

P.D. Seth Vs. Smt. Krishna Devi

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Court : Allahabad

Decided On : Aug-02-2006

Reported in : 2006(4)AWC3549

Judge : Prakash Krishna, J.

Appellant : P.D. Seth

Respondent : Smt. Krishna Devi

Advocate for Def. : Sri. K.K. Tripathi

Disposition : Petition dismissed

Judgement :

Prakash Krishna, J.

1. The above three revisions are at the instance of the tenant, Under Section 25 of the Provincial Small Causes Court Act, against the orders passed by the Judge Small Causes, at the various stages of S.C.C. Suit No. 2 of 1994.

2. Smt. Krishna Devi, the land lady instituted the aforesaid S.C.C. Suit No. 2 of 1994 against the tenant who is applicant in the revision for recovery of arrears of rent, damages and ejectment with respect to the premises No. 8/58-E Arya Nagar, Kanpur. The suit was filed on the pleas inter alia that the tenancy of the defendant tenant has been terminated by means of a notice on the ground of default in

payment of rent. The defendant tenant failed to pay the rent in spite of service of the notice nor he vacated the disputed premises, hence the suit.

3. The suit was contested by the defendant tenant on the pleas inter alia that the amount claimed by the plaintiff is not due and that the requisite deposit has been made by him Under Section 20 (4) of U. P. Act No. 13 of 1972 on the first date of hearing, i.e., 9.2.1994.

4. An application purporting to be Under Order XV, Rule 5, C.P.C. was filed by the plaintiff landlady for striking off the defence of the defendant tenant on the ground that the defendant tenant has failed to deposit the entire amount due from him nor made deposits month by month. It was further stated that the defendant tenant has not deposited the interest at the rate of 9 per cent nor had deposited water tax or sewerage tax and has been adopting delaying tactics and is prolonging the proceeding on the some pretext or the other, vide application dated 12.7.1994. An objection to the aforesaid application was filed with the allegation that rent and taxes were deposited in Bank by tender Nos. 246 and 206 and the rent for 1.7.1994 to 31.8.1994, stand deposited in Bank on 7.7.1994, vide tender No. 212 filed in Court on 5.7.1994. The trial court initially by its order dated 22.10.1994, on the basis of the various tenders came to the conclusion that 'from the perusal of the documents, it does not appear that the defendant tenant has committed any default in payment of rent and compliance of Order XV, Rule 5, C.P.C. has been duly made.' The application was, therefore, rejected by the order dated 22.10.1994. The said order has been recalled and reviewed on an application filed by the plaintiff landlord Under Order XLVII, Rule 1, C.P.C. read with Section 151, C.P.C. by the order dated 11.9.1996. The matter was reheard by the trial court and this time the court below allowed the application filed Under Order XV, Rule 5, C.P.C. mainly on the ground that the adjustment of Rs. 10,000 as claimed by the defendant tenant towards the amount allegedly spent on the electricity bill is not adjustable Under Order XV, Rule 5, C.P.C. The second ground taken is that the defendant tenant has not deposited the monthly rents as and when fell due within time. Feeling aggrieved against the aforesaid order dated 3.10.1997, Revision No. 425 of 1997 has been filed.

5. Civil Revision No. 114 of 2002 is against the judgment and decree dated 19.2.2002, decreeing the aforesaid S.C.C. Suit No. 2 of 1994 ex parte for recovery of arrears of rent amounting to Rs. 13,900 since 1.3.1992 to 27.5.1993 and Rs. 7,103.33 from 8.5.1993 to 31.12.1993 towards the damages and for recovery of Rs. 1,000 per month as damages for the period first of January, 1994 till the date of actual delivery of possession Including water tax and sewerage tax and the ejectment of the defendant tenant from the premises in question. The defence of the defendant tenant as pointed out above was struck off by the order dated 30.10.1997.

6. Revision No. 456 of 2002 is against the judgment and decree dated 19.9.2002, rejecting the application filed by the defendant tenant Under Order IX, Rule 13 read with Section 151, C.P.C. to set aside the ex parte decree dated 19.2.2002. The defendant tenant had filed Civil Revision No. 425 of 1997 against the order striking off the defence in this Court and obtained an interim order staying further proceedings in the suit. The said interim order was for limited period and was extended from time to time. The revision was dismissed In default. Consequently, the interim order staying further proceedings of the suit stood vacated and thus the J.S.C.C. court heard and decided the suit after rejecting the adjournment application dated 3.5.2001 filed by the defendant tenant. The application to set aside the ex parte decree was rejected on the finding that after the vacation of the interim order in Civil Revision No. 425 of 1997, information of the date fixed was given to the learned Counsel for the defendant tenant who made an endorsement that he is not in a position to participate in the proceedings as his client not contacted him since long.

7. The two Revisions No. 456 of 2002 and 114 of 2002 were dismissed by this Court and the said orders were subject-matter of Civil Appeal Nos. 3960 and 3961 of 2003 before the Apex Court, at the instance of the defendant tenant. The Apex Court after hearing the counsel for the parties was of the opinion that the order striking out of the defence of the tenant who was appellant therein, was not a well considered order and a failure of Justice has occasioned thereby. It directed that all the three revision petitions, in the end of justice be taken up for analogous hearing by the High Court who shall decide them on merits. The said order was

passed expressly invoking jurisdiction conferred on it under Article 142 of the Constitution of India. For the sake of convenience the relevant portion of the order of the Apex Court is reproduced below:

Having heard the learned Counsel for the parties, we are satisfied that the order of the trial court striking out the defence of the tenant-appellant was not a well considered order taking into consideration the pleadings and other material available on the record of the case. A failure of justice has occasioned thereby. However, in the peculiar facts and circumstances of the case, we are of the opinion that ends of justice demand all the 3 revision petitions being taken up for analogous hearing by the High Court and then heard and decided on merits. In exercise of Jurisdiction conferred on this Court under Article 142 of the Constitution, C.R. No. 425/1997 is directed to be restored for hearing on merits by the High Court. Both the impugned orders dated 24.10.2002 are also set aside. C.R. No. 456/02 and C.R. No. 114/02 shall stand restored on the file of the High Court. All the 3 revision petitions shall be placed for hearing before one Bench and shall be taken up for hearing and decision analogously. The High Court would do well to take up the revision petitions for hearing at an early date.

The possession of the tenant-appellant shall remain protected until the revision petitions are heard and disposed of by the High Court.

Before parting we would like to make it clear that any observation made herein is not intended to be on merits and the High Court shall hear and dispose of the revision petitions on their own merits uninfluenced by any observation made in this order touching the merits of the controversy arising for decision before the High Court.

No order as to the costs in these appeals.

8. Thus, after remand, all the three revisions were heard together and are being disposed of by a common judgment, as suggested by the learned Counsel for the parties. When the matter was taken up on 6.4.2006, an objection was raised by the plaintiff-landlord that the defendant tenant in spite of decree passed by the court below is not depositing rent/damages and enjoying the disputed

accommodation. This Court on the said date passed the following order:

After hearing learned Counsel for parties at some length, Sri K.K. Tripathi, learned Counsel for the respondent landlord pointed out that the tenant in spite of the decree passed by the court below is not depositing rent for the use and occupation of the disputed accommodation. Sri Ravi Kiran Jain, senior advocate, very fairly offered on behalf of the applicant that his client is ready to pay entire arrears of rent and damages, by the date fixed, at the decreed rent.

Draft in favour of the Landlord, for the amount, which according to the decree, is due.

9. On the next date, i.e.. 20.4.2006 a bank draft for the sum of Rs. 40,000 was handed over to the learned counsel for the plaintiff opposite party. It may be placed on the record that there is dispute between the parties with regard to the exact amount due but it is not necessary for this Court to enter into the said controversy. The said controversy can be more appropriately decided by the trial/executing court if so raised.

10. Sri Ravi Kiran Jain, the learned senior counsel along with Shri R. M. Saggi, advocate, made submission in Civil Revision No. 425 of 1997, arising out of order striking off the defence of the defendant tenant. The main thrust of the argument of the learned Counsel was that on a true and correct interpretation of the judgment of the Hon'ble Apex Court in the aforesaid Civil Appeal Nos. 3960 and 3961 of 2003, the order of the trial court striking off the defence is unsustainable. Elaborating the argument it was submitted that the only course open to this Court is to set aside the order striking off the defence and consequently other two orders namely decreeing the suit ex parte and refusing to set aside the ex. parte decree and restore the matter on the file of the trial Judge for decision of the suit on merits. Great emphasis was laid on the observations made by the Apex Court that the order of the trial court striking out the defence of the tenant was not well considered order taking into consideration the pleadings and other materials available on the record of the case and a failure of Justice has occasioned thereby.

11. It may be placed on the record that no argument on merits was advanced by the learned senior counsel in the other two revisions.

12. In contra, Shri K.K. Tripathi, the learned Counsel for the plaintiff- landlord submitted otherwise. He pointed out that the subsequent observations made towards the end of the order depicts the position that the Supreme Court never intended to make any observation on merits and left the entire matter open for the decision by the High Court on merits, uninfluenced by any of the observations made therein.

13. Having considered the respective submissions of the learned Counsel for the parties it is difficult to agree with the submission of Shri Jain that the only course left open to this Court is to remand the matter to the trial court after setting aside the impugned orders. A careful reading of the judgment of the Hon'ble Supreme Court leaves no room of doubt that the observations made in earlier part of the Judgment were only tentative for the purposes of the disposal of the appeals. The said observations should be interpreted and understood in the light of the subsequent observations made in the penultimate paragraph of the Judgment. A reading of the Judgment of the Supreme Court as a whole makes it clear that the order of the trial court striking out the defence of the defendant tenant was left to be decided on merits by the High Court. It is well founded that any observation made in the judgment should not be read in isolation. The judgment of the Apex Court should be read as a whole to find out its crux. The interpretation suggested by the learned Counsel for the applicant if accepted it would amount divorcing the observations made in the concluding paragraph of the judgment wherein it has been stated In no uncertain terms that any observation made in the judgment is not intended to be on merits and the High Court shall hear and dispose of the revision petitions on their own merits uninfluenced by any of the observations made in the order touching the merits of the controversy arising for decision before the High Court.

14. It was then submitted that the order of the trial court striking off the defence is Illegal and cannot be sustained Inasmuch as the defendant tenant has made the necessary deposits as required Under Order XV, Rule 5, C.P.C. The non-deposit

of Rs. 10,000 was justified as a tenant is required to deposit the only admitted amount due from him. There being a controversy as to whether the tenant was entitled to adjust a sum of Rs. 10,000 towards the electricity dues, this controversy would be appropriately decided only at the time of final decision of the suit and therefore, at the stage of consideration of the application Under Order XV, Rule 5, the court below committed illegality in entering into the said controversy and holding that non-deposit of the said amount of Rs. 10,000 amounts non-compliance of the Order XV, Rule 5, C.P.C. Para 23 of the written statement was referred during the course of argument wherein it was stated by the defendant tenant that a further sum of Rs. 10,593 was paid in cash to the plaintiff, the plaintiff acknowledged the same and Issued receipt in her handwriting on 1.5.1993 for discharge of electricity bill, which she did not pay to K.E.S.A., authorizing the defendant to pay the amount to the K.E.S.A. To appreciate the aforesaid point, it is desirable to reproduce Order XV, Rule 5, C. P.C. which has been added by way of amendment in the State of U. P. It reads as follows:

5. Striking off defence for failure to deposit admitted rent, etc.--(1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent, per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may, subject to the provisions of Sub-rule (2), strike off his defence.

Explanation 1. -- The expression 'first hearing' means the date for filing written statement for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.

Explanation 2. -- The expression 'entire amount admitted by him to be due' means the entire gross amount, whether as rent or compensation for use and occupation,

calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account (and the amount, if any, paid to the lessor acknowledged by the lessor in writing signed by him) and the amount, if any, deposited in any Court Under Section 30 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

Explanation 3. -- (1) The expression 'monthly amount due' means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account.

May consider any representation made by the defendant in that behalf provided such representation is made within 10 days of the first hearing or, of the expiry of the week referred to in Sub-section (1), as the case may be.

(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff:

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited:

Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same.'--U. P. Act (57 of 1976) (1.1.1977) and (w.e.f. 3.10.1981).

15. A bare perusal of the aforesaid provision clearly shows that the aforesaid provision can be divided into two compartments. The defendant tenant, in a suit by a lessor for his eviction after determination of his lease and for recovery from him of rent or compensation for use and occupation shall: (1) at or before the first date of hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of 9 per cent per annum; (2) and the tenant shall throughout the continuance of the suit regularly deposit the monthly amount due within a week from the date of its accrual. It has been further provided

that in the event of any default of either of the deposits stipulated above, the Court may, after giving an opportunity of hearing and subject to the provisions of Sub-rule (2) strike off his defence. The Explanation-II to Order XV, Rule 5, C.P.C. defines the expression 'entire amount admitted by him to be due'.

16. A plain reading of Explanation-II makes it clear that while calculating the gross amount to be deposited Under Order XV, Rule 5 (1), a tenant is entitled to make the following deductions only:

(1) The taxes, if any, paid to a local authority in respect of building on a lessor's account, and (2) the amount, if any, paid to the lessor acknowledged by the lessor in writing signed by him.

17. The object of the aforesaid Explanation is loud and crystal clear. It puts beyond pale of any doubt permissible deductions, which can be made by a lessee while making a deposit Under Order XV, Rule 5, C.P.C. The expression 'no other deduction' makes the position clear beyond doubt that except those amounts which are specified to be deducted, tenant cannot claim any other deduction. To put it differently, the Explanation-II has been enacted with a view to make the things clear that except the aforesaid specified deductions, no other deduction/set off/or adjustment is admissible for the purposes of deposits Under Order XV, Rule 5, C.P.C.

18. Having clarified the legal position which could not be seriously disputed by the learned Counsel for the applicant, his argument that there is an acknowledgment by the plaintiff acknowledging the receipt of Rs. 10,593 requires consideration. There was serious controversy between the parties with regard to the aforesaid issue. The learned Counsel for the plaintiff landlord emphatically denied any such acknowledgment by his landlord. The learned Counsel for the plaintiff landlord offered that the record of the case be summoned through a special messenger at his cost to ascertain the above fact which goes to the root of the matter. The Court directed the parties to file affidavits clearly stating the factum of acknowledgment in the handwriting of the landlady. In pursuance of the aforesaid order the affidavits of respective parties were filed and are on record. The defendant tenant in para 5 of his affidavit has stated that the alleged acknowledgment by the plaintiff

landlady with regard to the payment of electric dues in writing signed by her is being filed as Annexure-1 to the affidavit. I have carefully perused the said document. By no stretch of imagination the said document can be called acknowledgment of the payment of Rs. 10,000 and odd. In the said document, in short, it is written that the tenant P.D. Seth is consuming an average of 16 units electricity of the plaintiff landlady and 5 units of one Agrawal, which is apparent from the chart given beneath the aforesaid writing. The said chart contains four dates as 31.3.1993, 2.4.1993, 27.4.1993 and 1.5.1993 and also entries of main meter reading and sub-meter reading and nothing beyond it. At the end of the aforesaid details of dates, main meter reading and sub-meter reading it is written in Hindi (Dev Nagari Script) which means that Shri Seth has used the electricity from 10.1.1992 to 4.2.1990 (the date appears to be incorrect) and would be liable to pay after accounting. The learned senior counsel was unable to carry his point any further in view of the contents of the aforesaid document that it amounts acknowledgment of payment to landlady in her writing.

19. Besides above, the question whether the said document is in the handwriting of the landlady and signed by her would be gone into if so agitated in the trial of the suit. The categorical case of the plaintiff opposite party is that she has not issued any receipt regarding the payment of Rs. 10,593.69. Nor she has accepted any amount of Rs. 10,593.69 regarding which the tenant is claiming adjustment.

20. At this stage it is interesting to notice the dichotomy in between the contents of paragraphs 12 and 23 of the written statement which contradicts the theory of payment of the aforesaid amount to the plaintiff landlady. In para 12 of the written statement it has been stated by the defendant tenant that initially he gave a cheque to clear the electricity dues against the bill dated 26.2.1993, being Cheque No. 446583 dated 29.4.1993, drawn on State Bank of India, Main Branch Kanpur to K.E.S.A. The said cheque was dishonoured as it was not properly drawn and due to non-stamping the firm's name on the cheque which was unintentional omission on the part of the defendant tenant. The defendant tenant thereafter deposited Rs. 10,933 in cash before K.E.S.A. inclusive of Rs. 140 towards the collection charges. The said paragraph is reproduced below:

12. That the contents of paras 14, 15 and 16 of the plaint are not admitted but emphatically denied and the plaintiff is put to strict proof thereof. It is pertinent to mention here that the answering defendant against bill dated 26.2.1993, deposited a sum of Rs. 10,593.69 with K.E.S.A. through Cheque No. 446583 dated 29.4.1993 drawn on State Bank of India, main Branch, Kanpur which was dishonoured. The cheque return memo was not forwarded by the K.E.S.A. to the answering defendant. However, there could have been no other reason for non-encashment of the said cheque except non-stamping of the firm's name on the cheque except non-stamping of the firm's name on the cheque or inadvertent omission to mention the account No. therein. The said information of the dishonour of the cheque was received by the plaintiff without any further transmission of information to the answering defendant, which resulted in abrupt disconnection of the power. The answering defendant thereafter deposited Rs. 10,933 in cash before K.E.S.A. besides, Rs. 140 towards reconnection charges on 18.6.1993 and got the electricity supply resumed. By any stretch of imagination, the said dishonour of cheque and/or subsequent payment of the value thereof to the K.E.S.A. taken together cannot be termed as fraud. Allegations to the contrary are misconceived and false.

21. In para 23 of the same written statement, the defendant tenant has pleaded a totally different plea and stated that a sum of Rs. 10,593 was paid in cash to the plaintiff, the plaintiff acknowledging the same has issued receipt in her Own writing on 1.5.1993 for discharge of electricity bill, which she did not pay to the K.E.S.A. authorizing the defendant to pay the said amount to K.E.S.A. again. A Joint reading of the aforesaid two paragraphs namely paragraphs 12 and 23 of the written statement clearly leads to the conclusion that the plea of acknowledgment in the handwriting of the landlady with regard to the payment of Rs. 10,593 is absurd on the face of it. It would not be out of place to mention here that the affidavit by the son of the plaintiff landlady titled as supplementary counter-affidavit on 18.5.2006 clearly denying the payment and the alleged acknowledgment in the handwriting of the plaintiff was filed. The copy of the said affidavit was served on the counsel of the defendant tenant. The defendant tenant instead of making any denial of the aforesaid para 4 of the affidavit has in reply filed affidavit titled as 'supplementary-affidavit' of 11.5.2006, stating that the document dated 1.5.1993,

already referred to above shows the actual payment of amount of Rs. 10,593.

22. In any view of the matter, the alleged acknowledgment in question cannot be termed as acknowledgment of Rs. 10,593. The receipt of any amount cannot be inferred from the document in question. Assuming for the sake of argument that the document alleged to be acknowledgment is in handwriting and under the signature of the plaintiff landlady, it does not show the receipt of any amount by her. Examining the said document from any angle it is not possible to hold the said document as an acknowledgment of receipt of Rs. 10,593. The contents of the document lack payment or receipt of any amount whatsoever by anybody to her. As a matter of fact the contents of the document does not disclose any transaction of give and take or passing of money.

Acknowledgment means-to 'acknowledge' is to admit, affirm, declare, testify, avow, confess or own as genuine. The admission or affirmation of obligation or responsibility, vide Black's Law Dictionary, Sixth Edition, Page 23.

Webster's New Twentieth Century Dictionary Unbridged Second Edition B says besides other meanings of Acknowledgment-to own, avow or admit to be true, by declaration of assent to own or admit to belong oneself.

23. In this view of the matter, there is no merit in the aforesaid submission of the learned Counsel of the defendant tenant and the order of the trial court on this point is on terra- firma.

24. Under Order XV, Rule 5, C.P.C. a tenant is required to deposit the monthly rent or the damages after the first date of hearing within the specified time during the pendency of the suit. It has been found by the trial court that the defendant tenant has not deposited the amount during the pendency of the suit after the first date of hearing. The learned Counsel could not point out any illegality on this point in the order of the trial court. On this account also the order of the trial court being in accordance with law, the defence of the defendant tenant is liable to strike off.

25. After examining the case from all the possible angles with which, the learned Counsel for the parties advanced arguments, the order of the trial court is perfectly

justified and is in accordance with law and is hereby confirmed. No argument on merits was advanced in the other two connected revisions, as it was understood by the parties that failure or success in the present revision would decide the fate of the connected revisions.

26. In view of the above discussion all the revisions lack merit and are hereby dismissed with no order as to costs.

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