

Kashful Huda Vs. Additional District Judge (Court No. 2) and ors.

Kashful Huda Vs. Additional District Judge (Court No. 2) and ors.

SooperKanoon Citation : sooperkanoon.com/489252

Court : Allahabad

Decided On : Oct-28-2002

Reported in : 2003(2)AWC1235

Judge : S.P. Mehrotra, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 20(1) and 20(4); [Evidence Act, 1872](#) - Sections 8, 45 and 47

Appeal No. : C.M.W.P. No. 45335 of 2002

Appellant : Kashful Huda

Respondent : Additional District Judge (Court No. 2) and ors.

Advocate for Def. : N.C. Rajvanshi, ;I.M. Khan and ;M.A. Siddiqui, Advs.

Advocate for Pet/Ap. : Atul Dayal and ;Ravi Kiran Jain, Advs.

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 8.8.2002 (Annexure-7 to the writ petition) passed by the learned Additional District

Judge (Court No. 2) Kanpur Nagar (respondent No. 1) and the judgment and order dated 6.9.2000 (Annexure-6 to the writ petition) passed by the learned IInd Additional Judge, Small Causes Court, Kanpur Nagar (respondent No, 2).

2. The dispute relates to an accommodation on the ground floor in House No. 94/118 (old) and 94/118A (new), Pech Bagh, Kanpur Nagar. The said accommodation has, hereinafter, been referred to as 'the disputed accommodation'.

3. From the allegations made in the writ petition, it appears that the respondent No. 3 filed a suit against the petitioner, inter alia, alleging that the petitioner was the tenant of the plaintiff/respondent No. 3 in respect of the disputed accommodation ; and that the petitioner defaulted in the payment of arrears of rent and taxes since 1.12.1983 ; and that the petitioner also wilfully damaged the tenanted portion, altered it, diminished its value, and also disfigured it and sub-let it to Mohd. Zaheer ; and that a notice dated 3.1.1988, was given by the respondent No. 3 through Sri Chhotey Lal, advocate to the petitioner by registered post ; and that the petitioner committed breach of Section 20 (2) (a), (b) and (c) of the U. P. Act No. XIII of 1972 (in short 'the Act') ; and that having committed default in payment of arrears of rent from 1.12.1983 to 31.12.1987 for 49 months, at the rate of Rs. 200 per month amounting to Rs. 16,087.50 by 14.2.1988, the petitioner became defaulter.

4. It was, inter alia, further alleged by the respondent No. 3 In the said suit that the petitioner had also committed breach of the provisions of Section 20 (2) (b) and (c; of the Act because he altered the entire accommodation by converting it into one godown and an office along with latrine and bath and that the entire tenanted portion stood disfigured.

5. It was, inter alia, further alleged by the respondent No. 3 in the suit that the petitioner committed breach of Section 20 (2) (e) of the Act by subletting the entire tenanted portion to Sri Mohd. Zaheer.

6. The said suit filed by the respondent No. 3 was registered as S.C.C. Suit No. 50 of 1988. A copy of the plaint has been filed as Annexure-1 to the writ petition.

7. The petitioner contested the said suit and filed written statement, It was, inter alia, alleged by the petitioner that the rent had been paid upto 31.3.1988 ; and that the petitioner never became a defaulter ; and that the petitioner was not liable to pay any water tax ; and that the rent included the water tax ; and that the petitioner had not converted or made any alteration as alleged by the respondent No. 3 ; and that there had not been any diminution of the utility or disfigurement of the accommodation in question ; and that the petitioner was entitled to the benefit of Section 20 (4) of the Act ; and that the petitioner had not sub-let or parted with the possession of the disputed accommodation to any one. A copy of the written statement has been filed as Annexure-2 to the writ petition.

8. Evidence was led by both the sides in the suit.

9. The learned IInd Additional Judge, Small Cause Court, Kanpur Nagar (respondent No. 2), by his judgment and order dated 6.9.2000, decreed the said suit filed by the respondent No. 3. It was, inter alia, held by the respondent No. 2 on issue No. 1 that the alleged rent receipts filed on behalf of the petitioner showing the alleged payment of rent upto 31.3.1988 were forged receipts. It was, inter alia, further held by the respondent No. 2 that on the first date of hearing of the suit i.e., 12.5.1988, the petitioner only deposited Rs. 3,000 while the rent for the period from 1.12.1983 to 12.5.1988, i.e., about 51 months came to more than Rs. 10,000 ; and that the petitioner not only defaulted in the payment of rent but he (petitioner) also did not deposit the entire rent, water tax, cost of the suit and 9% interest on the date of first hearing of the suit, and as such, the petitioner was not entitled to the benefit of Section 20 (4) of the Act.

10. It was, inter alia, further held by the respondent No. 2 on issue No. 2 that the petitioner had made material alteration in the disputed accommodation.

11. As regards, issue No. 3 regarding sub-letting the said issue was not pressed on behalf of the respondent No. 3, and as such, the same was decided in favour of the petitioner.

12. Against the said judgment and decree dated 6.9.2000 passed by the respondent No. 2, the petitioner filed a revision under Section 25 of the Provincial

Small Cause Courts Act which was registered as S.C.C. Revision No. 109 of 2000.

13. By the judgment and order dated 8.8.2002, the learned Additional District Judge, Court No. 2, Kanpur Nagar (respondent No. 1), dismissed the said revision filed by the petitioner.

14. It was, inter alia, held by the respondent No. 1 that the petitioner had failed to prove that rent and taxes due on him, had been paid by him and receipts filed by the petitioner per List 90C had been issued by the plaintiff (respondent No. 3) ; and that the petitioner failed to establish that the said receipts bore the signatures of the plaintiff (respondent No. 3).

15. It was, inter alia, further held by the respondent No. 1 that on the first date of hearing of the suit, the entire amounts required to be deposited under Section 20 (4) of the Act had not been deposited by the petitioner, and as such, the trial court (respondent No. 2) had rightly held that the petitioner was not entitled for the benefit of Section 20 (4) of the Act.

16. It was, inter alia, further held that no illegality or invalidity in the notice served on the petitioner was found.

17. It was, inter alia, further held by the respondent No. 1 that the petitioner had materially altered the disputed accommodation, which disfigured it, and the value and utility of the disputed accommodation were diminished.

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

19. I have heard Sri Ravi Kiran Jain, learned senior counsel assisted by Sri Atul Dayal, advocate for the petitioner and Sri N.C. Rajvanshi, learned senior counsel assisted by Sri M.A. Siddqul, advocate for the caveator-respondent No. 3.

20. Sri Ravi Kiran Jain, learned senior counsel appearing for the petitioner submits that the mode of proving signature of a person has been dealt with in Sections 45, 47 and 73 of the Indian [Evidence Act, 1872](#). It is submitted that in the present case, the findings recorded by the courts below regarding the signatures on the receipts filed by the petitioner being forged ones, had been recorded without

complying with the provisions of the said Sections 45, 47 and 73 of the Indian Evidence Act.

21. It is submitted by Sri Jain that in view of the provisions of Section 73 of the Indian Evidence Act, the court below should have compared the disputed signatures on the receipts filed by the petitioner with the admitted signatures of the respondent No. 3 on the record, and, thereafter, the court below should have recorded the findings on the question of genuineness of the signatures on the said receipts. It is further submitted that in view of the provisions of Section 47 of the Indian Evidence Act, the husband of the respondent No. 3 who was examined as P.W. 1 in the suit ought to have denied the signatures of the respondent No. 3 on the said rent receipts, and no such denial having been made by P.W. 1, the courts below acted illegally in deciding the question of genuineness of the signatures on the said receipts merely on the basis of report of handwriting expert. It is submitted that the evidence of a person referred to in Section 47 of the Indian Evidence Act is direct evidence, and is more reliable as compared to the report of hand-writing expert, which is admissible under Section 45 of the Indian Evidence Act.

22. Sri Jain further submits that even though the reports of handwriting expert were there, still it was incumbent on the court below itself to have compared the disputed signatures with the admitted signatures, even though, the Court may not act as handwriting expert. Sri Jain has placed reliance on the decision of the Apex Court in *Fakhruddin v. State of Madhya Pradesh*, AIR 1967 SC 1326 (paragraphs 10 and 11),

23. It is further submitted by Sri Jain that the finding on issue No. 2 regarding material alteration as recorded by the respondent No. 2 was that the petitioner had made material alteration in the disputed accommodation. It is submitted that Section 20 (2) (c) of the Act requires that the construction or structural alteration in the building should be such as is likely to diminish its value or utility or to disfigure it, but no such finding was recorded by the respondent No. 2 while deciding issue No. 2.

24. It is further submitted that the respondent No. 1 appraised the evidence on record and recorded a finding that the material alteration made by the petitioner

disfigured the disputed accommodation, and the value and the utility of the disputed accommodation were diminished. It is submitted that the respondent No. 1 while deciding the revision under Section 25 of the Provincial Small Cause Courts Act, acted illegally in appraising the evidence on record and recording the said finding. The only course open to the respondent No. 1 was to have remanded the matter to the Judge, Small Cause Court for deciding the said question on appraisal of the evidence on record.

25. In reply, Sri N.C. Rajvanshi, learned senior counsel appearing for the caveator-respondent No. 3 submits that findings of fact have been recorded by the courts below on the question of default as well as on the question of material alteration, and no interference is called for by this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India.

26. It is further submitted by Sri Rajvanshi that the respondent No. 2 considered the reports of handwriting experts submitted by both the sides, and also examined the statements of handwriting experts as witnesses in the suit, and also considered other relevant facts and circumstances on the record, and on consideration of the entire material on record, the respondent No. 2 recorded finding of fact that the signatures on the receipts filed by the petitioner were forged.

27. It is further submitted by Sri Rajvanshi that the comparison of signatures by the Court is one of the modes, which the Court may adopt for satisfying itself regarding the genuineness of a particular signature. It is submitted that the decision of the Apex Court in Fakhruddin's case (supra) is not applicable to the present case.

28. It is further submitted that the respondent No. 1 while deciding the revision under Section 25 of the Provincial Small Cause Courts Act rightly did not interfere with the findings of fact recorded by the respondent No. 2.

29. As regards, issue No. 2 regarding material alteration, Sri Rajvanshi has fairly conceded that it was not open to the respondent No. 1 to have examined the evidence on record and record a finding that the material alteration made by the

petitioner disfigured the disputed accommodation, and its value and utility were diminished. However, it is submitted that even if the finding on the question of material alteration were to be ignored, still in view of the findings recorded by the courts below on the question of default, the impugned judgments and orders of the courts below deserve to be sustained.

30. Having considered the submissions made by the learned senior counsel for both the sides and having perused the record, I am of the opinion that so far as the question of material alteration is concerned, the submission made by Sri Jain that it was not open to the respondent No. 1 to have appraised the evidence on record and come to the conclusion that the material alteration made by the petitioner disfigured the disputed accommodation, and its value and utility were diminished. Therefore, the findings recorded by the respondent No. 1 in this regard cannot be sustained. However, as the suit was filed not only on the ground of material alteration, but also on the ground of default, it is pertinent to consider as to whether the judgments and orders passed by the courts below on the question of default called for any interference or not. This is because, either of the said two grounds, namely, default in payment of arrears of rent under Section 20 (2) (a) of the Act and the structural alteration under Section 20 (2) (c) of the Act may provide ground for passing a decree for eviction of the tenant.

31. Respondent No. 2 considered the question of default in payment of arrears of rent in deciding issue No. 1. It was held by the respondent No. 2 that the receipts filed by the petitioner regarding the alleged payments of rent were forged. It was, inter alia, further held by the respondent No. 2 that the deposit of Rs. 3,000 made on behalf of the petitioner on the first date of hearing of the suit, i.e., 12.6.1988, was much less than the amount which the petitioner was required to deposit under Section 20 (4) of the Act in respect of rent and damages for use and occupation, water tax, cost of the suit and interest at the rate of 9% per annum.

32. In recording the finding regarding the rent receipts filed by the petitioner being forged ones, the respondent No. 2, inter alia, considered the following :

(a) While the written statement in the said suit was filed on 27th May, 1988, the rent receipts were filed in the year 1996, i.e., after about 8 years, even though the

rent receipts related to the period upto 31.3.1988. No reasonable explanation for the delay was given by the petitioner.

(b) If the rent upto 31.3.1988 @ Rs. 200 per month (which, according to petitioner, included water tax also) had already been paid by the petitioner as alleged, there was no occasion for the petitioner to have deposited Rs. 3,000 on 12th May, 1988.

(c) The report of handwriting expert submitted on behalf of the plaintiff (respondent No. 3) as well as the statement of the said handwriting expert as P.W. 2.

(d) The report of handwriting expert submitted on behalf of the petitioner as well as the statement of the said handwriting expert as D.W. 2.

33. After taking into consideration the aforesaid, the respondent No. 2 came to the conclusion that while the report of handwriting expert submitted on behalf of the petitioner was doubtful, the report of handwriting expert on behalf of the respondent No. 3 was believable. In the circumstance, the respondent No. 2 concluded that the rent receipts filed on behalf of the petitioner were forged.

34. Sri Ravi Kiran Jain, learned senior counsel for the petitioner submits that the husband of the respondent No. 3 in his statement as P.W. 1 did not make any statement that the signatures on the rent receipts filed by the petitioner were not those of the respondent No. 3. It is submitted that under Section 47 of the Indian Evidence Act, it was necessary that the husband of the respondent No. 3, who was evidently acquainted with the handwriting of the respondent No. 3, should have made such statement. The respondent No. 2, it is submitted, failed to appreciate this aspect, and, therefore, the finding on the question of genuineness of the signatures on the rent receipts filed by the petitioner was not in accordance with law, and the same was liable to be interfered with by the respondent No. 1 while deciding the revision under Section 25 of the Provincial Small Cause Courts Act.

35. I have considered the submissions made by the learned senior counsel for the petitioner. A perusal of the statement of the husband of the respondent No. 3, examined as P.W. 1 in the suit, shows that the said witness categorically stated

that the rent receipts filed as papers 91C to 99C were forged, and the said receipts were not issued by him on behalf of the respondent No. 3. It was reiterated in the statement that these receipts were forged receipts.

36. In view of the categorical statement made by the husband of the respondent No. 3 as P.W. 1, it is evident that there was clear denial on behalf of the respondent No. 3 regarding the genuineness of the rent receipts filed on behalf of the petitioner. It clearly follows from the statement of P.W. 1 that the entire contents of the rent receipts filed by the petitioner including the alleged signatures on those rent receipts were stated to be forged by the husband of the respondent No. 3 examined as P.W. 1. Therefore, the submission of Sri Jain that the husband of the respondent No. 3, examined as P.W. 1, did not state that the signatures on the rent receipts filed by the petitioner were not those of the respondent No. 3, cannot be accepted. No misreading was done by the respondent No. 2 in observing that the respondent No. 3 had stated the said rent receipts to be forged. Similarly, no misreading was done by the respondent No. 1 in observing that in his statement, P.W. 1 had specifically denied the signatures of the plaintiff (respondent No. 3) on the receipts filed by the defendant (petitioner).

37. Sri Jain further submits that the courts below acted illegally in relying upon the circumstance that even though the written statement was filed on 27th May, 1988, the said rent receipts were filed on behalf of the petitioner in 1996.

38. I have considered the submission made by Sri Jain. The respondent No. 2 in its judgment and order dated 6.9.2000 considered the facts that while the written statement had been filed on behalf of the petitioner on 27.5.1988, the alleged rent receipts were filed in the year 1996, i.e., after about 8 years, and further, there was no reasonable explanation for the delay given on behalf of the petitioner. The respondent No. 1 in its Judgment and order dated 8.8.2002 again considered the said aspect of the matter.

39. In my opinion, the said circumstance is one of the relevant circumstances to be considered for deciding the question as to whether the rent receipts filed on behalf of the petitioner were genuine or not. If a party does not file a particular document at the proper stage in the suit, and he seeks to file the same at a much belated

stage without any reasonable explanation for the delay, then such a conduct of the party is an unusual one, and the same is relevant for deciding the question as to whether the particular document is genuine or not. It is relevant to refer to Section 8 of the Indian [Evidence Act, 1872](#), in this regard. Section 8 of the Indian [Evidence Act, 1872](#), in so far as is relevant, is quoted below :

' 8. Motive, preparation and previous or subsequent conduct,-- The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceedings, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.....'

40. Sri Jain, learned senior counsel for the petitioner further submits that even though the report of handwriting expert can be called for in view of the provisions of Section 45 of the Indian Evidence Act, it is still incumbent on the Court to itself compare the disputed signature with the admitted signature in view of Section 73 of the Indian Evidence Act, even though the Court may not act as handwriting expert. It is submitted that even though in the present case, handwriting experts had submitted their reports, still it was incumbent on the respondent No. 2 to have itself compared the disputed signatures on the receipts filed by the petitioner with the admitted signatures of the respondent No. 3 on the record. As noted above, Sri Jain has placed reliance upon the decision of the Apex Court in Fakhruddin's case (supra). Paragraphs 10 and 11 of the said decision relied upon by Sri Jain are quoted below :

'10. Evidence of the identity of handwriting receives treatment in three sections of the Indian Evidence Act. They are Sections 45, 47 and 73. Handwriting may be proved on admission of the writer, by the evidence of some witness in whose presence he wrote. This is direct evidence and if it is available the evidence of any other kind is rendered unnecessary. The Evidence Act also makes relevant the opinion of a handwriting expert (Section 45) or of one who is familiar with the writing of a person who is said to have written a particular writing. Thus, besides direct evidence which is of course the best method of proof, the law makes

relevant two other modes. A writing may be proved to be in the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or by the testimony of an expert competent to the comparison of handwritings on a scientific basis. A third method (Section 73) is comparison by the Court with a writing made in the presence of the Court or admitted or proved to be the writing of the person.

11. Both under Section 45 and Section 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become an handwriting expert but to verify the premises of the expert in the one case and to appraise the value of the opinion in the other case. This comparison depends on an analysis of the characteristics in the admitted or proved writing and the finding of the same characteristics in large measure in the disputed writing. In this way the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness.'

41. A perusal of paragraph 11 of the decision of the Apex Court quoted above shows that both under Sections 45 and 47 of the Indian Evidence Act, the evidence is an opinion. In case of Section 45 of the said Act, opinion is given by a scientific comparison, while in case of Section 47 of the said Act, opinion is on the basis of familiarity resulting from frequent observations and experience. In either case, it is observed by the Apex Court, 'the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to

compare them with the disputed one, not to become an handwriting expert but to verify the premises of the expert in the one case and to appraise the value of the opinion in the other case'.

42. It is thus evident that the Apex Court laid down that the Court should satisfy itself by such means as are open that the opinion may be acted upon. One such means is that the Court itself should compare the admitted signatures with the disputed signatures. Normally, this means should be adopted by the Court for satisfying itself as to whether the opinion may be acted upon. However, the Court may adopt other means also for recording such satisfaction. For instance, there may be facts and circumstances established by the evidence on record which coupled with an examination of the contents of the report of the handwriting expert and the testimony of the handwriting expert, may be sufficient to enable the Court to satisfy itself as to whether the report submitted by the handwriting expert may be acted upon or not.

43. In *Ajit Savant Majagaui v. State of Karnataka*, AIR 1997 SC 3255, their Lordships quoted the provisions of Section 73 of the Indian Evidence Act, and then laid down as under (paragraphs 37 and 38 of the said AIR) :

'37. This section consists of two parts. While the first part provides for comparison of signature, finger impression, writing etc. allegedly written or made by a person with signature or writing etc. admitted or proved to the satisfaction of the Court to have been written by the same person, the second part empowers the Court to direct any person including an accused, present in Court to give his specimen writing or finger prints for the purpose of enabling the Court to compare it with the writing or signature allegedly made by that person. The Section does not specify by whom the comparison shall be made. However, looking to the other provisions of the Act, it is clear that such comparison may either be made by a handwriting expert under Section 45 or by anyone familiar with the handwriting of the person concerned as provided by Section 47 or by the Court itself.

38. As a matter of extreme caution and Judicial sobriety the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of slightest

doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has not the power to compare the disputed signature with the admitted signature, as this power is clearly available under Section 73 of the Act. See *State (Delhi Administration) v. Pali Ram*. AIR 1979 SC 14 : (1979) 2 SCC 158.'

44. In the present case, as noted above, the respondent No. 2 considered the various circumstances and recorded finding of fact that the signatures on the receipts filed by the petitioner were forged. The report of the handwriting expert submitted on behalf of the respondent No. 3 was examined along with the statement of the said handwriting expert as P.W. 2, and the report of the handwriting expert submitted on behalf of the petitioner along with the statement of the said handwriting expert as D.W. 2 was examined. Besides examining the said reports of the handwriting experts and the statements of the said handwriting experts, the respondent No. 2 also took into account various other relevant facts and circumstances established on record, and then concluded that the signatures on the rent receipts filed by the petitioner were forged. Thus, the respondent No. 2 cannot be said to have committed any illegality.

45. Further, the respondent No. 1 in order to examine whether the findings of fact recorded by the respondent No. 2 on the question of genuineness of the receipts filed by the petitioner were in accordance with law or not, again considered the material on record including the facts and circumstances considered by the respondent No. 2 as well as the reports and statements of the handwriting experts. The respondent No. 1 further noticed that even though in paragraph 10 of the written statement, it was alleged that the rent upto 31.3.1988 had been paid, but there was no specific pleading in the written statement that the rent was paid against the rent receipts. The respondent No. 1 further noticed that despite the statement of P.W. 1, the defendant (petitioner) had not examined his son as witness in the suit. The respondent No. 1 further noticed that even though the petitioner as D.W. 1 admitted that he used to keep bahi khata at his business place and all rent and taxes paid were entered in his bahi khata but the said bahi khata was not produced in the suit.

46. After examining the material on record and also the aforementioned relevant circumstances, established on record, the respondent No. 1 did not find any illegality in the findings of fact recorded by the respondent No. 2, and therefore, declined to interfere with the same.

47. In my opinion, the findings of fact recorded by the respondent No. 2 regarding the receipts filed by the petitioner being forged ones were rightly not interfered with by the respondent No. 1 in the impugned judgment and order dated 8.8.2002.

48. In view of the said findings, it is evident that the defence of the petitioner that rent upto 31.3.1988, had been paid, was not correct. Hence, the rent for the period with effect from 1.12.1983, was due from the petitioner. The courts below have held the petitioner to be defaulter in the payment of rent. The deposit of Rs. 3,000 made by the petitioner on the first date of hearing, i.e., 12.5.1988, has been held by the respondent No. 2 as well as the respondent No. 1 to be far below, the amount required to be deposited under Section 20 (4) of the Act. In fact, Sri Jain, learned senior counsel did not make any submission in regard to the said question. In the circumstances, no interference is called for with the findings recorded by the courts below that the petitioner was not entitled to the benefit of Section 20 (4) of the Act.

49. It is relevant to note that the rate of rent as admitted to the petitioner was Rs. 200 per month. The rent/damages for the period from 1.12.1983 to 12.5.1988 (i.e., the first date of hearing in the suit) would come to more than Rs. 10,000 even according to the rate of rent as alleged by the petitioner. The deposit of Rs. 3,000 on 12.5.1988 was thus far below, the amount of rent/damages required to be deposited under Section 20 (4) of the Act. Moreover, besides the rent required to be deposited, the petitioner was also required to deposit the costs of the suit, and interest at the rate of 9 % per annum etc. as provided under Section 20 (4) of the Act. Therefore, the courts below rightly held that the petitioner was not entitled to the benefit of Section 20 (4) of the Act. Thus, the ground of default contemplated in Section 20 (2) (a) of the Act is established in the present case.

50. Sri Jain, learned senior counsel relied upon a Full Bench decision of our Court in *Nanha and Anr. v. Deputy Director of Consolidation, Kanpur and Ors.*, 1975

AWC 1 (FB), on the question of interference by the High Court under Article 226 of the Constitution of India with the findings of fact recorded by the courts below. In paragraph 15 of the said decision, it has been laid down by the Full Bench as follows :

'15. Our answer to the question referred to us is : If it appears that a Court of fact has in substance based its findings on no evidence or that its finding is perverse in the sense that no reasonable person could possibly come to that conclusion or that it erroneously ignores a vital plea or material evidence which affects the result, a manifest error of law apparent on the face of the record leading to failure of justice can be said to be established. But if a Court or a Tribunal bases its finding on a consideration of all relevant evidence, but an appellate or a revisional court or Tribunal while affirming the finding does not refer to some material or contrary evidence in its order it cannot be said that it has been ignored from consideration so as to entitle the High Court to interfere under Article 226 of the Constitution.'

51. In my opinion, the said decision is not applicable to the present case. In the present case, it has not been shown that the findings are based on no evidence. No perversity in the findings of fact has been shown. It has also not been shown that any vital plea or material evidence which affects the result, has been ignored. Hence, this decision does not help the petitioner.

52. It is well established that the findings of fact recorded by the courts below are normally not interfered with by the High Court in exercise of writ Jurisdiction under Article 226 of the Constitution of India unless such findings are shown to be patently illegal or perverse. The High Court cannot sit as a court of appeal while exercising its Jurisdiction under Article 226 of the Constitution of India.

53. In view of the aforesaid discussion, even though the findings on the question of structural alteration recorded by the respondent No. 1 cannot be sustained, still in view of the findings recorded by the counts below on the question of default, no interference is called for with the impugned judgments and orders passed by the courts below. The writ petition filed by the petitioner is thus liable to be dismissed, and the same is accordingly dismissed.

54. Learned counsel for the petitioner submits that sometime may be granted to the petitioner for vacating the disputed accommodation.

55. I have heard learned counsel for the petitioner and Sri N.C. Rajvanshi, learned senior counsel for the caveator-respondent No. 3 on this question also.

56. Having regard to the facts and circumstances of the case, the petitioner is granted time upto 28th February, 2003, for vacating the disputed accommodation subject to the petitioner giving an undertaking on his personal affidavit before the respondent No. 2 within five weeks from today incorporating the following conditions :

(1) The petitioner will vacate the disputed accommodation on or before 28th February, 2003 and will handover peaceful, vacant possession of the disputed accommodation to the respondent No. 3.

(2) The petitioner will deposit the entire decretal amount with upto date rent/damages for the period upto November, 2002, within five weeks from today. The amount so deposited may be withdrawn by the respondent No. 3 without furnishing any security.

(3) The petitioner will continue to pay damages at the rate of Rs. 200 per month to the respondent No. 3 with effect from December, 2002 till the date of vacating the disputed accommodation.

57. In case, the aforesaid undertaking is not given within the time granted or any of the conditions incorporated in the undertaking is violated, this order granting time to the petitioner will stand automatically vacated, and it will become open to the respondent No. 3 to execute the decree forthwith.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com