

Rajendra Kumar Verma and anr. Vs. Smt. Padma Jindal and anr.

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Court : Allahabad

Decided On : Feb-15-2006

Reported in : 2006(3)AWC2315

Judge : Poonam Srivastava, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 15, Rule 5

Appeal No. : Civil Revision No. 53 of 2006

Appellant : Rajendra Kumar Verma and anr.

Respondent : Smt. Padma Jindal and anr.

Advocate for Def. : Anoop Trivedi and ;Anoop Tripathi, Advs.

Advocate for Pet/Ap. : Y.K. Sinha, Adv.

Judgement :

Poonam Srivastava, J.

1. Heard Sri Y.K. Sinha, learned Counsel for the revisionists and Sri Anoop Tripathi, advocate for the caveator-respondents.
2. As agreed between the parties, this revision is being heard and finally decided at this stage itself.

3. The order dated 13.1.2006, passed by Additional District Judge Court No. 2, Ghaziabad in S.C.C. Suit No. 13 of 2001-Smt. Padma Jindal and Anr. v. Rajendra Kumar Verma and Anr. is impugned in this revision. An application moved on behalf of the plaintiff-landlord under Order XV, Rule 5, C.P.C. has been allowed on the ground that the admitted rent was deposited on 27.8.2005 to a tune of Rs. 1,52,665. The submission on behalf of the plaintiffs is that the rent, which was liable to be deposited along with interest, should have been Rs. 1,72,071 but since no interest has been deposited therefore, the amount so deposited is short and. therefore, the defence of the tenant is liable to be struck down. This application was moved on 16.12.2003 and thereafter a number of dates were fixed but the money was deposited through tender only on 27.8.2005. A copy of tender has been annexed as Annexure-4 to the affidavit filed in support of the stay application.

4. Sri Y.K. Sinha has tried to show that the rent for 81 months was deposited at the rate of Rs. 1,400 per month which is Rs. 1,13,400 and the interest is Rs. 39,265 therefore total amount is Rs. 1,52,665. In the circumstances, it has been emphatically argued that the amount said to be less is against the record. Reliance has been placed on a number of decisions of the Apex Court as well as this Court. In the case of Mangat Singh Trilochan Singh v. Satpal 2003 (53) ALR 708, the Apex Court quashed the order of the High Court whereby the order of the trial court refusing to strike off defence was set aside. It was held that the High Court was not Justified in interfering with the order passed by the trial court refusing to strike off defence. This Court in the case of Om Prakash v. IVth Additional District Judge, Allahabad and Ors. 1999 (37) ALR 531, has held that the purpose of Order XV, Rule 5, C.P.C. is not to punish the tenant but to ensure the regular payment of rent during the period of litigation. The same view has been expressed in a number of other decisions, Central Academy Society School v. R.K. Ganjur 2002 (48) ALR 662. In the case of Vishwanath v. 1st Additional District Judge, Bijnor and Ors. 1982 ARC 532, it was held that the provisions of Order XV, Rule 5. C.P.C. is intended to be a trap for the defendants. The plaintiffs should not feel shy in contesting the case on merits. The provision is only to prevent the unscrupulous defendants from contesting the suit for long time without payment of any rent and damages. In the case of Shyam Kishore Agrawal v. VIIth Additional District Judge,

Kanpur and Ors. 1984 (2) ARC 534, this Court elucidated the intention behind the provisions of Order XV, Rule 5, C.P.C. It was concluded that the provisions are with an aim to prevent an abuse of the process of the Court by a tenant. It is only intended to safeguard the interest of the landlord. While allowing the writ petition reliance was placed on another decision of the Apex Court in the case of Santosh Mehta v. Om Prakash and Ors. : [1980]3SCR325 , where it was held that the provision do not provide an automatic weapon against the tenants but it prescribes a wide discretion, inscribes no mechanical consequence but Invests a power to overcome intransigence. Thus, if a tenant fails or refuses to pay or deposit rent and the Court discerns a mood of defiance or gross neglect, the tenant may forfeit his right of being heard, and, therefore, this is last resort which cannot be used as punitive measure. In the instant case, no doubt a number of dates were fixed but the main consideration for striking off the defence was that the tenant has failed to deposit interest as required by law whereas the record clearly shows that the interest was deposited and the defence was struck off after almost five months of the required amount having been deposited. Sri Anoop Trivedi has submitted that no written statement has been filed till date and, therefore, in the event, this Court grants any indulgence, it will result in delay in the proceeding. It was in these circumstances, Sri Anoop Trivedi fairly consented that this revision be decided finally at this stage and declined to file a counter-affidavit.

5. After hearing the respective counsel for the parties at length, I am of the view specially on the face of detailed reasoning given in paragraph 6 onwards in the affidavit filed In support of the stay application that the findings given by the Judge Small Causes Court regarding non-deposit of the Interest stands falsified on the face of tender annexed with the affidavit. The power to strike off defence remains in reserve to be availed in extreme case of deliberate or wilful default with an intention to harass the landlord. The intention of the statute was not to put a weapon in the hands of the landlord to use it even in case of a bona fide mistake or omission. The denial of an opportunity to the tenant to contest on merits is too harsh and cannot be used against him on flimsy grounds. In the circumstances, I set aside the impugned order dated 13.1.2006, passed by the Additional District Judge Court No. 2, Ghaziabad striking off the defence of the tenant. It is made clear that the tenant shall not make any default in future and deposit month to

month rent along with interest in accordance with law and also participate in the proceeding without seeking undue adjournment. The Judge Small Causes Court is further directed to decide the Suit No. 13 of 2001 within a period of eight months from the date, a certified copy of this order is produced before him.

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