

**Bankey Lal Vs. liird Additional District Judge, Mathura and Others**

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**Court :** Allahabad

**Decided On :** Aug-19-1998

**Reported in :** 1998(3)AWC2318

**Judge :** J.C. Gupta, J.

**Acts :** Uttar Pradesh Buildings (Regulation Letting, Rent and Eviction) Act, 1972 - Sections 20, 20 (1) and (2); Code of Civil Prochure, 1908 - Sections 38; Transfer of Properties Act - Sections 106

**Appeal No. :** C.M.W.P. No. 14336 of 1998

**Appellant :** Bankey Lal

**Respondent :** iird Additional District Judge, Mathura and Others

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** Rajesh Tandon, Adv.

**Judgement :**

**J.C. Gupta, J.**

1. This writ petition is directed against the order dated 9.12.1996 passed by respondent No. 2 in the execution proceedings and the order dated 15.4.1998 passed by revisional court, the respondent No. 1.

2. Relevant facts may be briefly stated.

3. Suit No. 9 of 1989 was filed on Small Cause Court's side by respondent No. 3 against the petitioner for ejectment alleging that the petitioner was tenant in the disputed shop @ Rs. 100 per month which was subsequently enhanced to Rs. 150 per month from 1982. The tenant-petitioner was in arrears of rent since July, 1982, which were not paid despite service of notice of demand. The tenancy was also terminated by means of a notice served under Section 106 of the Transfer of Properties Act.

4. The said suit was contested by the petitioner and in the written statement filed by him, the plaintiffs allegations were denied and it was pleaded that he committed no default in payment of rent and the suit was liable to be dismissed. The trial court framed following issues :

(i) Whether the defendant is plaintiff-tenant?

(ii) Whether the defendant has committed default in payment of rent and is liable to be evicted from the disputed shop on that account?

(iii) To what relief is the plaintiff entitled?

5. It appears that though the parties entered into some agreement with regard to rate of rent and payment of arrears, they adduced both oral and documentary evidence before the trial court as is apparent from the judgment. The suit was decided by the trial court by means of judgment dated 29.4,1992, issue No. 1 was decided in affirmative. While deciding issue No. 2, the trial court held that the defendant did not commit any default in payment of rent and was, thus, not liable to ejectment. While answering issue No. 3, the trial court held that though in the plaint a relief for decree of eviction was prayed against the defendant but the plaintiff admitted in his statement before the Court that he did not want the said relief. With these findings, the trial court decreed the plaintiffs suit and directed the defendant-petitioner to pay arrears of rent @ Rs. 125 per month from August, 1988, to April. 1992, within three months and also to pay future rent at the same rate and if any default was committed by the defendant in payment of rent, the

plaintiff would be entitled to evict, him.

6. The plaintiff-respondent No. 3 then filed an application in execution for the eviction of the petitioner alleging therein that since the defendant-petitioner had not paid rent from November, 1992, to July, 1994, he had made himself liable to eviction under the terms of the decree passed in S.C.C. suit filed by him. The petitioner filed objection in the form of an affidavit stating therein that the entire arrears of rent have been paid and deposited and he could not be evicted in execution of decree. The executing court by the order dated 9.2.1996 rejecting the petitioner's objection held that the petitioner has committed default in payment of future rent and was liable to eviction in execution of the decree. The petitioner unsuccessfully challenged the said order before the revisional court. Aggrieved, this writ petition has been filed before this Court.

7. Since affidavits have been exchanged, with the consent of parties' counsel, this writ petition is disposed of finally at the admission stage itself.

8. Learned counsel for the petitioner vehemently argued that since no decree of ejectment against the petitioner was passed in S.C.C. suit filed by respondent No. 3, he could not be dispossessed in execution of the decree in question and default, if any, was committed in respect of payment of future rent, the respondent No. 3 could get the petitioner evicted only after obtaining a fresh decree by filing a fresh suit. Learned counsel for the respondent No. 3 on the other hand contended that the Courts below have rightly held that the petitioner was liable to eviction as he has committed a breach of the conditions incorporated in the decree in question. According to him, plaintiffs suit for eviction had also been decreed and the petitioner was given only a concession that as long as he continued to pay rent @ Rs. 125 per month, the decree for eviction would not be executed but in case of default the plaintiff was entitled to evict him in execution of that decree.

9. The contentious point for consideration in this writ petition is as to what were the terms of the decree and was the petitioner liable to be dispossessed in execution of the decree passed in the suit in case of default committed by the petitioner in payment of future rent

10. Section 38 of the Code of Civil Procedure provides that the decree may be executed by the Court which was passed by it. It is well-established law that the executing court cannot go behind the decree and must execute it as it stands but where the terms of the decree are not very specific and clear, it is the duty of the executing court to construe the decree to ascertain its precise meaning. For this purpose, it is within the competence of the executing court to refer not only to the judgment but also to the pleadings of the parties. Whether the decree is vague and ambiguous as to the reliefs actually granted, the executing Court should always look to the judgment for finding out what reliefs have been granted to plaintiff and to what extent. It is also well-established that the court should, if possible, adopt such a construction as will make the decree in conformity with the judgment and is in accordance with law. The executing court has no power to frame a new decree in favour of the decree holder which was not intended by the judgment.

11. In the backdrop of this legal position, the decree in execution is to be examined and construed. The decree passed by the trial court reads as under:

'Plaintiffs suit against the defendant is decreed with costs. Defendant is directed to pay arrears of rent @ Rs. 125 per month from August, 1988, to April, 1992, within three months and would continue to pay @ Rs. 125 per month to the plaintiff. If the defendant commits default in payment of the above rent, the plaintiff would be entitled to get the defendant evicted from the disputed shop. In case plaintiff does not accept rent from the defendant, the defendant within the aforesaid period of three months shall deposit the entire rent in Court which will be deemed to have been paid to the plaintiff. The amount already deposited in Court, shall be liable to be adjusted and the plaintiff would be entitled to withdraw the said amount.'

12. Since the aforesaid decree did not clearly specify that a decree for eviction has also been passed, it is necessary to refer to the pleadings of the parties and the judgment given by the trial court. The plaintiff alleged that the defendant was liable to eviction on the ground of default in payment of arrears of rent. Defendant had denied this allegation. The trial court on this disputed point framed a specific issue as issue No. 2 and decided the same after taking into consideration the evidence adduced by the parties at the trial. The trial court while answering the said issue in

the negative, specifically held that in the circumstances it was proved that the defendant has not committed any default and accordingly he was not liable to be evicted from the disputed shop. It may further be seen from the judgment that while deciding issue No. 3, the trial court observed that though in the plaint the plaintiff has prayed for a relief of eviction of the defendant from the disputed shop and for delivery of possession but he has admitted that he did not want to get the defendant evicted from the disputed shop.

13. Under the U. P. Act No. 13 of 1972, Section 20 (1) puts a complete bar for filing suit for eviction of tenant excepting on the grounds that are specified in clauses (a) to (g) of Section 20 (2) meaning thereby that suit for eviction can neither be filed nor decreed if no ground as contained in either of the clauses (a) to (g) aforesaid is found to exist.

14. Under clause (a), the bar for filing suit for eviction is lifted if it is found that the defendant was in arrears of rent for a period of more than four months which he did not pay within one month from the date of service of notice of demand. In other words, where the defendant commits default in payment of rent as per this provision, suit for eviction could be filed but where no such default has been committed, suit for eviction on that ground was not maintainable as the bar created by sub-section (1) would come into action and accordingly in such a situation, no decree of eviction also could legally be passed. In the present case, the trial court had held that since defendant did not commit any default in payment of rent, he was not liable for eviction, therefore, in law no decree for eviction could be passed, and perhaps for this reason, the trial court did not specifically decree the plaintiffs suit for eviction. As pointed out above, the trial court while deciding issue No. 3 had further observed that though a relief of decree of eviction after dispossession of the defendant was claimed in the plaint but the plaintiff has admitted in his statement before the Court that he did not want that relief now, meaning thereby that the plaintiff had given up his claim for a decree of eviction. It is in these circumstances and situation that the terms of the decree which provided that the tenant would pay rent @ Rs. 125 per month from August, 1988 to April, 1992, and would continue to pay at the same rate in future and if default was committed therein, the plaintiff would be entitled to get the defendant evicted are to be

interpreted and construed to mean that if default in payment of rent was committed in future, the plaintiff would be entitled to get the defendant evicted in accordance with law. Undisputedly the provisions of U. P. Act No. 13 of 1972 are applicable to the shop in question, the defendant could be evicted only under the provisions of the said Act and not in execution of the decree in question which was passed in the aforesaid suit. Both the Courts below have committed a manifest error of law in inferring a decree of eviction in favour of respondent No. 3 without making any reference to the findings recorded by the trial court in the judgment, which mistake has caused a great miscarriage of justice in the present case. Accordingly, the orders impugned cannot be sustained.

15. For the above reasons, this writ petition succeeds and is allowed. The impugned orders dated 9.12.1996 and 15.4.1998 passed by respondents No. 2 and 1 respectively are quashed.

16. In the circumstances, parties are directed to bear their own costs.

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