

**Jamal Vs. Iqbal and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/489113](http://sooperkanoon.com/489113)

**Court :** Allahabad

**Decided On :** Nov-12-2002

**Reported in :** 2003(2)AWC961

**Judge :** S.P. Mehrotra, J.

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

**Appeal No. :** C.M.W.P. No. 47597 of 2002

**Appellant :** Jamal

**Respondent :** iqbal and ors.

**Advocate for Pet/Ap. :** Pankaj Mithal, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**S.P. Mehrotra, J.**

1. This writ petition has been filed by the petitioner under Article 226 of the Constitution of India, inter alia, seeking quashing of the Judgment and order dated 1.5.2002 (Annexure-8 to the writ petition) passed by the learned Additional District Judge/ Special Judge, N.D.P.S. Act, Meerut and the judgment and order dated

19.11.1998 (Annexure-7 to the writ petition) passed by the learned Additional Judge, Small Cause Court, Meerut.

2. The dispute relates to an accommodation in house No. 34 situated in Mohalla Purwa Hafiz Abdul Karim, Meerut, the details whereof have been given at the foot of the plaint of the suit referred to hereinafter. The said accommodation has, hereinafter been referred to as 'the disputed accommodation.'

3. From the allegations made in the writ petition, it appears that Aziz Uddin, the predecessor-in-interest of the respondents filed a suit for ejectment and arrears of rent, mesne profits, etc. against the petitioner in respect of the disputed accommodation. The said suit was registered as S.C.C. Suit No. 114 of 1992. A copy of the plaint of the said suit has been filed as Annexure-1 to the writ petition.

4. It was, inter alia, alleged in the said plaint that the said Aziz Uddin, the predecessor-in-interest of the respondents was the owner and landlord of the said House No. 34 situated in Mohalla Purwa Hafiz Abdul Karim, Meerut ; and that the petitioner was the tenant in the disputed accommodation at a monthly rent of Rs. 50 and that rent for the period from 1.2.1982 to 11.5.1986 was due from the petitioner ; and that a notice dated 31.3.1986 of demand and determination of tenancy under Section 106 of the Transfer of Property Act was given on behalf of the said Aziz Uddin to the petitioner which was served on the petitioner on 11.4.1986; and that despite the service of the said notice, the petitioner neither paid rent nor vacated the disputed accommodation,

5. The said suit was contested by the petitioner who filed written statement dated 15.5.1998, a copy whereof has been filed as Annexure-2 to the writ petition.

6. Evidence was led by both the sides in the said suit.

7. It appears that during the pendency of the said suit, the said Aziz Uddin, the original plaintiff died on 20th August, 1997, and the respondents were brought on record as the heirs and legal representatives of the said Aziz Uddin.

8. The learned Additional Judge, Small Cause Court, Meerut, by the said judgment and order dated 19.11.1998, decreed the said suit for ejectment, arrears of rent,

mesne profits etc. against the petitioner.

9. Against the said judgment and order dated 19.11.1998, the petitioner filed a revision under Section 25 of the Provincial Small Cause Courts Act which was registered as Revision No. 608 of 1998.

10. By the judgment and order dated 1.5.2002, the learned Additional District Judge/Special Judge, N.D.P.S. Act, Meerut; dismissed the said revision filed by the petitioner.

11. Thereafter, the petitioner has filed the present writ petition.

12. I have heard Sri Pankaj Mithal, learned counsel for the petitioner. Sri Pankaj Mithal submits that the said notice of demand and determination of tenancy was not: duly proved, and as such, the said suit could not be decreed.

13. Having considered the said submission made by Sri Mithal, I am unable to agree with the same. A perusal of the statement of Smt, Shah Jahan examined on behalf of the plaintiff (Annexure-3 to the writ petition) shows that the carbon copy of the said notice (Paper No. 10G) was duly proved, and the same was exhibited as Exhibit No. 1.

14. In view of the fact that the said carbon copy of the notice was proved by the said witness and the same was also exhibited, it is not open to the petitioner to raise the question of proof of the said notice in this writ petition.

15. Sri Mithal, learned counsel for the petitioner next submits that the learned Additional Judge, Small Cause Court, Meerut in the judgment and order dated 19.11.1998, declined to grant the benefit of Section 20(4) of the Act No. 13 of 1972 (in short 'the Act') on the ground that the petitioner had acquired a house, namely. House No. 175, Purwa Hafiz Abdul Karim, Meerut, as a result of inheritance from his father, without at all considering as to whether the petitioner was entitled to the benefit of Section 20(4) of the Act. It is submitted that the said approach adopted by the learned Additional Judge, Small Cause Court, Meerut, was illegal. It is further submitted that though the revisional court in the judgment and order dated 1.5.2002 considered the question as to whether the petitioner had complied with

the provisions of Section 20(4) of the Act, but no specific finding on the question of first date of hearing was recorded by the revisional court.

16. I have considered the submission made by the learned counsel for the petitioner. In my opinion, in case, the proviso to Section 20(4) of the Act was attracted to the present case, there was no occasion for the learned Additional Judge, Small Cause Court to go into the question whether the provisions of Section 20(4) of the Act were complied with by the petitioner or not. Section 20(1), Section 20(2)(a) and Section 20(4) of the Act and Proviso thereto are reproduced below :

'20. Bar of suit for eviction of tenant except on specified grounds.--(1) Save as provided in Sub-section (2), [\* \* \*] no suit shall be instituted for the eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner :

Provided that nothing in this sub-section shall bar a suit for the eviction of a tenant on the determination of his tenancy by efflux of time where the tenancy for a fixed term was entered into by or in pursuance of a compromise or adjustment arrived at with reference to a suit, appeal, revision or execution proceeding, which is either recorded in Court or otherwise reduced to writing and signed by the tenant.

(2) A suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the following grounds, namely :

(a) that the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand :

Provided that in relation to a tenant, who is a member of the armed forces of the Union and in whose favour the prescribed authority under the Indian Soldiers (Litigation) Act, 1925 (Act No. IV of 1925), has issued a certificate that he is serving under special conditions within the meaning of Section 3 of that Act or where he has died by enemy action while so serving then in relation to his heirs, the words 'four months' in this clause shall be deemed to have been substituted by

the words 'one year' ;

(b) .....

(4) In any suit for eviction on the ground mentioned in Clause (a) of Sub-section (2), if at the first hearing of the suit the tenant unconditionally pays or (tenders to the landlord or deposits in Court) the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under Sub-section (1) of Section 30, the Court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground :

Provided that nothing in this sub-section, shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area.

(Explanation.--For the purpose of this sub-section :

(a) the expression 'first hearing' means the first date for any step or proceeding mentioned in the summons served on the defendant ;

(b) the expression 'cost of the suit' includes one-half of the amount of counsel's fee taxable for a contested suit.]'

17. A perusal of the Proviso shows that Sub-section (4) of Section 20 of the Act will not apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area. Therefore, if the case is covered under the Proviso to Section 20(4) of the Act, there would be no occasion for considering as to whether the provisions of Section 20(4) of the Act have been complied with by the tenant or not.

18. The learned Additional Judge, Small Cause Court, Meerut, as well as the revisional court have recorded categorical findings that house No. 175, Purwa Hafiz Abdul Karim, Meerut, had been acquired by the petitioner by inheritance from his father, and the petitioner was residing in the said house.

19. In view of the finding that the petitioner was residing in the said house No. 175, Purwa Hafiz Abdul Karim, Meerut, it is evident that the said house was acquired by the petitioner in a vacant state. Evidently, therefore, the provisions of Proviso to Section 20(4) of the Act were attracted to the present case. Hence, there was no occasion for granting the benefit of Section 20(4) of the Act to the petitioner.

20. Sri Mithal, learned counsel for the petitioner has then tried to assail the findings recorded by the courts below regarding the acquisition of the said house No. 175, Purwa Hafiz Abdul Karim, Meerut and the residence of the petitioner in the said house.

21. I am of the opinion that the said findings recorded by the courts below on a consideration of the evidence on record are findings of fact. The findings of facts cannot normally be interfered with by the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India unless such findings are shown to be patently illegal or perverse. No illegality or perversity has been shown in the said findings recorded by the courts below.

22. Even though there was no occasion to go into the question as to whether the provisions of Section 20(4) of the Act were complied with by the petitioner or not, still the revisional court considered the said aspect of the matter also, and held that the petitioner did not make the requisite deposit at the first hearing of the suit and, as such, the petitioner was not entitled to the benefit of Section 20(4) of the Act.

23. Having perused the judgment passed by the revisional court, I do not find any illegality in the conclusion drawn by the revisional court. The revisional court, inter alia, noted that the notice dated 31.3.1986 sent on behalf of the landlord to the petitioner was served on the petitioner on 11.4.1986. The suit was filed by the said Aziz Uddin against the petitioner on 12.7.1986. The summons was served on the

petitioner personally on 20.8.1986. The date fixed in the summons was 12.9.1986. The petitioner did not make requisite deposit of arrears of rent, cost of suit and interest as per the requirements of Section 20(4) of the Act on the date fixed in the said summons. The petitioner appeared with his counsel in the Court on 5.12,1986, and filed an Application No. 15Ga for time for filing written statement. However, even thereafter, the petitioner did not deposit arrears of rent etc.

24. On 11.8.1993, the suit was decreed ex parte. On 22.11.1994, application was filed for setting aside ex parte decree, and along with the said application, the petitioner deposited arrears of rent. Therefore, it was concluded that the petitioner did not make requisite deposit under Section 20(4) of the Act at the first hearing of the said suit.

25. In view of the aforesaid discussion, this writ petition lacks merit and the same is liable to be dismissed. The writ petition is accordingly dismissed.

26. Sri Pankaj Mithal, learned counsel for the petitioner has then submitted that some time may be granted to the petitioner for vacating the disputed accommodation.

27. Having regard to the facts and circumstances of the case and the submission made by the learned counsel for the petitioner, the petitioner is granted time upto 28th February, 2003, for vacating the disputed accommodation provided the petitioner gives an undertaking before the Additional Judge, Small Cause Court, Meerut, on his personal affidavit within one month from today incorporating the following conditions :

(1) The petitioner will vacate the disputed accommodation on or before 28th February, 2003 and will hand over peaceful vacant possession to the respondents.

(2) The petitioner will deposit the entire decretal amount with rent/damages upto 30th November, 2002, within one month from today. In case, such deposit is made, the respondents may withdraw such amount without furnishing any security.

(3) The petitioner will continue to pay rent/damages to the respondents at the decreed rate of rent with effect from December, 2002, till the date of vacating the

disputed accommodation.

In case, the petitioner does not give the required undertaking within the time granted or does not comply with any of the aforesaid conditions incorporated in the undertaking, this order granting time will stand automatically vacated, and it will become open to the respondents to execute the decree forthwith.

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