

Smt. Chotti Vs. Xiiiith Additional District Judge, Agra and Others

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Court : Allahabad

Decided On : Apr-19-1999

Reported in : 1999(3)AWC1813

Judge : Yatindra Singh, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 20(2) and (4); Indian Soldiers (Legislation) Act, 1925 - Sections 3 and 30(1)

Appeal No. : C.M.W.P. No. 40015 of 1998

Appellant : Smt. Chotti

Respondent : Xiiiith Additional District Judge, Agra and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Piush Narain Dubey, Adv.

Judgement :

Yatindra Singh, J.

1. This is the tenant's writ petition against the orders dated 22.8.1997 and 9.3.1998 passed by respondent Nos. 2 and 1 (Annexures-4 and 5 respectively) decreeing the suit of the landlord. Courts below have held that 22.2.1996 was the

date mentioned in summon. It is the first date of hearing. No amount was deposited by this date. The Court further held that Rs. 600 was deposited on 25.9.1996 which is not only after first date of hearing but is also less than the amount calculated under Section 20 (4) of U.P. Urban Building (Regulation of Letting- Rent and Eviction) Act. 1972 (the Act for short). The suit is liable to be decreed.

SUBMISSION OF THE PARTIES--

POINTS FOR DETERMINATION

2. I have heard counsel for the parties. The counsel for the petitioner argued that 22.02.1996 was not the first date of hearing. The first date of hearing is the date on which the Court applies its mind and the Court applied its mind on 22.08.1997 the date when the Judgment was delivered and by that time, the entire amount was deposited. Following points arise for determination in this case.

(i) What is the first date of hearing?

(ii) Was the entire amount deposited on the first date of hearing?

1st Point--FIRST DATE OF HEARING

3. The Act prohibits the filing of suit for the eviction of a tenant except on the ground mentioned in Section 20 (2) of the Act. Section 20(2) (a) of the Act permits the landlord to file a suit for the eviction of a tenant if he is in arrears of rent for not less than four months. But Section 20 (4) of the Act provides that if the tenant deposits the entire rent along with interest and the cost of the landlord in the suit, then the decree for his eviction on this ground cannot be passed. This has to be deposited in the Court on the first date of hearing. But what is the first date of hearing? This was subject matter of some debate before the Courts, The Legislature inserted an Explanation defining the word 'first date of hearing'. According to the Explanation, it means the first date for any step or proceedings mentioned in the summons served on the tenant. The controversy even then did not end. The word 'first date of hearing even after the Explanation has been subject-matter of discussion. Now it has been settled.

4. 'First date of hearing' means the first date on which the Court proposes to apply its mind.

5. Two single Judges of this Court have considered these two decisions. Perhaps the observations of Justice D.K. Seth in para 14 of the report *Virendra Pal Sharma v. Sita Ram Agrawal* that the date of filing of written statement will be the first date of hearing is not correct. But nothing turns upon that. This may be because in both the cases before the Apex Court, there was one date for filing of written statement and the other date for final hearing. But this was not so in both the cases considered by this Court. Justice M.C. Agrawal has correctly interpreted the decision of the Apex Court in his decision in *Shyamlal v. Janki Das* and has rightly held that adjourned date is not the first date of hearing.

6. In this case, the suit was filed on 17.1.1996 and notices were issued to the defendant-petitioner for appearance on 22.2.1996. The first date before the Small Causes Court normally is for appearance as well as for final hearing. The summons is not on the record of the writ petition. It is not clear if 22.2.1996 was fixed for appearance only or for final hearing also. The order sheet is on the record. It also does not indicate why 22.2.1996 was fixed. It records on 17.1.1996 that notice to defendant for 22.2.1996 be issued. On 22.2.1996, the defendant filed an application that he may give the copy of the plaint. The Court held that the copy of the plaint has already been given to him. The application was rejected and 14.04.1996 was fixed for final hearing. This was the date on which Court has proposed to apply its mind. This date atleast was the first date of hearing.

2nd Point--WAS AMOUNT

DEPOSITED

7. It is admitted case that no amount was deposited even by 14.4.1996. The amount was first deposited on 25.9.1996. This is much after the first date of hearing. The Courts below have further held that it is less than the amount contemplated under Section 20 (4) of the Act.

CONCLUSION

8. The writ petition has no merit and is dismissed with costs. Petitioner is a widow. She may not be evicted from the premises in dispute for the period of six months from today provided she files an undertaking in the form of an affidavit within two months from today that she will handover peaceful possession of the premises within six months and pay the damages at the rate of rent for the period of her occupation.

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