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Court : Allahabad

Decided On : Oct-10-2007

Reported in : 2008(1)AWC371

Judge : S.U. Khan, J.

Appellant : Mohd. Asharaf and anr.

Respondent : Additional District Judge and ors.

Disposition : Petition allowed

Judgement :

S.U. Khan, J.

1. Heard learned Counsel for the petitioner.

2. This is tenants' writ petition. Landlord-respondent No. 3 Mohd. Shafeek Ahmad Siddiqui filed suit for eviction against the tenant-petitioner in the form of S.C.C. Suit No. 61 of 2000, on the ground of default and subletting. J.S.C.C., Varanasi decreed the suit through judgment and decree dated 29.1.2000. Against the said judgment and decree petitioner filed Civil Revision (ought to be S.C.C. Revision) No. 7 of 2002. A.D.J. Court No. 9 Varanasi dismissed the revision on 23.10.2003, hence this petition.

3. Rate of rent is Rs. 75 per month and the property in dispute is a shop situate in Varanasi.

4. In respect of default tenant-petitioner sought the benefit of Section 20 (4) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. In order to avail the said benefit petitioners deposited Rs. 2,428 on 4.8.2000 and Rs. 2,108 on 19.10.2000. Date 4.8.2000 was the date fixed in the summons. On the said date petitioners sought adjournment on the ground of illness of their counsel, which was granted and 4.9.2000 was fixed. On 4.9.2000 also some more adjournment was sought by the tenants-petitioners which was allowed and 19.10.2000 was fixed. There is no serious dispute that if 19.10.2000 is taken to be the date of first hearing, then the petitioners' deposit was complete and they were entitled to the benefit of Section 20 (4) of the Act. However, the courts below took 4.8.2000 as the date of first hearing.

5. After discussing five authorities of the Supreme Court on the interpretation of first date of hearing used in Section 20 (4) of the Act, I have held in K. K. Gupta v. A.D.J. 2004 (2) ARC 659, that if written statement is filed within the time/extended time granted by the Court then no date prior to the date of filing of written statement can be taken to be the date of first hearing. In the instant case on 4.9.2000, petitioners were permitted to file written statement by 19.10.2000 and on 19.10.2000 they filed written statement, hence 19.10.2000 was the date of first hearing. Accordingly, in my opinion, the petitioners were fully entitled to the benefit of Section 20 (4) of the Act.

6. In respect of subletting the allegation was that defendant-petitioner No. 1 had sublet the shop in dispute to defendant No. 2, Najmuz Zaman, Najmuz Zaman is son of real brother of the tenant. Issue No. 6 framed by the trial court and point No. 3 framed by revisional court related to sub-tenancy.

7. Revisional court has categorically held that petitioner No. 2 is son of real brother of petitioner No. 1 and petitioner No. 2 is having his P.C.O. in a portion of the shop in dispute. However, there is no finding that the portion in which petitioner No. 2 is having his P.C.O. has been so completely separated from the main shop that it has become an independent shop having got no concern with the remaining

portion. There is no allegation that walls etc. had been placed and the portion where petitioner No. 2 is carrying on the business of P.CO. has got independent opening.

8. Even though by virtue of Section 105 of Transfer of Property Act, there cannot be any tenancy or sub-tenancy without rent, however in case of sub-tenancy it is not necessary for the landlord to prove that rent was paid by the sub-tenant to the chief tenant for the reason that it is almost impossible for the landlord to collect evidence in that regard, particularly when sub-tenancy is prohibited under law. Accordingly, it has been held in several authorities that mere exclusively possession of a person, other than tenant, may be sufficient to prove sub-tenancy vide Bharat Sales Ltd. v. Life Insurance Corporation of India : [1998]1SCR711 and J. S. Sodhi v. A. Kaur : (2005)1SCC31 . It is also correct that neither real brother nor his son is included in the definition of family of the tenant as provided under Section 3 (g) of the Act. However, in this regard, the case of a very close relation of tenant will have to be placed at a slightly different level, than the case of a total stranger.

9. Sub-letting is a ground for eviction under Section 20 (2) (e) of the Act, which is quoted below:

20 (2) (e) that the tenant has sub-let, in contravention of the provisions of Section 25, or as the case may be, of the old Act the whole or any part of the building.

Section 25 of the Act is quoted below:

25. Prohibition of sub-letting. -(1) No tenant shall sublet the whole of the building under his tenancy.

(2) The tenant may with the permission in writing of the landlord and of the District Magistrate, sub-let a part of the building.

Explanation. - For the purposes of this section:

(i) where the tenant ceases, within the meaning of Clause (b) of Sub-section (1) or Sub-section (2) of Section 12, to occupy the building or any part thereof, he shall

be deemed to have sub-let that building or part; and

(ii) lodging a person in a hotel or a lodging house shall not amount to sub-letting.

Section 12 (1) (b) is quoted below:

12. Deemed vacancy of building in certain cases.-(1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if: (b) he has allowed it to be occupied by any person who is not a member of his family.

10. On a plain reading of the above provisions, one may get an impression that if tenant has allowed his brother or brother's son to reside with him in the tenanted accommodation or to do business from a portion of the tenanted shop, then sub-letting takes place. However, the Supreme Court in Ganesh Trivedi v. Sundar Devi, : [2002]1SCR189 , has held that if the tenant of a residential building allows his brother to reside with him then it does not amount to vacancy or sub-letting. The Supreme Court has clarified that in case tenant completely withdraws his possession from the entire tenanted building and allows it to be occupied by his brother, then it will amount to sub-letting. On the same principle, if petitioner No. 1, the tenant allowed his real brother's son, i.e., petitioner No. 2 to occupy a small portion of the shop in dispute and do independent business therefrom, then it cannot amount to sub-letting.

11. Accordingly, I am of the opinion that findings of the courts below on both the points, i.e., denial of benefit of Section 20 (4) of the Act to the tenant and sub-letting are erroneous in law and liable to be set aside.

Accordingly, writ petition is allowed. Both the impugned judgments, decree of trial court and order of the revisional court are set aside. Suit of the landlord for eviction is dismissed. Decree for recovery of rent/permission to the landlord to withdraw the amount deposited by the tenant shall stand.

12. I have held in Khursheeda v. A.D.J. 2004 (2) ARC 64 : 2004 (1) AWC 851, that while granting relief against eviction to the tenant in respect of building covered by Rent Control Act, writ court is empowered to enhance the rent to a reasonable

extent.

The shop in dispute is quite big in size and is situate in Varanasi. Accordingly, it is directed that w.e.f. October, 2007, onwards tenant petitioner shall pay rent to the landlord respondent @ Rs. 1,750 per month inclusive of water tax etc. No further amount over and above Rs. 1,750 per month shall be payable.

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