

Rahul Sharma Vs. Dhanesh Gupta

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Court : Uttaranchal

Decided On : Aug-07-2004

Reported in : 2005(1)ARC511

Judge : Rajesh Tandon, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972; Small Causes Courts Act - Sections 25

Appeal No. : Civil Revision No. 91 of 2002

Appellant : Rahul Sharma

Respondent : Dhanesh Gupta

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Sharad Sharma, Adv.

Disposition : Revision dismissed

Judgement :

Rajesh Tandon, J.

1. Heard Sri Sharad Sharma, learned Counsel for the revisionist and Standing Counsel for the respondent.

2. By the present revision, the revisionist has prayed for setting aside the order dated 22.11.2002 passed by Mr. Ramesh Chandra Maulakhi, Judges Small Cause Courts/A.D.J./Second Fast Track Court District Dehradun.

3. Briefly stated, a suit was filed before the Judge Small Cause Courts by the plaintiff/respondent praying for eviction of the applicant in respect of the premises No. 78 Akash Deep Colony, Dehradun.

4. According to the case of the plaintiff, an agreement was executed on 7.11.1997, between the plaintiff and the defendant by virtue of the said agreement the premises was let out to the defendant for a period of 11 months w.e.f. 7.11.1997 on a monthly rent of Rs. 3,400/-. Paragraph No. 2 and 3 of the plaint are quoted below:-

'That vide agreement dated 7.11.1997 between the plaintiff and the defendant, the said premises was let out to the defendant for a period of 11 months w.e.f. 7.11.1997. The monthly rent, so fixed was Rs. 3,400/- payable in advance.

That as per Clause 4 of the said agreement, in case the plaintiff wanted to get the said premises vacated, he was required to send a notice in writing in advance to the defendant.'

5. According to the plaintiff a notice was sent on 6.9.1998, terminating the tenancy of the defendant with effect from the expiry of 30 days following the date of receipt of the said notice calling upon the defendant to vacate the premises and deliver physical vacant possession on the expiry of the said period. The defendant was also required to pay electric charges and water charges up to the date of determination of the tenancy.

6. Counsel for the plaintiff-respondent has submitted that the premises was constructed in the year, 1996 and therefore, UP. Act No. 13 of 1972 is not applicable to the premises in dispute and, hence he was entitled to get the possession after the expiry of the notice from the defendant. The plaintiff has claimed a sum of Rs. 4,716.12 paise towards the arrears of rent and taxes.

7. Applicant has filed a written statement. The averments made in Paragraph 2 of the plaint with regard to the rate of rent to the extent of Rs. 3,400/-, was admitted. He has admitted himself to be the tenant at the rate of Rs. 3,400/- per month including house tax and water tax.

8. So far as the construction of the premises in the year 1996 in concerned, the same was also not specifically denied by the defendant in his written statement.

9. The plaintiff has examined PW1 Dhanesh Gupta and PW2 Vinod Narain. Besides, this, the plaintiff has filed 16 documents as per list 6-C. These documents include copy of the notice Exhibit 6, receipt of the notice Exhibits 1 and 2, A.d. receipt Exhibit 3, Certificate of posting Exhibit-4, reply notice Paper No. 11-C, Power of attorney Exhibit-7. The plaintiff also filed one document as per list 14-C, which is an agreement dated 7.11.1997 Exhibit-5. As per list, 48-C, the plaintiff has filed receipt of the tender. As per list 52-C, the plaintiff filed three documents, which are copy of the assessment of Nagar Nigam and copies of the affidavits of Vinod Narain and Rahul Sharma. The plaintiff as per List 168-C has filed copy of the order dated 23.7.2002 passed by the High Court in writ petition No. 506 (MS) of 2002 (Rahul Sharma v. Dhanesh Gupta).

10. On behalf of the defendants Rahul Sharma DW1, V.K. Gupta DW2, Yamin DW3 and Rishi Pal were examined, apart from that Cheque Book, Counterfoil receipt of the rent, statement of account 60&x;], the payment of the electricity dues etc. were field by the defendant.

11. The Judge Small Cause Court has framed as many as 12 issues.

12. Issue No. 1 was framed to the effect as to whether the rent was of Rs. 3,400/- per month.

13. Issue No. 3 was with regard to the default and issue no. 5 related to the arrears of rent to the extent of Rs. 4,716.12 paise.

14. All the issues were decided together and the Judge Small Cause Court has come to the conclusion that the rent has not been paid from 1.9.1998 to 12.10.1998 and as such the plaintiff was entitled to get a sum of Rs. 4,716.12

paise.

15. While recording the aforesaid finding, the Judge Small Cause Court has relied upon the Paper No. 60&x;] from which, it is evident that a sum of Rs. 3,550/- has been deposited being Cheque No. 200666 dated 13.8.1998 and this fact has been admitted by Sri V.N Gupta that he has issued the last cheque on 13.8.1998 and no other receipt was produced.

16. From the perusal of the record Paper No 58&x; i.e. counterfoil as well as Bank Account, it is fully evident that the rent was due from 1.9.1998 to 12.10.1998 and I find no infirmity with the findings of Judge Small Cause Court while deciding the issue No. 1, 3 and 5 in favour of the plaintiff/respondent.

17. Issue No. 2 was framed with regard to the rent of Rs. 3,400/- as agreed between the parties.

18. A finding was recorded that the water tax is included in the said Rent. However, sewer tax is not a part of the rent.

19. I find no infirmity in the order passed by the Judge Small Cause Court while deciding the aforesaid issues.

Clause 5 of the agreement is reproduced as under:-

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20. Issue No. 4 was framed with regard to the fact as to whether the defendant has inveted a sum of Rs. 40,000/- in the house. The said fact has been denied by Vinod Narain P.W.2 on behalf of the plaintiff. No receipts have been filed with regard to the investment made by the defendant in the house towards furnishing.

21. It is settled law that the defendant is entitled only for reimbursement of the expenses, which are legally admissible. He is not entitled for any amount towards furnishing. The Judge Small Cause Court has rightly decided the issues in favour of the plaintiff.

22. Issue No. 6 was framed with regard to the notice sent by the plaintiff. Notice has been proved by the plaintiff as paper No. 70&x; and the reply is paper No. 11&x-.; The notice was duly received by the defendant, there is no denial of this fact. The tenancy, therefore, stands determined after 30 days of the receipt of the notice, I find no infirmity in the findings recorded by the Judge Small Cause Court.

23. Issue No. 7 was framed to the effect that the plaintiff was entitled to get a sum of Rs. 150 towards electricity dues. This fact has been admitted the defendant in his statement and therefore, I find no infirmity in the findings recorded by the Judge Small Cause Court while deciding issue No. 7.

24. The defendant has taken the plea that he is a licensee and as such issue No. 9 was framed as to whether the status of the defendant is a licensee but neither there is any statement to that effect nor there is any pleading to that effect and as such the finding recorded by the Judge Small Cause Court requires no interference. The plaintiff has specifically stated in Paragraph No. 2 of the plaint that the defendant is a tenant and this fact has not been controverted by the defendant in reply to the aforesaid paragraph. In fact the defendant has admitted that premises was let out to him on a monthly rent of Rs. 3,400/- per month including house tax and water tax. Therefore, I find no infirmity with the findings recorded by the Judge Small Cause Court to that effect.

25. Issues No. 10 and 11 were framed as to whether, the plaintiff has a right to file the suit in view of Paragraph No. 27 and 28 of the written statement and whether the suit is maintainable. In Paragraphs No. 27 and 28, it has been stated as under:-

'That the plaintiff had already sold the said property to Sh. V.N. Gupta on the basis of agreement of sale, power of attorney and will and the plaintiff has no interest in respect of the said property.

That the plaintiff have no right, title or interest in the property in suit.'

26. The plaintiff No. 1 Dhanesh Gupta and plaintiff No. 2 Vinod Narain were examined. The plaintiff has filed the suit as a Power of Attorney of V.N. Gupta and

this fact has been admitted by the defendant in paragraph No. 1 of the Written statement that Dhanesh Gupta is the owner and landlord of the property.

27. Further it has been admitted by the defendant that the rent was being paid to the Power of Attorney of Sri V.N. Gupta. The said property was let out by Dhanesh Gupta to the defendant through Power of Attorney of V.N. Gupta, who was realizing the rent.

28. In view of the above, I find no infirmity in the order passed by the Judge Small Cause Court while deciding the issues to that effect.

29. Issue No. 12 has been framed as to whether the plaintiff is entitled to sue in the light of the issues No. 10 and 11.

30. The Judge Small Cause Court has recorded a finding that the plaintiff is landlord of the premises in dispute. The tenancy having been terminated, the plaintiff is entitled for a decree of eviction.

31. Admittedly, Act No. 13 of 1972 is not applicable to the premises in dispute being the rent of more than Rs. 2,000/- per month and further the said premises having been constructed in the year, 1996.

32. In view of the aforesaid, the decree passed by the Judge Small Cause Court requires no interference. The plaintiff is entitled for a decree for eviction along with the arrears of rent as decreed by the trial Court.

33. It is settled law that while deciding the revision under Section 25 of the Small Causes Courts Act, the scope of Revisional Court under Section 25 of the Small Cause Courts Act is very limited in view of the judgment of the Division Bench of the Allahabad High Court reported in 1981 A.R.C. Page 543 Laxmi Kishore and Anr. v. Har Prasad Shukla. The observation of the Division Bench are quoted below:-

'But, if it finds that a particular finding of fact is vitiated by an error of law, it has power to pass such order as the justice of the case requires; but which has no jurisdiction to reassess or reappraise the evidence in order to determine an issue

of fact for itself. If it cannot dispose of the case adequately without or finding on a particular fact, it should send the case back after laying down proper guidelines, it cannot inter into the evidence, assess it and determine and issue of fact.'

34. Relying upon the judgment of the Apex Court in the case of Laxmi Kishore (supra), the Revisional Court has no jurisdiction to reassess or reappraise the evidence in order determine the issue of fact.

35. Relying upon the judgment of the Apex Court in the case of Laxmi Kishore (supra), in the case of Deen Dayal v. Smt. Bhagwan Das reported in, 2004 (1) ARC 558, it has been held as under;-

'The phrase 'according to law' has been explained by the Supreme Court in Hari Shankar v. Rao Girdhari Lal Chowdhary, AIR 1963 SC 698 at 701, in which it was held as follows:-'The phrase 'according to law' refers to the decision as a whole and is not to be equated to error of law or of fact simpliciter. It refers to the overall decision, which must be according to law which it would not be if there is a miscarriage of justice due to a mistake of law.'

36. The revisionist is granted time by 31.1.2004 to vacate the premises provided undertaking is given before the Judge Small Cause Court within 15 days after the receipt of the certified copy of this order.

37. Plaintiff has filed the cross objection challenging the order dated 20.4.2001. No such cross objection is maintainable as the order was passed in the year, 2001. However, liberty is given to the plaintiff to file objections before the executing Court, while executing the decree with regard to the amount deposited in the Judge Small Cause Court.

38. Consequently, the revision is dismissed. No order as to costs.