

Shri Nath Vs. Iiird Additional District Judge and anr.

Shri Nath Vs. Iiird Additional District Judge and anr.

SooperKanoon Citation : sooperkanoon.com/491736

Court : Allahabad

Decided On : Oct-25-2004

Reported in : 2005(1)ARC361

Judge : S.U. Khan, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 20(2)

Appeal No. : C.M.W.P. No. 14254 of 1981

Appellant : Shri Nath

Respondent : Iiird Additional District Judge and anr.

Disposition : Petition allowed

Judgement :

S.U. Khan, J.

1. This is landlords writ petition arising out of a suit (S.C.C. Suit No. 6 of 1979) filed by him against tenant-respondent No. 2 for eviction on the ground of default and for recovery of arrears of rent J.S.C.C./Special Judge, Mathura through judgment and decree dated 6.3.1980 decreed the suit for both the reliefs. Tenant respondent No. 2 filed a revision against the said judgment and decree being Civil Revision No. 70 of 1980. Revisional Court substantially allowed the revision and

set aside the decree for eviction. Landlord was declared entitled to withdraw the deposits made by the tenant. The revision was allowed on 13.8.1981. The said judgment of the Revisional Court is under challenge in the instant writ petition.

2. The notice terminating the tenancy and demanding the rent given by landlord on 17.10.1978 and was served upon the tenant on 18.10.1978. In the notice rent from May 1978 till September, 1978 was demanded. In the suit rent from May 1978 till December 1978 was stated to be due and decree for ejectment and recovery of the rent for the said period was prayed for long with pendente lite and future damages for use of occupation. Rate of rent is Rs. 180/- per month. Landlord clearly admitted that he had received rent from January to April, 1978 through two money orders; one for the months of January and February and the other for the months of March and April. Landlord refused to accept the money order through which tenant sent the rent of June, 1978. Landlord was justified in refusing the said rent as rent for the previous month i.e. May, 1978 had not been paid. Even if the rent of June, 1978 is taken to be not due still at the time of notice tenant was defaulter for four months i.e. May, July, August and September, 1978. The trial Court reproduced that part of the oral statement of the tenant in its judgment where the tenant stated that he did not remember that in what manner he paid the rent to the landlord since May, 1978 till December, 1978 (it was the case of the tenant that since May, 1978 till December, 1978, he had already paid the rent to the landlord). Tenant further stated in his oral statement that the plaintiff took rent amounting to Rs. 1,040 from him however he did not remember that the said amount was for what period. From the above statement, trial Court rightly deduced that tenant failed to prove that he had paid any rent after April, 1978. The tenant in his notice/reply notice Ex. A-7 stated that he had paid rent to the plaintiff from July, 1978 to December 1978 but plaintiff did not issue any receipt. From this version trial Court rightly inferred that tenant was taking contradictory stands.

3. Revisional Court in Para 11 of its judgment held that rent for March 1978 sent by the tenant through money order to the landlord was refused by him in the mid April, 1978. Even if this fact is correct still it will not make any difference as the rent for March and April, 1978 was sent later on through one money order and was accepted by the landlord. Landlord has accepted that he received the rent till April,

1978 through money order. The Revisional Court after excluding the default for the months of March and June, 1978 held that at the time of notice tenant was defaulter only for three months, hence he could not be ejected under Section 20 (2) (a) of the Act, according to which the default must be at least for four months. In my opinion revisional Court wrongly excluded the default of March, 1978. As stated earlier refusal of rent of March 1978 even if made by the landlord became meaningless when the rent for March 1978 was again sent through money order by the tenant to the landlord alongwith the rent of April, 1978 and was accepted by the landlord.

4. Accordingly, I hold that the judgment and order passed by Revisional Court is erroneous in law and liable to be set aside.

5. Consequently, writ petition is allowed. Judgment and order dated 13.8.1981 passed by Illrd Additional District Judge, Mathura in Civil Revision No. 70 of 1980 is quashed and judgment and decree passed by J.S.C.C., Mathura dated 6.3.1980 in S.C.C. Suit No. 6 of 1979 is restored.

6. As during the argument no one appeared for the tenant-respondent, hence before passing the order of delivery of possession on the execution application of the landlord, when filed, Executing Court should ensure service of notice upon tenant-respondent Babu Lal.