

Pooran Singh and ors. Vs. Additional District Judge/Special Judge (D.A.A.) and ors.

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Court : Allahabad

Decided On : Jun-30-2009

Reported in : 2009(4)AWC3854

Judge : S.U. Khan, J.

Appellant : Pooran Singh and ors.

Respondent : Additional District Judge/Special Judge (D.A.A.) and ors.

Judgement :

S.U. Khan, J.

1. Heard learned Counsel for the parties on the restoration application as well as merit of the writ petition. Cause shown is sufficient, restoration application is allowed. Order dated 2.3.2007 dismissing the writ petition In default is set aside. Writ petition is restored.

2. This is tenant's writ petition arising out of suit for eviction filed by landlord-respondents No. 2 to 10, Khoob Chand and others. Eviction was sought on the ground of default and prayer for recovery of arrears of rent was also made. Suit was registered as S.C.C. Suit No. 33 of 1981 and was dismissed by J.S.C.C., Lalitpur on 20.1.1992. Against the said judgment and decree landlords respondent

filed S.C.C. Revision No. 7 of 1992. A.D.J./Spelcal Judge (D.A.A.), Lalitpur, through judgment and order dated 26.2.1998 allowed the revision set aside the judgment and decree passed by the trial court and decreed the suit of the landlord respondents for eviction and recovery of arrears. This writ petition is directed against the said Judgment and order passed by lower revisional Court.

3. The building in dispute is covered by U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Admitted rate of rent is Rs. 14 per month. Landlords asserted that rent had not been paid since 19.11.1967. Notice of demand was sent on 2.9.1980, which was served on tenant on 10.9.1980. Thereafter, notice to terminate the tenancy was given on 2.2.1981 which was served upon the tenant on 5.2.1981. No rent was paid in pursuance of either of the two notices hence suit was filed.

4. Tenant-petitioner filed written statement contending that as rent was not accepted by the landlord hence he deposited the same under Section 7C of old Rent Control Act of 1947 (equivalent to Section 30 of the new Rent Control Act of 1972). The case Initiated before the Munsif for deposit of rent under Section 7C of the old Act which was registered as Misc. Case No. 6 of 1971. It was also pleaded that in the said case rent till 16.10.1980 had been deposited hence at the time of second notice dated 2.2.1981, four months rent was not due. However, tenant sent the rent from 17.10.1980 to 16.2.1981 to the landlord through money order which was refused.

5. The main dispute between the parties was regarding the deposit of the rent for the following period under Section 7C of the old Rent Control Act.

6. 18.11.1967 to 17.5.1971 amounting to Rs. 588. This amount was deposited in Misc. Case No. 26 of 1971 instead of Misc. Case No. 6 of 1971. The assertion of the tenant was that it was a clerical error. The lower revisional court held that rent deposited in wrong case could not be withdrawn by the landlord hence it could not be said that the deposit of the said rent was valid and amounted to payment to the landlord.

7. In order to get the benefit of Section 20(4) of the Act tenant deposited an amount of Rs. 259 on 30.3.1981 which was the date of first hearing. This amount included rent from 18.4.1977 to 17.7.1977 and 17.10.1980 to 16.3.1981 alongwith interest and cost. Out of this amount, an amount of Rs. 130 was stated by the tenant to be the amount of cost. The challan of deposit under Section 7C of the old Act for the period from 17.4.1977 to 16.7.1977 was missing hence rent for the said period was redeposited on 30.3.1981. Lower revisional court has mentioned that challan for the period from 17.7.1975 to 16.10.1975 (3 months) was also missing. Lower revisional court also mentioned that the interest for delayed payment of the rent from 16.7.1980 to 16.10.1980 amounting to Rs. 4.42 was also deposited late, i.e., on 20.8.1981.

8. Learned Counsel for respondent No. 2 to 10 landlords has filed a chart on 3.5.2006 showing details of deposits. In that chart it is shown that rent from 17.7.1980 to 16.10.1980 was deposited under Section 7C of the old Act on 26.9.1980, i.e., after receiving the first notice dated 2.9.1980.

9. In the supplementary-affidavit filed by the petitioner on 21.5.2009 the date on which arguments were heard and judgment was reserved, it has been stated that the rent for the period from 17.7.1975 to 16.10.1975 had in fact been deposited even though its challan could not be filed before the courts below. In this regard as Annexure SA-3 to the supplementary-affidavit some documents have been filed copies of which have been obtained from Misc Case No. 6 of 1971 attempting to show that for the period from 17.7.1975 to 16.10.1975 rent was infact deposited by the tenant. I do not propose to decide this controversy.

10. However, there is no denial of the fact that even after receiving the first notice dated 2.9.1980 on 10.9.1980, tenant deposited the rent of three months, i.e., 17.7.1980 to 16.10.1980 on 26.9.1980. This deposit is utterly illegal as through notice dated 2/10 September, 1980 landlord had agreed to receive the rent directly thereafter, it could not be deposited under Section 7C of the old Act (or Section 30 of the new Rent Control Act).

11. As far as deposit of initial rent of Rs. 588 from 18.11.1967 to 17.5.1971 is concerned, version of the tenant that it was an inadvertent clerical error that the

deposit was made in Misc Case No. 26 of 1971 instead of Misc. Case No. 6 of 1971 could be accepted and the fault could be condoned, if after coming to know about the error, tenant had withdrawn the said amount from Misc. Case No. 26 of 1971 and had deposited the same either in the suit giving rise to this writ petition or in Misc. Case No. 6 of 1971. It has not been done by the tenant even till date. The said amount even till date is not available to the landlords and they cannot withdraw the said amount. Accordingly no benefit can be given to the tenant and his fault of showing incorrect case number cannot be condoned as even after coming to know of the said fault the tenant did not make any effort to rectify the same which caused great prejudice to the landlord.

12. However, I do not agree with the finding of the revisional court that the delayed deposit of interest of about Rs. 4.50 was fatal. It is such a trivial shortfall that it deserves to be ignored. I also do not agree with the view of the lower revisional court that complete details of cost of Rs. 130 deposited by the tenant were not given by the tenant hence it should be deemed that the deposit of cost was not complete.

13. However, the eviction decree passed by the revisional court against the tenant is to be maintained for two reasons. Firstly the erroneous deposit of Rs. 588 in the wrong case was not rectified (by depositing the said amount in correct case) even after coming to know of the error hence tenant will be treated to be in default of rent for the said period. Secondly deposit of rent after receiving the notice dated 2/10 September, 1980 was illegal.

14. Accordingly, writ petition is dismissed.

15. Tenant-petitioner is granted six months time to vacate provided that:

1. Within one month from today tenant files an undertaking before the J.S.C.C. to the effect that on or before the expiry of aforesaid period of six months he will willingly vacate and handover possession of the property in dispute to the landlord-petitioner.

2. For this period of six months, which has been granted to the tenant-respondent to vacate, he is required to pay Rs. 3,000 (at the rate of Rs. 500 per month) as rent/damages for use and occupation. This amount shall also be deposited within one month before the J.S.C.C. and shall immediately be paid to the landlord-petitioner.

3. Within one month from today tenant shall deposit entire decretal amount due till date {after adjusting any amount already deposited) before J.S.C.C. for immediate payment to landlord-petitioner.

16. In case of default in compliance of any of these conditions tenant-petitioner shall be evicted-through process of Court after one month and shall also be liable to pay damages at the rate of Rs. 1,000 per month since after one month till the date of actual vacation.

17. Similarly, if after filing the aforesaid undertaking and depositing decretal amount and Rs. 3,000 the accommodation in dispute is not vacated on the expiry of six months then damages for use and occupation shall be payable at the rate of Rs. 1,000 per month since after six months till actual vacation. It is needless to add that this direction is in addition to the right of the landlord to file contempt petition for violation of undertaking and execution application.

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