

AFR

Neutral Citation No. - 2024:AHC-LKO:45237

Court No. - 19

Case :- WRIT - A No. . - 1000034 of 2001

Petitioner :- Smt. Prema Devi

Respondent :- Sri Shri Kishna Agrawal

Counsel for Petitioner :- Ram Karan Agrawal, Anadi

K. Sinha, Ram Karan Agrawal, Shatrughna Awasthi, Virendra Mishra

Counsel for Respondent :- C.S. Pandey, Mohammad Adil Khan

Hon'ble Manish Kumar, J.

1. The present writ petition has been preferred for setting aside the revisional order dated 12.12.2000 passed by the XIth Additional District, Judge, Lucknow in SCC Revision No. 107 of 1998 (Smt. Prema Devi Vs. Sri Shri Krishna Agarwal) and judgment and order dated 17.3.1998 passed by the Ist Additional Judge Small Causes Courts, Lucknow in S.C.C. Suit No. 71 /83 (Smt. Prema Devi Vs. Sri Krishna) and decreeing the said suit for all the reliefs prayed for i.e. ejectment, arrears or rent, water tax, drainage tax, damages and costs.

2. Learned counsel for the petitioner has submitted that the respondent was a tenant of the shop situated at 12 Gautam Budh Marg Lucknow belonging to the petitioner at a monthly rent of Rs. 100/- The respondent had defaulted in payment of arrears of rent, water tax and the drainage charges. The petitioner had served a notice dated 24.9.1983 terminating the tenancy and directing the respondent to pay the arrears within a particular period and failing which to vacate the shop immediately.

3. It is further submitted that when the respondent had neither paid the arrears nor vacated the shop, the petitioner preferred a suit under Section 20 of the Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act, 1972") before Judge Small Causes. The suit preferred by the petitioner was dismissed by the impugned judgement dated 17.3.1998 against which the revision was preferred under Section 25 of The Provincial Small Cause Courts Act, 1887, which was also dismissed by the impugned order dated 12.12.2000.

4. It is further submitted that the learned trial court had failed to appreciate that the respondent i.e. the tenant had not deposited the arrears of rent and other dues on the first date of hearing of the suit as required under Section 20 (4) of the Act, 1972. The court below had also failed to appreciate that the respondent had a residential house in the city/within the same municipality hence as per the proviso to Sub-section 4 of the Section 20 of the Act, 1972, the respondent had to vacate the premises but the same was not considered by the learned trial court. In support of his submission, learned counsel for the petitioner had relied upon a judgment of Hon'ble Supreme Court in the case of *Samar Pal Singh Vs. Chitranjan Singh reported in 2015 (3) ARC 463 and judgment of the this Court in the case of Heera Lal Vs. IInd ADJ and Another, 2010 2 ARC 31*.

5. It is further submitted that learned court below had also erred in giving a finding that the notice served by the petitioner is in contravention of the lease deed and was not a valid notice.

6. It is further submitted that the revisional court had not considered the illegalities/irregularities committed by the

learned trial court while deciding the suit and dismissed the revision preferred by the petitioner mainly on the ground that the notice was not in consonance with the lease deed, as the petitioner had first terminated the tenancy and also demanded the arrears of rent and other dues as required under Section 20 (4) of the Act, 1972.

7. On the other hand, Sri Mohammad Arif Khan, learned Senior Advocate assisted by Sri Chandra Shekar Pandey has submitted that the arrears of rent and other dues as demanded by the petitioner were deposited prior to the first date of hearing after receiving summons from the court. A sum of Rs. 5,456/- was deposited on 15.2.1984 and Rs.560/- was deposited on 22.8.1984 i.e. total demand raised by the petitioner in the suit prior to framing of the issues and it is further submitted that first date of hearing is interpreted by this Court as well as by the Hon'ble Supreme Court that first date of hearing is when the court has applied his mind for adjudication of the case and in support of his submission, learned counsel has relied upon the judgment of Hon'ble Apex Court in case of *Siraj Ahmad Siddiqui Vs. Shri Prem Nath Kapoor* report in AIR 1993 SC 2525 and the in case of *Mam Chand Pal Vs. Smt. Shanti Agrawal* reported in 2002 1 Allahabad Rent Cases 370.

8. It is further submitted that the house, which has been shown by the petitioner owned by the respondent is a residential house and is not being used for the purposes of commercial activity. The petitioner has also not adduced any evidence to show that the property, which is residential property can be used for commercial purposes or is being used by the respondent for commercial purposes. It was purely a residential house.

9. After hearing the parties and going through the record and the judgments relied by both the sides, the issues which are as below:-

(i) whether the amount deposited by the respondent/tenant would be treated as deposited prior to the first date of hearing or not and;

(ii) what would be the first date of hearing.

(iii) what would be the effect of being tenant/respondent the owner of residential building to deprive him the benefit of Section 20 (4) of the Act.

10. As per the petitioner first date of hearing would be when a written statement was filed by the respondent. The first date of hearing has been expressed in the statute in Explanation to the Sub-section 4 of Section 20 of the Act, 1972. For convenience the same is quoted hereinbelow:-

-- [Explanation. For the purposes of this sub-section-

(a) the expression "first hearing" means the first date for any step or proceeding mentioned in the summons served on the defendant;"

11. The said expression "first hearing" has been interpreted and decided by the Hon'ble Supreme Court in the case of ***Siraj Ahmad Siddiqui (Supra)***. The relevant paragraph is quoted hereinbelow:-

"13. The date of first hearing of a suit under the Code is ordinarily understood to be the date on which the court proposes to apply its mind to the contentions in the pleadings of the parties to the suit and in the documents filed by them for the purpose of framing the issues to be decided in the suit. Does the definition of the expression "first

hearing" for the purposes of Section 20(4) mean some- thing different? The "step or proceedings mentioned in the summons" referred to in the definition should, we think, be construed to be a step or proceeding to be taken by the court for it is, after all, a "hearing" that is the subject matter of the definition, unless there be something compelling in the said Act to indicate otherwise; and we do not find in the said Act any such compelling provision. Further, it is not possible to construe the expression first date for any step or pro- ceeding" to mean the step of filing the written statement, though the date for that purpose may be mentioned in the summons, for the reason that, as set out earlier, it is permissible under the Code for the defendant to file a written statement even thereafter but prior to the first hearing when the court takes up the case, since there is nothing in the said Act which conflicts with the provisions of the Code in this behalf. We are of the view, therefore, that the date of first hearing as defined in the said act is the date on which the court proposes to apply its mind to determine the points in controversy between the parties to the suit and to frame issues, if necessary."

12. Subsequently, in another judgment in the case of ***Mam Chand Pal (Supra)***, the Hon'ble Supreme Court has interpreted the expression "first hearing" as it has interpreted in the case of ***Siraj Ahmad Siddiqui (Supra)*** and also placed reliance on catena of cases. The relevant paragraph in the case of ***Mam Chand Pal (Supra)*** :-

*"5. So far the question as to the meaning of the date of first hearing is concerned, the position stands well settled that it is the date on which the Court applies its mind to the facts and controversy involved in the case. Any date prior to such a date would not be date of first hearing. For instance date for framing of issues would be the date of first hearing when the Court is to apply its mind to the facts of case. As it relates to proceedings under the Small Causes Courts Act, there being no provision for framing of issues any date fixed for hearing of the case would be the first date for the purpose. The above stated position is clear from a catena of cases of the Allahabad High Court and some decisions of this Court also. In ***Ved Prakash Wadhwa v. Vishwa Mohan, AIR 1982 SC 816: 1981 ARC 1 (S.C.)***, this Court held that the date of first hearing would not be before a date fixed for*

*preliminary examination of parties and framing of issues. It has further been held that if the amount is deposited before the date of first hearing, it would amount to compliance with the relevant provision of the Act. In **Sudarshan Devi & another v. Sushila Devi & another**, 1999 (8) SCC 31: 1999 (2) ARC 668 (SC), the service of notice was by publication, hence tenant applied for copy of the plaint which was furnished and fresh dates for filing WS and hearing was fixed. The Court considered the provisions of sub-section (4) of Section 20 of the Act along with Explanation (a) as well as series of earlier decisions and held that the date fixed for hearing of the matter was the date of first hearing and not the date fixed for filing of the written statement it has been observed that the emphasis in the relevant provision is on the word 'hearing'. The decision in the case of **Ved Prakash (supra)** was also relied upon. In yet another case **Advita Nand v. Judge, Small Causes Court Meerut & Ors.**, 1995 (3) SCC 407: 1995 (1) ARC 563, the dates were fixed for filing of the written statement and later for hearing of the case after furnishing of a copy of the plaint, it was held that the Court was to apply its mind to the facts of the case on the date fixed for hearing and not earlier on the date fixed for filing of the written statement."*

13. After going through the judgments of the Hon'ble Supreme Court, it is settled preposition of law that the first date of hearing would not be the date when the written statement is filed by the respondent/defendant. The first date of hearing would be the date on which the court applies its mind to the facts and controversy involved in the case and this date may be said to be the date for framing of issues when the court applies its mind to the facts of the case. It is undisputed fact between the parties that the amount demanded by the petitioner in the suit was deposited by the tenant/respondent on the date fix for framing of the issues prior to framing of the issues so the respondent is entitled for the benefit of Section 20 (4) of the Act, 1972, as the respondent/tenant has deposited the amount demanded by the landlord prior to the first date of hearing.

14. As far as the third submission that the respondent has residential house and as per proviso to sub-section 4 of Section 20 of the Act, 1972. For convenience, the same is quoted hereinbelow:-

"Provided that nothing in this sub-section shall apply in relation to tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area."

15. Wherein it is provided that nothing in sub-section shall apply in relation to a tenant, who has acquired in a vacant state, or has got vacated after acquisition, in residential building in the same city, municipality, notified area or town area. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in support of his submission in the case of ***Samar Pal Singh Vs. Chitranjan Singh (Supra)***, the relevant paragraphs are quoted hereinbelow:-

11. What is vehemently argued before us on behalf of the landlord is that in view of the proviso to sub-section (4) of Section 20, since the defendants have acquired as many as four houses within municipal limits of the city, as such, they are not entitled to protection provided under the sub-section. On the other hand, on behalf of the tenants, it is contended that the proviso to sub-section (4) deprives a tenant only if he has built or otherwise acquired a residential house in a vacant state in the city and in this connection it is further submitted that properties acquired by tenants are commercial.

12. From the language of sub-section quoted above, it is clear that under the proviso it is provided that nothing in the sub-section could apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city. Learned counsel for the tenant/respondent did not dispute that the respondent has acquired

property Nos. 621, 42, 43 and 72 in the municipal limits of Mowana (District Meerut). What the High Court has held is that the proviso deprives the tenant of the protection under sub-section (4) only if he has acquired residential building. On carefully going through the record, we are unable to agree with the High Court that none of the properties acquired by the tenant are residential. (emphasis laid) From the evidence on record, it is clear that only property no. 621 and property no. 42 are shops. The record reveals that property no. 43 consists of two rooms, one hall on the ground floor, and one room with Sehan on the first floor and property no.72 consists of five rooms. There is no specific finding that the nature of these two buildings is exclusively commercial. In our opinion, High Court has erred in law by treating these two properties as commercial without there being evidence to that effect. A building which can be used for residential as well as commercial purposes cannot be said to be excluded from the clutches of proviso to sub-section (4), if built, or acquired in vacant state within limits of the municipal area in which the house from which eviction is sought by the landlord Needless to say in the present case building in question was let out for residential-cum-commercial purposes.(emphasis laid)

13. It cannot be said that object of sub-section (4) of Section 20 is to protect those tenants who have built, or acquired in vacant state a house which can be used for residential as well as commercial purposes. If word "residential" mentioned in the proviso is taken to mean what has been interpreted by the High Court, the object of the proviso would get defeated. As such, in our opinion, the High Court has erred in law in reversing the judgment and decree passed by the Judge Small Cause Court.

16. Learned counsel for the petitioner has also relied upon the judgment of this Court in the case of *Heera Lal (Supra)*. The relevant paragraph no. 5 is quoted hereinbelow.

"5. It is urged on behalf of the petitioner that the finding of the trial Court that the petitioner tenant was not defaulter, was never set aside by the revisional Court. After going through the order of the prescribed authority, the Counsel for the petitioner has failed to point out any such finding.

In fact the trial Court had come to the conclusion that the petitioner was a defaulter but due to the deposit of rent in Court, it gave the benefit of Section 20(4) of the Act. Further, once it was proved from the evidence on record that the tenant had acquired a residential building within the same municipal limit, he would not be entitled to protection granted under Section 20(4) of the Act. Thing finding of fact has not been shown to be either perverse or without any evidence."

17. The said submission of the learned counsel for the petitioner that a specific plea was taken while replying the objection preferred by the respondent/tenant in the suit that the respondent/tenant had constructed a house in which he is living along with his family and the shop in which the respondent is the tenant is within the same municipality.

18. On being asked an specific query by the learned counsel for the petitioner whether any evidence was ever adduced or led by the petitioner before the trial court whether the said residential house constructed by the respondent can be used for commercial activity or not, or it was being used by the respondent for commercial purposes or not, learned counsel for the petitioner has very fairly replied that except that averment no evidence was adduced before the trial court that the residential building possessed by the respondent/tenant can be used for commercial purposes.

19. The judgment relied by the learned counsel for the petitioner i.e. in the case of ***Samar Pal Singh (Supra)***, wherein it has been observed by the Court that the High Court has erred in law by treating theses two properties as commercial without there being evidence to that effect. The property as alleged by the petitioner i.e. residential house in the name of the respondent/tenant is for purposes of residential as it is admitted by the petitioner before the trial court and petitioner had not

adduced/lead any evidence that the same can be used for commercial purposes hence the judgment relied are not applicable on the facts of the present case.

20. As per the law settled in the case of ***Sunil Kumar Mukherji Vs. Kabiraj Bindo Madho Bhattachaya and others reported in (1977) 11 AHC CK 0010*** and in the case of ***Sheo Nath Prasad Vs. IIIrd Additional District Judge and others reported in Allahabad Rent Cases, 1981 Page No. 207,*** wherein it has been held that the purpose of the proviso is clear and it is that in case the petitioner has an alternative accommodation which can be used for the purpose for which he occupied the building under his tenancy, he should not be given the benefit of sub-section 4 of Section 20 of the Act, 1972. It is also held by this Court that proviso to Section 20 (4) would be attracted only to those cases where the building under tenancy is in the use of the tenant for residential purpose. If the building under tenancy is being used by the tenant for the commercial or business purposes, it is obvious that the acquisition by the tenant of a residential accommodation cannot, in the context of things, be relevant for determining whether the tenant ought not be held entitled to claim the benefit contemplated under Section 20 (4) of the Act, 1972.

21. The relevant paragraph no. 4 of the judgment in the case of ***Sunil Kumar Mukherji Vs. Kabiraj Bindo Madho Bhattachaya and others reported in (1977) 11 AHC CK 0010*** is quoted herein-below:-

"4. I may here point out that the explanation to the proviso was inserted by Section 13 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976. On a perusal of the proviso, I am of opinion that it applies only to a residential building for otherwise the use of the

word "residential" before the word "building" in the proviso will have no meaning. If the intention was to make the proviso applicable to every building the word "residential" would not have been used before the word "building". It is an established rule of interpretation that no part of an enactment is to be held as surplusage. In the instant case since admittedly the premises in question were not held by the applicant for residential purposes, his having built a residential building within the meaning of the proviso would be of no consequence. The purposes of the proviso is clear and it is that in case the tenant has an alternative accommodation which he can use for the purpose for which he is occupying the building under his tenancy, he should not be given the benefit of Sub-section (4) (emphasis laid). In the instant case, however, since the premises in question were occupied by the applicant admittedly not for residential purpose but for running a press, namely, for commercial purpose, his having built a residential building in the year 1958 would not deprive him of the benefit which he was entitled to in view of his having made the deposit as contemplated by Sub-section (4). Another argument was addressed by counsel for the applicant, namely, that the proviso applied only to such buildings which had been constructed after the coming into force of the Act did not refer to such buildings which may have been constructed before its commencement. The argument is plausible but I am not expressing any final opinion on the matter inasmuch as the revision can be allowed on the ground already stated above.

22. The relevant paragraph nos. 4 and 5 of the judgment in the case of ***Sheo Nath Prasad Vs. IIIrd Additional District Judge and others reported in Allahabad Rent Cases, 1981 Page No. 207*** are quoted herein-below:-

4.) In the case of Sunil Kumar Mukherji (supra) a learned Single Judge of this court had occasion to deal with precisely the same controversy. After analysing the provision, and the principle underlying thereunder, the learned

Judge observed thus:-

"The purposes of the proviso is clear and it is that in case the tenant has an alternative accommodation which he can use for the purpose

for which he is occupying the building under his tenancy, he should' not be given the benefit of sub-section (4). In the instant case, however, since the premises in question were occupied by the applicant admittedly not for residential purpose but for running a press, namely, for commercial purpose, his having built a residential building in the year 1958 would not deprive him of the benefit which he was entitled to in view of his having made the deposit as contemplated by sub-section (4). (emphasis laid)

Another argument was addressed by counsel for the applicant, namely, that the proviso applied only to such buildings which had been constructed after the coming into force of the Act did not refer to such buildings which, may have been constructed before its commencement. The argument is plausible but I am not expressing any final opinion on the matter, inasmuch as, the revision can be allowed on the ground already stated above."

5. I am in respectful agreement with the above statement of law. In my opinion, in the context of the aforesaid statutory provision and the purpose of the enactment of which the said provision is a part, it is obvious that the proviso to section 20 (4) would be attracted only to those cases where the building under tenancy is in the use of the tenant for residential purpose. If the building under tenancy is being used by the tenant for the commercial or business purposes, it is obvious that the acquisition by the tenant of a residential accommodation can not in the context of things, be relevant for determining whether the tenant ought not to be held, entitled to claim the benefit contemplated under Section 20 (4). In my opinion the tenant was clearly entitled to claim the benefit of Section 20 (4) and the learned District Judge has rightly held so.

23. After considering the facts and circumstances and discussions made above, now it is not necessary to replicate on the issue of the notice served by the petitioner to the respondent. The deposit as demanded by the petitioner from the respondent prior to the framing of the issues is admitted by both the parties i.e. by the learned counsel for the petitioner and learned counsel for the respondent hence amount was deposited on the first date of hearing, prior to the framing of the issues.

The property which the petitioner has alleged in his reply to the objection filed by the respondent in a suit, it is an admitted case that it is a residential house in which the respondent is residing with his family and it is also admitted that no evidence was led before the trial court whether it can be used for the commercial purposes or not and nor it has been mentioned that it is being used by the respondent for commercial purposes, as such the petition is devoid of merit and is liable to be dismissed.

24 . The writ petition is dismissed.

Order Date :- 3.7.2024

Anuj Singh