

Devendra Kumar Jain Vs. Ram Prakash

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Court : Allahabad

Decided On : Jul-13-2004

Reported in : 2004(4)AWC3056

Judge : Anjani Kumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 15, Rule 5 and 5(2)

Appeal No. : Civil Revision No. 204 of 2002

Appellant : Devendra Kumar Jain

Respondent : Ram Prakash

Advocate for Def. : Ravi Agrawal, Adv.

Advocate for Pet/Ap. : P.K. Jain, Adv.

Disposition : Revision dismissed

Judgement :

Anjani Kumar, J.

1. Heard Sri P. K. Jain, learned counsel appearing on behalf of the revisionist-defendant and Sri Ravi Agrawal, learned counsel for the plaintiff-opposite party.

2. The plaintiff-landlord filed a suit for ejectment and arrears of rent against the defendant-revisionist, which was pending before the trial court. The aforesaid suit was numbered as S.C.C. Suit No. 3 of 2000. During the pendency of the aforesaid suit, an application 24-GA has been filed by the plaintiff-landlord under Order XV Rule 5 of the Code of Civil Procedure on the ground that the defendant-tenant has not complied with the provisions of Order XV Rule 5 of the Code of Civil Procedure, inasmuch as he is not depositing regularly the admitted rent as contemplated under Order XV Rule 5 of the Code of Civil Procedure. therefore, his defence deserves to be set aside. The defendant-tenant denied the aforesaid allegation of the plaintiff-landlord and stated that he has deposited the entire admitted rent on the first date of hearing and he has not committed any default.

3. The trial court vide its order dated 3rd May. 2002. dismissed the objection raised by the defendant-tenant and found that the tenant has committed default and struck off the defence of the tenant. Aggrieved thereby, this revision under Section 25 of the Provincial Small Causes Court Act is filed by the tenant-revisionist, in order to appreciate the rival contention, it is necessary to reproduce the Order XV Rule 5 of the Code of Civil Procedure :

'Order XV Rule 5.-Striking off defence for failure to deposit admitted rent. etc.-(I) in any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off his defence :

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited :

Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same.'

4. Learned counsel for the revisionist-tenant submitted that a bare reading of the aforesaid provisions demonstrates that apart from depositing the entire admitted amount with interest, etc. as contemplated under Order XV Rule 5 of the Code of Civil Procedure, the tenant is further liable to deposit regularly in future the admitted rent as contemplated in the second para of Order XV Rule 5 of the Code of Civil Procedure. In support of his contention learned counsel for the revisionist relied upon the decision of the Apex Court particularly para 3, which is reproduced below, in *Smt. Satya Kumari Kamthan v. Noor Ahmed and Ors.* 1992 (2) ARC 82 ;

'3. Can the ground that the decision of this Court 'overruled the decision of the Allahabad High Court above referred, be sufficient to set aside the District Judge's order and remand it for fresh disposal? We may point out that in the case on hand when the appellant filed an application for striking off the tenant filed a written statement objecting to the striking off on the ground that there was no default in payment of the monthly rent as provided under Rule 5 (1) of Order XV. The courts below did not accept this contention and found as a fact that there was a default in payment of the admitted rent. The courts below further held that though there was a default there is no 'representation' by the tenant giving any excuse for not depositing the correct amount or praying for extension of time for deposit for valid reasons and that. therefore, the plaintiff was entitled to get the defence struck off. The word 'representation' may cover 'representation' in answer to an application for striking off or a 'representation' praying for an extension of time for making the deposit on sufficient grounds shown. The tenant in this case , only made representation that he had deposited the correct money rent but he had not filed any application for extension of time. In the circumstances, therefore. the courts below were right in holding that there was a default in payment of the monthly rent and since there was also no application for extension of time under sub-rule (2) of Rule 5 of Order XV the defence was liable to be struck off. The order of the High Court in the writ petition, is, therefore, not sustainable. The appeal is accordingly allowed. The judgment dated 24th February. 1982 in Civil Writ Petition No. 13392

of 1987 is set aside and the Order of the Civil Judge as confirmed by the Additional District Judge striking off the defence is upheld.'

5. Learned counsel appearing on behalf of the revisionist-tenant further relied upon a decision of the Apex Court in Bimal Chand Jain v. Sri Gopal Agarwal. 1981 ARC 465. whereby the Apex Court relying upon Rule 5 of Order XV of the Code of Civil Procedure in para 6 has held that :

'Sub-rule (1) obliges the defendant to deposit at or before the first hearing of the suit the entire amount admitted by him to be due together with the interest thereon at the rate of nine per cent per annum and further, whether or not, he admits any amount to be due to deposit regularly throughout the continuation of the suit monthly amount due within a week from the date of its accrual.

In the event of any default in making any deposit 'the Court may subject to the provisions of sub-rule (2), strike off his defence.'

6. Sub-rule (2) of the aforesaid Rule 5 of Order XV of the Code of Civil Procedure reads as under :

'Striking off defence on failure of deposit of admitted rent, etc. (1)

'Explanation (i) Explanation (ii) Explanation (iii)

(2) Before making an order for striking off defence, the Court may consider any representation made by the defendant in that behalf provided such representation is made within ten days of their first hearing or of the expiry of the week referred to in sub-section (1), as the case may be.

(3)

Provided further that if the amount deposited includes any sums claimed by the depository to be deductible on any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same.'

7. Learned counsel appearing on his behalf of the landlord, therefore submitted that the tenant is neither regularly depositing the monthly rent within seven days of

its accrual, nor made any representation as contemplated under sub-rule (2) of Rule 5 of Order XV of the Code of Civil Procedure, thus his defence is liable to be struck off, as held in the aforesaid decision of the Apex Court. He further relied upon decisions in *Dinesh Chandra Gupta v. Pradeep Bhargava*, 1984 ALJ 501 and *Prem Prakash Yadav v. Smt. Chandra Kala Devi*, AIR 1983 All 396

8. In view of the aforesaid settled law and in view of the findings recorded by the trial court while disposing of the application, referred to above, since it is apparent on the face of record that the tenant has not deposited the regular rent within seven days of its accrual as contemplated under Order XV Rule 5 of the Code of Civil Procedure and also not made any representation as contemplated under sub-rule (2) of Rule 5 of Order XV of the Code of Civil Procedure, this revision deserves to be dismissed and is hereby dismissed. The order passed by the trial court is affirmed.

9. With the aforesaid observation this revision is dismissed. The interim order. If any, stands vacated. However, the parties shall bear their own cost.

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