost its importance. The aforesaid decision is not squarely applicable to the facts of the present case. There is a celebrated decision of the Apex Court on the point in Madan Mohan and another v. Krishna Kumar Sood, JT 1993 (1) SC 162, in which It was observed that whatever protections the Rent Acts give, they do not giveblanket protection for 'non-payment of rent'. This basic minimum requirement

has to be complied with by the tenants. The Rent Acts do not contemplate that if one takes a house on rent, he can continue to enjoy the same without payment of rent. The onus to show payment of rent lies on the tenant. Relying upon the decision on Madan Mohan's case (supra). It has been held by this Court in Sukhanand v. IVth Additional District Judge, Bulandshahr and another. 1993 (2) ARC 39, that the tenant is obliged to establish the plea of payment of rent. The law, as stands well embedded, is that if the landlord establishes that the tenant is in arrears of rent, in that event, it is squarely upon the tenant to establish the plea of payment of rent as pleaded by him.

14. The revisional court has come to the conclusion that the petitioner has failed to establish the alleged payments and, therefore, he has become a defaulter in payment of rent rendering himself liable to ejectment. Though, it is not necessary, but in my quest to reach the truth, I have Sifted the evidence. The specified plea of the petitioner in the written statement is that he has paid a sum of Rs. 350 to the landlord himself and besides the said amount, also paid a sum of Rs. 228 to Bacchu Ram, an employee of the landlord. In his statement, the petitioner has to tell an entirely different story. According to him, he had paid a sum of Rs. 300 only (not Rs. 350 as pleaded In the written statement) to the landlord and Rs. 228 to Bacchu Ram. There is, thus, a leave way of Rs. 50 In the facts as pleaded in the written statement and as stated on oath by the petitioner. It Is also worthwhile to mention that the petitioner had made an unflinching statement that at the time when he paid Rs. 228 to Bacchu Ram, no other person was present. Yet the petitioner. In his zeal to prove the payment, examined one Allahauddln as D.W. 2 who has stated that a sum of Rs. 228 was paid by the petitioner to Bacchu Ram in his presence. Not only this, Allahauddin appeared to be so excited to espouse the cause of the petitioner that he further went on tostate that the petitioner had also paid Rs. 200 in his presence to the landlord and that some settlement with regard to the price of the shoe/chappal amounting to Rs. 15-16 was made. The revisional court has rightly discarded the evidence of Allahauddin who. as a matter of fact. was not required to be produced as he could not have been a witness of the payment in the light of the stand taken by the petitioner in his statement. The petitioner also set up a plea that a sum of Rs. 11 was required to be paid by the landlord to him as the price of the chappal. The landlord has denied this allegation.

15. Sri H. S. N. Tripathi, learned counsel for the petitioner took pains to argue that the landlord was duty bound to produce Bacchu Ram who was present in the Court on the date of the evidence and to produce the account books maintained by him. It appears that the trial court was swayed by the similar submission and has drawn an adverse inference against the landlord for not producing Bacchu Ram or in not bringing before the Court, the account books. As said above, the burden to prove the payment was squarely on the tenant-petitioner. He had miserably failed to establish that he had paid in total a sum of Rs. 578 (Rs. 350 directly to the landlord and Rs. 228 through Bacchu Ram]. The petitioner was not entitled to make adjustment of Rs. 11 as the price of chappal. The fact, therefore, remains that the plea of payment taken by the petitioner-tenant turns out to be ornamental and an empty formality to save the eviction.

16. The landlord has claimed a sum of Rs. 575 after adjusting a sum of Rs. 107.75 n.p. paid by the tenant-petitioner after 1.1.1973. This amount has been calculated on the basis of enhanced rent. In view of the finding above that since the landlord did not comply with the provision of Section 5 of the Act, he could not claim enhanced rent, the claim of the landlord would stand reduced to Rs. 520.75 n.p. as arrears of rent for the period 1.1.1971 to 23.9.1973 at the rate of Rs. 19 per month and after adjusting the admitted payment of Rs.107.75 n,p. a sum of Rs. 413 was required to be paid by the petitioner-tenant to the landlord. This amount was certainly for a period more than four months. The tenant failed to pay the said amount after service of the notice of demand and to quit dated 23.8.1973 and, therefore, committed default within the meaning of Section 20 (2) fa) of the Act.

17. Learned counsel for the petitioner urged that the tenant could have deposited the entire amount due to him with a view to relieve himself of the liability of ejectment in view of the provisions of sub-section (4) Section 20 of the Act. This provision gives another occasion to the tenant to save his tenancy. It provides that in a suit for eviction, if a tenant, at the first hearing of the suit, unconditionally pays or tenders to the landlord or deposits In Court the entire amount of rent and damages for use and occupation of the tenanted accommodation due from him together with interest thereon at the rate of 9 per cent per annum and the landlord's costs of the suit in respect thereof after deducting therefrom any amount

already deposited by the tenant, under subsection (1), the tenant would stand relieved of his liability of eviction. In the instant case, the petitioner had filed written statement on 6th May, 1974. Admittedly, he made no attempt to pay or deposit the requisite amount as contemplated under Section 20 (4) of the Act. The deposit has to be made at the first date of hearing. It was not done. Therefore, the petitioner is not entitled to the benefit of Section 20 (4) of the Act.

18. The fact that the petitioner had committed default in payment of arrears of rent calculated even at the agreed rate of Rs. 19 per month is well established. The petitioner cannot save his eviction on any ground.

19. A feeble attempt was also made by Sri H. S. N. Tripathi, learned counsel for the petitioner that the suit for ejectment against the petitioner was not maintainable on the Small Causes Court's side. He appeared tobe of the view that a regular suit for ejectment could be filed. A complete answer to this submission is to be found in the decision of this Court in Abdul Hameed v. IIIrd Additional District Judge, Mainpuri and others, 1999 (2) ARC 853. After analyzing the various provisions of the Act as well as Section 15(1) of the Provincial Small Causes Court's Act, it was held that the Small Causes Courts are courts of preferential jurisdiction and not exclusive jurisdiction and as Section 15(1) of the Provincial Small Causes Court's Act confers jurisdiction upon Small Causes Courts to try a suit for possession based on contract of tenancy of a building, it enables the Small Causes Court to take cognizance of a suit between lessor and lessee.

20. As a last straw. Sri H. S. N. Tripathi, learned counsel for the petitioner canvassed the point that the revisional court was not justified in disturbing the finding of fact arrived at by the trial court by substituting its own finding. It was argued that whether or not the petitioner has committed default in payment of arrears of rent was question of fact and since the trial court has recorded a finding that there was not default on the part of the petitioner, the revisional court was not justified in taking a contrary view. In support of his contention, Sri Tripathi placed reliance on the decision of this Court in Laxmi Kishore and others v. Har Prasad Shukla and others, 1979 All CJ 473 ; Om Prakash Gupta v. Additional District Judge, Atigarh, 1976 ARC (2) 532 ; Man Mohan Dixit v. Additional District Judge,

1996 ARC (2) 561 : Anwaruddin v. Additional District Judge, Aligarh and others, 1999 All CJ 54 ; Rajendra Nath Tripathi v. Jagdish Nath Gupta, 1999 All CJ 431 and Har Swamp Nigam a. District Judge and others, 1999 All CJ 990. There can be quarrel about the proposition of law laid down in the said decisions about the scope and power of the revisional court. The law on the point has been succinctly specified in paragraph 11 of the report in Anwaruddin's case (supra) which reads as under :

'11. So far as the first contention of the learned counsel for the petitioner about the scope of interference on the finding of facts re-appreciating the evidence on record by the rcvisional 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 revislonal court finds that the judgment under revision suffers from the vice of perversity or it is based on wrong appreciation of evidence, the revisional 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 limited to correct error of jurisdiction only. Whereas under Section 25 of the Act the revislonal 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 power to set aside such Judgment and decree which is causing injustice to the party and is not supported with goodreasons. 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 of misinterpretation of law.'

A close analysis of the above observations would make it clear that if the revisional court finds that the judgment of the trial court under revision is perverse or is based on wrong appreciation of evidence, it is the duty of the revisional court to step-in to rectify the mistake. The finding of fact recorded by the trial court ios not sacrosanct. If ultimately it is found that It is not according to law or is based on misreading or misappraisal of the evidence or the view taken Is perverse, the revisional court would not hesitate in setting it aside. In the instant case, the trial court has proceeded on an illegal and unwarranted assumption that it was the duty of the landlord to disprove payment of rent by the tenant. The burden of payment of rent was wrongly shifted on the landlord. This glaring Illegality could be corrected by the revislonal court. As a matter of fact, the revisional court has observed that the view taken by the trial court was perverse. Since the decision of trial court was not in accordance with law for the reasons stated above, the revisional court was Justified in setting aside the decision, which was against law. The decision of the revisional court cannot be faulted on any ground, whatsoever.

21. In the conspectus of the above facts, the decree for ejectment passed against the petitioner has to be upheld. The decree for recovery of arrears of rent and mesne profit shall, however, stand modified to the extent that the respondent No. 2 landlord (now Vijay Kumar - legal representative of the deceased landlord Ganesh Prasad) shall be entitled to receive a sum of Rs. 413 only from the petitioner-tenant as arrears of rent for the period 1.1.1971 to 23.9.1973 at the rate of Rs. 19 per month and mesne profit at the rate of Rs. 19 per month with effect from24.9.1973 till the date of actual delivery of possession at the same rate, after payment of the requisite court-fee.

22. The writ petition is accordingly disposed of.