

Fida Husaln Vs. Vith Additional District Judge and anr.

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Court : Allahabad

Decided On : Oct-31-2003

Reported in : 2004(1)AWC211

Judge : S.U. Khan, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 17

Appeal No. : C.M.W.P. No. 2877 of 1983

Appellant : Fida Husain

Respondent : Vith Additional District Judge and anr.

Advocate for Def. : D.N. Pandey, Adv. and ;S.C.

Advocate for Pet/Ap. : S.A. Ansari, ;Prem Prakash, ;K.B.L. Gaur, ;J.A. Azmi and ;J.J. Munir, Advs.

Disposition : Petition dismissed

Judgement :

S.U. Khan, J.

1. This is tenant's writ petition arising out of a suit for ejectment and recovery of arrears of rent and damages for use and occupation filed by landlord-respondent. The suit was initially filed on 28.9.1977 before regular civil court/Munsif. The plaint

was later on by order dated 17.8.1978 returned for filing before J.S.C.C. and it was accordingly thereafter filed before J.S.C.C. and registered as S.C.C. Suit No. 47 of 1978. The suit was decreed on 6.8.1981 by IInd Additional Civil Judge/J.S.C.C., Azamgarh. The revision filed against the same being Revision No. 172 of 1981 was also dismissed by 6th Additional District Judge, Azamgarh through judgment and order dated 18.11.1982. Review petition was also dismissed by Additional District Judge, Azamgarh through judgment and order dated 8.3.1983. Hence this writ petition.

2. According to brief allegations in the plaint the shop in dispute was constructed in the year 1970, that the rate of rent was Rs. 25 per month till October, 1972 and thereafter it was Rs. 31.25 paise per month, that the tenant had not paid the rent since 1.8.1974 and remained a defaulter inspite of notice of termination of tenancy and demand of rent dated 17.8.1977. In the plaint relief of ejection and rent of Rs. 1,114.56 paise alleged to be due till 21.9.1977 was prayed for. Pendente lite and future damages were also claimed in the plaint. Initially in the plaint it was pleaded that U.P. Act No. 13 of 1972 was applicable to the building in dispute. However, later on through amendment that assertion was got deleted.

3. Tenant-petitioner filed written statement pleading therein that in between landlord on the one hand and the defendant and another person namely Mohd. Sayeed on the other hand an agreement was executed on 16.1.1969 according to which land over which shop in dispute is constructed was given to them and they were required to make construction of a shop over the land with their own expenses which were to be adjusted in rent at the rate of Rs. 20 per month and that after adjustment of the entire expenses rent was to be paid at the rate of Rs. 25 per month. It was also pleaded that later on another agreement took place in between tenant and Mohd. Sayeed on 22.1.1971 whereby Mohd. Sayeed opted out the business which was being carried out from the shop in dispute and defendant Fida Husain remained only tenant of the said shop. The said agreement is alleged to have been signed by landlord-respondent as witness. Copies of both these agreements have been filed as Annexures-1 and 2 respectively to the writ petition. It was further pleaded in the written statement that defendant spent Rs. 2,252.60 in making the constructions which was to be adjusted in rent and by

virtue of that defendant was not defaulter till the filing of the suit.

4. After filing of the written statement plaintiff filed replica (Jawabul Jawab) which is quoted in para 3 of the writ petition according to which agreement dated 16.1.1969 was admitted but it was asserted that the tenant Fida Husain and the other person Mohd. Sayeed could not make construction and Mohd. Sayeed withdrew from the deal and Fida Husain alone could not spend the amount ; the agreement dated 16.1.1969 was not therefore, acted upon and plaintiff constructed the shop with his own expenses and gave the same on rent to defendant at the rate of Rs. 25 per month. Replica was filed on 6.9.1980.

5. Plaintiff adduced evidence to the effect that permission by the local body for making construction was granted on 18.12.1969 and thereafter he (plaintiff) made the constructions in January, 1970.

6. The trial court rightly held that U.P. Act No. 13 of 1972 was not applicable to the shop in question as according to the plaintiff construction was made in January, 1970 and according to defendant in February, 1969 and in either view of the matter the suit was filed within ten years from the date of construction.

7. The trial court after taking into consideration the evidence adduced by both the parties held that constructions were made by the plaintiff and not by the defendant. For arriving at these findings the following factors were taken into consideration :

(a) Map was sanctioned in December, 1970.

(b) Construction was made over the area which was more than the area mentioned in the agreement dated 16.1.1969.

(c) Tenant could not produce the entire account of expenses alleged to have been incurred by him towards constructions.

(d) Accounts of alleged construction submitted by the tenant appeared to have been manufactured afterwards.

(e) Two money orders sent by tenant to the landlord in September and November, 1977.

(f) Inconsistency in the oral statement of the defendant regarding sending two money orders and possession of Abdul Jabbar of the adjoining shop.

8. The trial court held that the rate of rent was Rs. 25 per month. However, the trial court did not accept the plea of the landlord that later on the rent was increased to Rs. 31.25 per month. According to the trial court the rent always remained to be Rs. 25 per month.

9. As far as the second agreement in between defendant Fida Husain and the other person Mohd. Sayeed is concerned the trial court found that it was not admissible. In any case plaintiff was not a party in the said agreement hence the same is not binding upon him. Even if it is assumed to be correct that the said agreement was signed by the plaintiff as witness it will not make any difference.

10. It has also been stated in writ petition that petitioner was entitled to the benefit of Section 114 of the T.P. Act. In the supplementary-affidavit it has been stated that the defendant deposited an amount of Rs. 2,250 on 28/30th October, 1978. This question of applicability of Section 114 of the T.P. Act was not at all considered by the trial court or the revisional court. It was mentioned for the first time in the order of the revisional court rejecting the review petition. In my opinion the question of applicability of Section 114, T.P. Act is not necessary to be decided in this case. The argument has been raised on the basis of a clause in the agreement dated 16.1.1969 to the effect that the tenant would be liable to ejection if he did not pay rent for more than three months. In this case basic question involved is whether the said agreement of 16.1.1969 was acted upon or not. If it is held that the said agreement was acted upon then the suit would be liable to be dismissed as there were no arrears of rent on the date of filing of the suit and no ground for ejection mentioned in the said agreement was alleged in the plaint. However, if it is held that the said agreement was not acted upon then there would be no question to consider the applicability of Section 114 of the T.P. Act.

11. Learned counsel for the tenant-petitioner has vehemently argued the plea that the agreement of 16.1.1969 was not acted upon was taken by the plaintiff only in replica and not in the plaint and replica not being part of pleading plaintiff could not

be permitted to adduce evidence in support of the said plea and the said evidence which had been adduced could not be taken into consideration by the Court. In AIR 1977 Punj 68, it has been held that replica is part of pleading. The said authority has been referred in AIR 1981 All 78. In the later authority of Punjab and Haryana High Court reported in AIR 1983 P&H; 197, the earlier authority of the same court of 1977 (supra) has been relied upon. In the 1977 authority of Punjab and Haryana High Court proceedings in dispute had been initiated before rent controller. Rent controller is not civil court and strict procedure of C.P.C. does not apply to proceedings before Tribunals, which are not civil courts. In my opinion, replica by plaintiff is nothing but amendment in the plaint. Nomenclature is not decisive. Replica may be taken to be part of the pleading only if it satisfies the requirement of amendment in the plaint as provided for under Order VI, Rule 17. The most important ingredient of amendment in pleading is permission of court granted on the grounds on which amendment may be permitted. In the instant case, it does not appear that any permission of the Court was sought or granted for adding in the plaint the allegations made in the replica, hence, it cannot be taken to be part of the pleading.

12. However, the matter does not end here. Tenant pleaded that agreement was entered into on 16.1.1969 and in pursuance thereof he made constructions and incurred expenditure of Rs. 2,252.60 thereupon. Regarding this plea he lead evidence and issue No. 3 (whether the rate of rent was Rs. 20 or Rs. 25 per month) was directly based on the said plea. On a plea raised by the defendant and on which Issue is framed and defendant leads evidence, plaintiff is fully entitled to lead evidence, hence the evidence lead by the plaintiff regarding non-implementation of agreement dated 16.1.1969 cannot be shut out from consideration on the ground that he did not plead it.

13. Findings of the trial court to the effect that the agreement dated 16.1.1969 was not acted upon is based upon evidence, hence neither it could be interfered with by the revisional court nor this Court can Interfere in the said finding of fact.

14. Accordingly, there is no merit in this writ petition and it is dismissed.

15. Tenant-petitioner is granted six months time to vacate provided that within one month from today he files an undertaking before the trial court to the affect that within the aforesaid period of six months he will willingly vacate and hand over its vacant possession to the landlord-respondent.

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