

Smt. Chameli Devi Vs. Vith Additional District Judge and anr.

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Court : Allahabad

Decided On : Oct-31-2003

Reported in : 2004(1)AWC660

Judge : S.U. Khan, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 20(4) and 30; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules - Rule 21(5)

Appeal No. : C.M.W.P. No. 8112 of 1990

Appellant : Smt. Chameli Devi

Respondent : Vith Additional District Judge and anr.

Advocate for Def. : R.P. Goel, Adv. and ;P.K. Singhal, S.C.

Advocate for Pet/Ap. : Pankaj Misra, Adv.

Disposition : Petition allowed

Judgement :

S.U. Khan, J.

1. This is tenant's writ petition. The main question involved in this petition is as to whether the deposits made by tenant-petitioner under Section 30 of U. P, Act No.

13 of 1972 (hereinafter referred to as the Act) were valid deposit or not. Landlord-respondent filed suit for eviction on the ground of default and for recovery of rent against tenant-petitioner numbered as S.C.C. Suit No. 5 of 1988. In the suit tenant-petitioner pleaded that he had validly deposited the entire prior rent under Section 30 of the Act and subsequently rent was deposited by him in the suit under Section 20 (4) of the Act. The trial court/J.S.C.C., Pilibhit accepted the contention of the tenant-petitioner and held that in view of deposit under Section 30, which was valid and subsequent deposit in the suit itself, the tenant-petitioner was entitled to the benefit of Section 20 (4) of the Act. Accordingly, trial court/J.S.C.C., Pilibhit through judgment dated 27.5.1989 dismissed the suit of the plaintiff-landlord respondent but permitted him to withdraw the amount deposited by the tenant in the Court. Against the judgment of J.S.C.C., Pilibhit dismissing the suit on 27.5.1989, landlord-respondent filed revision being S.C.C. Revision No. 10 of 1989. The VIth Additional District Judge, Pilibhit by judgment and order dated 20.2.1990 allowed the revision, setting aside the judgment passed by the trial court and the suit of the plaintiff was decreed for eviction and for recovery of arrears of rent.

2. In para 19 of the writ petition dates of deposits made by the tenant-petitioner under Section 30 of the Act have been given. It has been mentioned therein that on 22.1.1981 landlord refused to accept rent of December, 1980 sent to him by tenant-petitioner through money order hence, tenant-petitioner deposited the same under Section 30 of the Act in R.C.C. case No. 12 of 1981 on the file of IIIrd A.M.M., Pilibhit which was instituted by the tenant. It has further been mentioned that on 2.5.1981 the Munsif in the said case permitted the petitioner to make the deposit and that petitioner made deposits in the said case under Section 30 of the Act on 10 dates starting from 24.2.1981 and ending with 15.5.1987. According to Rule 21 (5) of the Rules framed under U. P. Act No. 13 of 1972 notice and process fee must accompany every subsequent deposit under Section 30 of the Act so that information of the deposit may be sent to the landlord. Tenant in his statement, which is Annexure-C.A. 4, clearly admitted that no notice was sent to the landlord for any of the subsequent deposits.

3. The second aspect of the matter is that under Section 30 of the Act tenant deposited one year's advance rent on 15.5.1987 (for the months of May, 1987 to April, 1988). On the very next date, i.e., 16.5.1987 notice of demand dated 4.5.1987 was served upon the petitioner through refusal. Thereafter on 25.9.1987, another notice through Advocate given by the landlord was served upon the tenant-petitioner, which was replied by him on 5.10.1987. Third notice demanding the rent was sent on 15.2.1988 and the reply to the same was given by the tenant on 20.2.1988. In both these replies the fact of deposit of rent till April 1988 was stated. The suit-giving rise to the instant writ petition was filed on 18.3.1988 and on 31.5.1988 tenant-petitioner deposited the rent for the months of May, 1988 to April, 1989 under Section 20 (4) of the Act. The first question is whether after the notices mentioned above tenant was required to remit the rent to the landlord for the period subsequent to the notice or he was not liable to pay the rent until it became due as before the notice he had already paid advance rent which covered the period of one year subsequent to the notice. This question does not pose any difficulty as in my opinion there is nothing wrong in paying or depositing advance rent.

4. However, second question, which pertains to validity of deposits, requires thorough consideration. It has been held in a Full Bench Judgment of this Court reported in 2000 (1) ARC 653, that deposit under Section 30 of the Act after receipt of the notice of demand is not legal and does not, amount to payment to the landlord. Placing reliance on the aforesaid Full Bench Authority and several other authorities, including AIR 2003 SC 153, I have held in a judgment delivered on 21.5.2003 in Writ Petition No. 19656 of 2003 that unless the deposit under Section 30 is strictly in compliance of the terms of the said section it cannot confer any benefit upon the tenant. In the aforesaid Supreme Court Judgment deposit had been made without even sending the rent to the landlord through money order. The position in Writ Petition No. 19656 of 2003 (supra), was that, case under Section 30 had been filed and deposits in the said case had been made by the tenant not only after receipt of notice of termination and demand but also after appearing in the suit for eviction filed on the basis of the said notice.

5. The lower revisional court placing reliance upon 1986 (1) ARC 195 and AIR 1987 SC 138, held that deposit under Section 30 after receipt of notice is not a valid deposit. In the instant case no deposit had been made after receipt of notice, hence the said authorities are not applicable to the facts of the instant case.

The lower revisional court further held in para 10 that :

'The defendant has admitted in his statement that besides one deposit he took no steps to send notices on deposits to the landlord and therefore, in view of principles of law laid down in 1981 ARC 222, the deposits made by the defendant cannot be taken into consideration as valid deposits.'

6. In the aforesaid authority the facts were quite different. There application under Section 30 had been dismissed in default and therefore, by virtue of Rule 21 (4) of the Rules the amount was to be refunded to the applicant/tenant. Rule 21 (5) was not considered in the said authority. Rule 21 (5) is quoted below :

'In the case of continuance of deposit of rent for any subsequent period fresh application shall not be necessary. But process fee and the notice in Form F shall accompany every deposit.'

7. The purpose of deposit of process fee and notice in Form F is to give information of the deposit to the landlord. The statement of tenant in his replies dated 5.10.1997 and 20.2.1988 given by him to the landlord in reply to his notices sufficiently informed the landlord about the subsequent deposits made by the tenant under Section 30. In my opinion, therefore, the subsequent deposits cannot be held to be invalid.

8. Accordingly writ petition is allowed. Judgment and order passed by the revisional court is set aside and that of trial court is restored.