

Court No. - 5

Case :- MATTERS UNDER ARTICLE 227 No. - 439 of 2024

Petitioner :- Rajesh Kumar Rastogi

Respondent :- Addl. District Judge Court No. 4 Distt. Lakhimpur Kheri And 4 Others

Counsel for Petitioner :- Jai Prakash Yadav, Ram Bux Rawat

Counsel for Respondent :- Vishnu Pratap Singh

Hon'ble Abdul Moin, J.

1. Heard Sri Jai Prakash Yadav, learned counsel for the petitioner and Sri Vishnu Pratap Singh, learned counsel appearing on behalf of the respondent no. 4.

2. Instant petition under Article 227 of the Constitution of India has been filed praying for the following main reliefs:-

"(i) Set aside the judgment and order dated 22.12.2023 passed by the Additional District Judge Court No. 4, Lakhimpur Kheri, (Opposite Party No. 1) and judgment and order dated 28.09.2022 passed by the Small Causes Court, Lakhimpur Kheri (opposite party no. 2), as contained in Annexure No. 1 & 2 to this petition.

(ii) Issue a direction restraining the opposite parties from interfering in peaceful possession of the petitioner over the suit property in the garb of the impugned orders."

3. The case set forth by the learned counsel for the petitioner is that the petitioner is a tenant of the suit property which is a shop. An S.C.C suit under Section 20 (2) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act, 1972") was filed by the private respondents in October, 2016 on the ground of personal need and the petitioner being in arrears of rent for 13 months from May, 2015 to July, 2016. The petitioner claims to have filed the written statement, a copy of which is annexure 4 to the writ petition per which it was indicated that the rent for all the aforesaid period had been paid but no rent receipts have been issued by the landlord. Upon the petitioner demanding the rent receipt, the landlord is said to have scolded and rebuked the petitioner for having demanded the rent receipts and consequently, no rent receipt was issued for the said period.

4. The learned Trial Court framed issues including the issue no. 2 as to whether the petitioner herein is in arrears of rent. Vide judgment and order dated 28.09.2022, a copy of which is annexure 2 to the writ petition, the learned Trial Court specifically concluded that the petitioner herein has failed to prove or produce any evidence of having paid the rent from May, 2015 to July, 2016 and hence was in arrears of rent and consequently, passed the judgment and order impugned per which the petitioner has been required to vacate the premises in

dispute and to pay arrears of Rs. 34,202/- along with interest.

5. Being aggrieved, the petitioner filed a revision which too has been dismissed vide judgment and order dated 22.12.2023, a copy of which is annexure 1 to the writ petition. Incidentally, the revisional Court also framed an issue namely issue no. 2 as to whether the petitioner herein is in arrears of rent and came to the conclusion that the petitioner herein was in fact in arrears of rent and has affirmed the order of the learned Trial Court.

6. Being aggrieved, the instant petition has been filed.

7. The only ground urged by the learned counsel for the petitioner herein is that the petitioner tenant was never in arrears of rent rather the rent was paid timely but no rent receipt was ever issued by the landlord rather every time when the petitioner demanded the rent receipt, the tenant was rebuked and scolded for having demanded the same and thus it cannot be said that the petitioner/tenant was ever in arrears of rent and both the Courts have patently erred in holding that the petitioner was in arrears of rent.

8. In this regard, reliance has also been placed on the judgment of the Apex Court in the case of **K.A.Ramesh and Ors Vs. Susheela Bai (Smt) and Ors** reported in **(1998) 3 SCC 58**.

9. Placing reliance on the aforesaid arguments as well as the judgment of the Apex Court in the case of **K.A.Ramesh (supra)** the contention is that the both the learned Courts have patently erred in holding the petitioner being in arrears of rent and consequently, the orders impugned merit to be set aside.

10. On the other hand, learned counsel appearing on behalf of the respondent no. 4 has supported the orders passed by the learned Trial Court as well as by revisional Court by contending that the issue pertaining to the petitioner/tenant being in arrears of rent has been discussed threadbare and conclusive finding of fact has been arrived at by the learned Trial Court and the revisional Court pertaining to the petitioner being in arrears of rent and this Court while exercising jurisdiction under Article 227 of Constitution of India may not interfere with the concurrent findings of fact recorded by both the learned Courts below.

11. Heard the learned counsels appearing on behalf of the contesting parties and perused the records.

12. From a perusal of records it emerges that a suit was filed by the landlord indicating that the petitioner herein, the tenant, was in arrears of rent from May, 2015 to July, 2016. The tenant filed his written statement in which he claims to have paid the entire rent but specifically indicated that no rent receipt was ever issued by the landlord. It is rather strange that when no rent receipt was being issued by the landlord, as claimed by the petitioner for one month or two months it could be understood but non issuance of rent receipt for a period of thirteen months and the petitioner not having gone ahead and either issued a notice to the

landlord of no rent receipt being issued or for that matter once no rent receipt was being issued, in not having deposited the rent in Court, itself indicates the conduct on the part of the tenant in not having paid the rent. This finding has conclusively been arrived at by both learned Trial Court as well as by revisional Court by specifically holding that there is no evidence on record to indicate that the tenant has ever paid the rent for the aforesaid period and consequently, have held that the petitioner was in arrears of rent and have thereafter proceeded to pass the order for eviction of the petitioner vide order dated 28.09.2022 which in turn has been affirmed with the dismissal of the revision vide order dated 22.12.2023. Thus, this Court does not find any error in the orders passed by both learned Trial Court as well as the revisional Court.

13. So far as the judgment of the Apex Court in the case of **K.V.Ramesh (supra)** is concerned, a perusal of the said judgment would indicate that even though the tenant was in arrears of rent and initially claimed of having paid the rent but when the landlord denied the same, he submitted the arrears of rent by means of Demand Draft prior to filing of the suit itself which was encashed by landlord which fact was not appreciated by the learned Trial Court while proceeding to pass an order of eviction. In the instant case, no rent was ever paid by the petitioner even when the landlord had denied having received the rent and consequently, the judgment of the Apex Court in the case of **K.V.Ramesh (supra)** would have no applicability in the facts of the instant case.

14. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the petition is dismissed.

Order Date :- 31.1.2024

Pachhere/-