

Chandra Shekhar Prasad Vs. Special Judge/ Additional District Judge, Ballia and Others

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Court : Allahabad

Decided On : May-10-2000

Reported in : 2000(3)AWC1924

Judge : Sudhir Narain, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 106, 111 and 114; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972

Appeal No. : C.M.W.P. No. 22871 of 1997

Appellant : Chandra Shekhar Prasad

Respondent : Special Judge/ Additional District Judge, Ballia and Others

Advocate for Def. : S.C. and ;O.P. Gupta, Adv.

Advocate for Pet/Ap. : M.A. Qadeer, Adv.

Judgement :

Sudhir Narain, J.

1. This writ petition is directed against the judgment of the trial court dated 23.3.1996 decreeing the suit for recovery of arrears of rent, ejectment and

damages and the order of the revisional court dated 23.4.1997 affirming the said order in revision.

2. Briefly stated, the facts are that the petitioner had taken the shop in question from respondent No. 3 at monthly rent of Rs. 200 for a period of 11 months. He had executed a rent note on 16th May, 1993. The landlady-respondent No. 3 gave a notice on 10th August, 1994 under Section 106 of Transfer of Property Act terminating the tenancy of the petitioner and demanding arrears of rent alleged to be due since 15.4.1994. The petitioner did not comply with the said notice. She gave another notice on 19.9.1994 purporting to be under Section 111 of the Transfer of Property Act stating therein that the tenancy was for a period of 11 months and the said period having expired, the petitioner was liable to deliver possession to her. As the petitioner did not deliver possession of the disputed shop to respondent No. 3, she filed Suit No. 9 of 1994 in the Court of Judge Small Causes Court. Ballia for recovery of arrears of rent, ejectment and damages. The petitioner filed written statement and denied that he had committed default in payment of arrears of rent. It was stated that the provisions of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short Act) were applicable and he was not liable for eviction. The trial court decreed the suit vide its judgment dated 23.3.1996 on the finding that the provisions of the Act were not applicable. The petitioner was liable to pay rent for the period since 16.4.1994 at the rate of Rs. 200 per month. The petitioner preferred a revision against the said Judgment. Respondent No. 1 has dismissed the revision vide impugned order dated 23.4.1997.

3. I have heard Sri M.A. Qadeer, learned counsel for the petitioner and Sri O.P. Gupta, learned counsel for the contesting respondent.

4. The main thrust of the submission of the learned counsel for the petitioner is that the suit was filed on the ground that the petitioner had not paid the amount as stipulated in the agreement but later on he having deposited the amount in the Court, his tenancy could not be forfeited and was not liable for eviction on that ground. It has been found by the Courts below that the petitioner had executed a rent deed dated 15.5.1993 which provided that the tenancy was for a period of 11

months. There was no clause in the agreement that the lease will be forfeited in case the tenant failed to pay the rent. There is no dispute that the rent for the period of 11 months was paid by the tenant. The plaintiff-respondent had claimed the rent only for a period after expiry of the lease period, i.e., for the period 14.4.1994 and till the date of filing of the suit.

5. Section 114 of the Transfer of Property Act is applicable when three conditions are satisfied. Firstly, there is an agreement of lease between the parties, secondly, there is a condition in the lease deed that the lease will be forfeited if the rent is not paid to the lessor in accordance with the conditions mentioned in the lease deed and thirdly, the lease is forfeited by the lessor on the ground that the lessee has not complied with the terms of payment of rent as contained in the lease deed.

6. In, *Sardar Kartar Singh v. Smt. Phoolwati*. AIR 1961 All 95, it has been held that Section 114 of the Transfer of Property Act applied to the cases where the forfeiture relied upon by the plaintiff is one incurred under the terms of the lease. The scope of Section 114 was explained in. *Riyasat Ali Khan v. Mirza Wahid Beg and another*. AIR 1966 All 165, observing that the right of forfeiture is limited to cases where the tenant is guilty of some kind of misconduct as for example non-payment of rent. Section 114 enables the Court to grant the tenant relief against forfeiture for non-payment of rent. It applies to those cases where the landlord invokes his rights under a forfeiture clause under the agreement and determines the lease by the forfeiture and sues to eject the tenant on the ground of forfeiture of lease.

7. Learned counsel for the petitioner has placed reliance upon the decision *Surjeet Singh v. Additional District Judge, Haridwar and others*, 1994 AWC 17, where the Court granted relief against eviction where the tenancy was forfeited on the ground of non-payment of rent. This case has no application, as in this case there was an agreement of forfeiture of lease on the ground of non-payment of rent.

8. The petitioner has annexed a copy of rent note as Annexure-1 to the writ petition. In this rent note, there is no forfeiture clause. It only states that the tenant shall be liable to pay rent at the rate of Rs. 200 per month and after the expiry of the period of lease, he will hand over possession to the landlord. The tenant paid

the rent for the entire period of 11 months and there was no occasion to forfeit the lease on this ground.

9. The learned counsel for the petitioner further submitted that the plaintiff-respondent had sent notice terminating the tenancy under Section 106 of the Transfer of Property Act and subsequently another notice under Section 111 of the said Act. The termination of tenancy in both ways did not make any difference as regards the right of the plaintiff to treat the tenancy as determined under Section 111 of the Transfer of Property Act. The tenancy can be determined on various grounds mentioned under Section 111 of Transfer of Property Act. The tenancy can be determined under clause (a) by efflux of time limited thereby ; by forfeiture under clause (g) and by serving a notice determining the tenancy or to quit under clause (h) of Section 111 of the Transfer of Property Act. The plaintiff determined the tenancy under Section 106 of the Transfer of Property Act and also issued another notice indicating that the tenancy has come to an end by efflux of time. The notice sent by the plaintiff did not indicate that the tenancy has been forfeited on account of non-payment of rent. The provisions of Section 114 of the Transfer of Property Act were, in these circumstances, not applicable in the case of the petitioner.

10. No other point has been pressed.

11. I do not find any merit in the writ petition. It is accordingly dismissed. The parties shall, however, bear their own costs.