

Habib Ahmad Vs. Vth Additional District Judge and ors.

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Court : Allahabad

Decided On : Nov-10-2003

Reported in : 2004(1)AWC540

Judge : S.U. Khan, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 20(2) and 20(4)

Appeal No. : C.M.W.P. No. 3625 of 1991

Appellant : Habib Ahmad

Respondent : Vth Additional District Judge and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : R.B.D. Mishra, Adv.

Disposition : Petition allowed

Judgement :

S.U. Khan, J.

1. This is tenants' writ petition. Respondent No. 3, who was the landlord of the building in dispute till 1983 filed a suit for ejectment against petitioners' father (since deceased and survived by the petitioners) before J.S.C.C., Muzaffarnagar

being S.C.C. Suit No. 142 of 1979, on the ground of default and material alteration. According to the plaint allegation before filing suit, notice terminating tenancy and demanding rent was sent by respondent No. 3 on 16.10.1979, which was refused to be accepted by the tenant on 19.10.1979. In order to prove service of notice through refusal, postman was examined by the plaintiff. The tenant in his oral testimony denied refusing to accept the notice. During the pendency of the suit, respondent No. 3 transferred the property in dispute to respondent Nos. 4 and 5, through registered sale deed dated 19.4.1983. Through the sale deed, previous unpaid rent was not transferred. After purchasing the property, respondent Nos. 4 and 5 got themselves impleaded in the suit as plaintiff Nos. 2 and

3. The arrears of rent were admitted by the defendant tenant however he claimed the benefit of Section 20

(4) of U. P. Act No. 13 of 1972, by depositing the requisite amount under the said sub-section on 20.2.1980. The trial court framed three issues, one was regarding default, other regarding material alteration and the third was regarding right of plaintiff Nos. 2 and 3/respondent Nos. 4 and 5 to eject the tenant in the suit filed by plaintiff No. 1/respondent No.

3. The trial court decided the question of material alteration in favour of the tenant. The other two issues were decided in favour of the landlord, Regarding benefit of Section 20

(4) of the Act, the trial court held that the first date of hearing being 2.2.1980, deposit of rent on 20.2.1980 was beyond the scope of Section 20

(4) of the Act. It is unfortunate that neither any issue regarding service of notice was framed by the trial court nor any finding was given even though while reciting the allegation of the written statement, the trial court observed that defendant had denied receipt of any notice and its refusal. The trial court through judgment and decree dated 1.2.1985 decreed the suit for ejectment and arrears of rent. Tenant, petitioner's father filed revision against the aforesaid judgment and decree being S.C.C. Revision No. 16 of 1985. In the revision respondent No. 3 entered into compromise with the tenant and filed a receipt dated 16.8.1990 (Annexure-12 to

the writ petition) acknowledging the receipt of entire arrears of rent and cost of the suit etc. The revisional court refused to decide/allow the revision in terms of compromise as respondent Nos. 4 and 5, the subsequent purchasers were not parties to the said compromise. The revisional court discussed the question of refusal of notice and held that even though the trial court had not openly discussed this question however, mere denial of oath by the tenant was not sufficient to rebut the evidence of the postman. Ultimately the revisional court (Vth Additional District Judge, Muzaffarnagar) by judgment and order dated 22.1.1991 dismissed the revision, hence this writ petition.

2. A liability for ejectment incurred by the tenant including liability of ejectment on termination of tenancy through notice continues to remain in existence even after transfer of property by lessor to third person and the subsequent purchaser is entitled to maintain a suit for eviction on the basis of the said liability by virtue of Section 109 of T. P. Act. In this regard reference may be made to the authority of Supreme Court reported in AIR 1991 SC 14.

3. As far as arrears of rent are concerned, unless they are transferred through the transfer deed, they are not recoverable by the subsequent purchaser by virtue of Section 109 of Transfer of Property Act. In the instant case even though arrears of rent prior to the sale deed were not transferred through the sale deed dated 19.4.1983, however, the right of the landlord to eject the tenant on the ground of default stood automatically transferred. The previous landlord was entitled to receive the rent only till the date of the sale. In the instant case, the right to eject on the ground of default had materialised in a decree for ejectment, hence, the previous landlord by accepting the rent afterwards (during pendency of revision) could not defeat the said right and decree in favour of subsequent purchaser. After transferring the property the only interest of previous landlord which remained in existence was his right to recover the rent till the date of transfer. With regard to ejectment he had been left with no right. Acceptance of rent by landlord even during pendency of suit but after the date of first hearing will not absolve the tenant of his liability to ejectment.

4. In a suit under Section 20 (2) (a) of U. P. Act No. 13 of 1972, filed for ejectment of the tenant on the ground of default by subsequent purchaser including the default committed before the date of sale, the tenant is entitled to claim exemption from ejectment under Section 20 (4) of the Act, if on or before the first date of hearing of the suit he deposits the entire arrears of rent before the Court or pays the same to the landlord. (In case unpaid rent till the date of transfer has not been transferred the same should be paid to the previous landlord otherwise entire arrears should be paid to subsequent purchaser). In this case, there are two crucial questions, which are to be decided.

(1) Whether tenant deposited the entire arrears of rent etc. under Section 20 (4) on or before the first date of hearing?

And

(2) Whether notice of termination of tenancy and demand of rent was served through refusal or not?

5. Both the Courts below have presumed that the date of first hearing was 2.2.1980, hence, deposit made on 20.2.1980 was beyond time. However, the oral statements of witnesses were recorded on 15.1.1985 (Annexures 7, 8 and 9 to the writ petition). It is also not clear as to on what date issues were framed. Date of first hearing is the date on which the Court for the first time applies its mind as held by the Supreme Court in the following authorities :

(1) AIR 1993 SC 2525 ;

(2) (1995) 3 SCC 407 ;

(3) AIR 1996 SC 3688 ;

(4) AIR 2002 SC 2520.

6. A right against ejectment on deposit of arrears of rent etc. on or before first date of hearing is a statutory right conferred by Section 20 (4) of the Act. If deposit has been made, it is the duty of the Court to see whether it is in accordance with the said sub-section or not. It is not necessary to raise specific plea regarding that. It is

a duty imposed by the Act in favour of the Court, which has to be discharged irrespective of specific plea to that effect by the tenant. Rent Control Act being Act enacted for the benefit of the tenant, tenant cannot contract himself out of the Act. It will be against public policy to permit the tenant to contract himself out of the Act. Rights based upon public policy cannot be waived. Right conferred upon a tenant under Rent Control is a right based upon public policy. There is nothing in the judgment of the trial court to indicate as to how 2.2.1980 was treated to be first date of hearing while oral evidence was recorded after five years therefrom, i.e., in January, 1985. In proceedings before J.S.C.C. normally only one date is the effective date of hearing. The plaint (Annexure-III) was filed on 19.11.1979 and written statement (Annexure-IV) on 16.8.1980. It appears that probably 2.2.1980 was the date fixed in the summons. Such date cannot necessarily be the date of first hearing. It is not clear as to for what purpose the said date was fixed and what proceeding of suit took place on that date? In view of this in my opinion the matter requires to be reconsidered by the trial court for deciding the said question.

7. As far as the finding on the question of service of notice is concerned the trial court ought to have recorded specific finding after discussing the evidence including oral evidence of postman, plaintiff and defendant. The revisional court under Section 25 of P.S.C.C. Act cannot record finding on an issue of fact on which no finding has been recorded by the trial court. In such situation, the revisional court is obliged to remand the matter to the trial court as held by a Division Bench of this Court reported in 1979 AWC 746.

8. Accordingly writ petition is allowed, both the judgments passed by the courts below are set-aside and the matter is remanded to the trial court (J.S.C.C., Muzaffarnagar) to decide only the following two points.

(1) Whether notice of date 16.10.1979 was refused to be accepted by the tenant on 19.10.1979.

(2) Whether the quantum and date of deposit made by the tenant was in accordance with the Section 20 (4) of U. P. Act No. 13 of 1972.

9. It is clarified that no other question shall be decided by the J.S.C.C. The finding of the courts below on other points are confirmed. It is also clarified that the deposit made by the tenant should be treated to have been made on 20.2.1980 and not on any earlier date due to passing of the tender for the same on 2.2.1980.

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