

Bhaghirathi Vs. A.D.J. Mahoba and ors.

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Court : Allahabad

Decided On : Oct-20-2008

Reported in : 2009(1)AWC922

Judge : S.U. Khan, J.

Appellant : Bhaghirathi

Respondent : A.D.J. Mahoba and ors.

Judgement :

S.U. Khan, J.

1. Heard learned Counsel for the petitioner.

2. This is tenant's writ petition. Landlord respondent No. 2, Sitaram filed S.C.C. Suit No. 4 of 1987 against Bhaghirathi (petitioner), Sunderlal, Ayodhya Prasad and Sri Kalu Ram (Sunderlal, Ayodhya Prasad and Kalu Ram are pro forma respondents 3 to 6 in this writ petition). Property in dispute is a shop. Relief claimed in the plaint was for possession on the ground of default and recovery of arrears of rent.

3. It was alleged in the plaint that rate of rent was Rs. 60/- per month and water tax was payable in addition thereto, that rent had not been paid since 01.08.1980, that on 30.09.1986 notice of termination of tenancy and payment of rent was sent by

landlord to the tenants demanding the rent from 01.08.1980 to 30.09.1986, that due to inadvertence in the said notice water tax could not be mentioned and demanded. Suit was filed on 06.02.1987. In the plaint it was further stated that rent prior to 04.02.1984 having become barred by time, no relief for recovery of the same was being asked for. In para 19 of the written statement, copy of which has been annexed alongwith supplementary affidavit it was categorically stated that plaintiff was entitled to claim only 3 years rent and the same along with interest and cost of the suit had been deposited on 20.04.1987 i.e. on or before the first date of hearing. Trial Court held that plaintiff was entitled only to three years rent before filing the suit and as the same had been deposited alongwith interest tenant was entitled to the benefit of Section 20(4) of U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972. Accordingly J.S.C.C. Mahoba through judgment and decree dated 30.09.1991 dismissed the suit for eviction and decreed the suit for recovery of rent from 03.02.1984 and it was directed that out of the amount deposited by tenant, landlord could withdraw the said amount which came to Rs. 3183.65.

4. Landlord respondent Sita Ram filed S.C.C. Revision No. 6 of 1991 against the said judgment and decree. A.D.J. Mahoba District Hamirpur through judgment and decree dated 31.05.1994 allowed revision and set aside the judgment and decree passed by the trial court in so far as it was against the landlord and decreed the suit for eviction also. Hence this writ petition.

5. There cannot be any doubt that in order to avail the benefit of Section 20(4) of the Act, even time barred rent is required to be deposited by the tenant. This proposition has not been disputed by learned Counsel for the petitioner.

6. However, the main contention of learned Counsel for the petitioner is that earlier similar suit for recovery of arrears of rent and ejectment had been filed by the landlord and in the said suit tenant had not only deposited the entire rent but had also deposited the excess amount. The earlier suit was registered as S.C.C. Suit No. 7 of 1980 and was decided on 03.11.1981 by J.S.C.C./3rd A.D.J. Hamirpur. In the said judgment it was categorically mentioned by the learned A.D.J. that tenant had deposited an excess/surplus amount of Rs. 2167.14. The exact sentence is

quoted below:

It is worthy to be noticed that the defendants for the purpose of savings his tenancy had deposited a sum of Rs. 167.14 as surplus amount.

7. Probably the amount of rent which had earlier been deposited in a case under Section 30 of the Act, before Munsif was again deposited by the tenant before J.S.C.C.

8. Copy of the earlier judgment has also been annexed alongwith supplementary affidavit. The operative portion of the said judgment is quoted below:

The suit of ejectment is dismissed. The plaintiff is however, entitled to get a decree in lieu of eviction order to this effect that in lieu of the deposits made by the defendants their tenancy shall remain intact and they are relieved of eviction order. The plaintiff therefore, shall be entitled to get all the amounts of money except the amount of repairs namely Rs. 430.63 with costs.

9. It is noteworthy that the excess/surplus amount deposited by the tenant in S.C.C. suit No. 7 of 1980 was not as future rent. It appears that by way of abundant precaution tenant had deposited the excess amount. The words 'plaintiff, therefore, shall be entitled to get all the amounts except the amount of repairs namely Rs. 430.63' used in the operative portion of the earlier judgment dated 03.11.1981 relate to the amount claimed by the plaintiff in the plaint. It can not be said that even the excess/surplus amount deposited by the tenant was permitted to be withdrawn by the landlord. If it had been the intention of the learned A.D.J. then it would have been mentioned in the operative portion that the excess amount to be withdrawn by the plaintiff should be adjusted in future rent. No such direction was given.

10. Accordingly, in my opinion, plaintiff was not entitled to withdraw the excess amount deposited by the tenant. On page 66 of the supplementary affidavit split of deposits made by the tenant in the earlier suit as reported by Munsarim is given. The date 14.10.1982 appears to be wrong in the said chart as in the judgment of S.C.C. suit No. 7 of 1980 it is mentioned that defendant deposited Rs. 7580 on

10.10.1980. On page 66 it is shown that on 14.10.1982 before J.S.C.C. Hamirpur an amount of Rs. 7,000/- was deposited.

11. Even otherwise from the above quoted para 19 of the written statement, filed in the suit giving rise to the instant writ petition. The case of the defendant was that he was not liable to pay or deposit the rent for the period since before three years of filing of the suit as it had become time barred.

12. Accordingly, I do not find any error in the findings of the Revisional Court holding that time barred rent was necessary to be deposited and it had not been deposited. The argument that excess amount deposited in the earlier suit by the tenant could be withdrawn by the landlord is not tenable. There is no dispute that in fact the said amount was not withdrawn by the landlord.

13. Accordingly, there is no merit in the writ petition, hence it is dismissed.

14. 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 landlady-respondent.

2. For this period of six months, which has been granted to the tenant-petitioner to vacate, he is required to pay Rs. 6,000/- (at the rate of Rs. 1000/- 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 landlady-respondent.

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 landlords respondents.

15. In case of default in compliance of any of these conditions tenant-petitioner shall be evicted through process of Court after one month and he shall also be liable to pay damages at the rate of Rs. 2000/- per month since after one month till

the date of actual vacation.

16. Similarly, if after filing the aforesaid undertaking and depositing decretal amount and Rs. 6000/- 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. 2000/- 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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