

Court No. - 17

Case :- S.C.C. REVISION No. - 13 of 2023

Revisionist :- Nafees Ahmad Siddiqui

Opposite Party :- Mrs. Sunanda Verma And 2 Others

Counsel for Revisionist :- Agendra Sinha

Counsel for Opposite Party :- Vimal Kumar,Km. Vishwa Mohini

Hon'ble Manish Mathur,J.

1. Heard Mr. Agendra Sinha, learned counsel for revisionist and Mr. Vimal Kumar, learned counsel for opposite parties.

2. Revision under Section 25 of the Provincial Small Causes Court Act,1887 has been filed challenging judgement and order dated 25.04.2023 passed in S.C.C. Suit No.43 of 2018 instituted by predecessor-in-interest of opposite parties for arrears of rent and ejection.

3. It is submitted that during pendency of proceedings, revisionist filed application C-85 raising the preliminary objection of jurisdiction regarding maintainability of suit before the District Court and it was specifically pleaded that the suit was deliberately over valued so as to bring it within the jurisdiction of the District Court whereas as per its correct valuation, the suit was in fact cognizable by the Judge Small Causes. The said application was rejected vide order dated 19.08.2021 which was challenged in S.C.C. Revision No.25 of 2021 before this Court and vide judgement and order dated 15.09.2021, it was directed that this point of consideration can be decided at the time of hearing of the case.

4. It is therefore submitted that once this Court had specifically directed the trial court to decide the issue of maintainability of suit pertaining to its pecuniary jurisdiction, it was incumbent upon the trial court to have decided the same after framing an issue with regard to that. However the trial court has in fact not adverted to such a plea at all since neither any additional issue was framed with regard to such a plea nor was it considered and decided at the time of judgment.

5. It is therefore submitted that the aforesaid aspect pertaining to jurisdiction and maintainability of suit proceedings before Court concerned on the grounds of pecuniary jurisdiction went to the root of matter and were required to be decided by the Court concerned and failure to do so renders the judgment under challenge voidable.

6. Learned counsel has also submitted that the trial court had framed six issues primarily pertaining to relation-ship of landlord tenant, validity of notice under Section 106 of the Transfer of Properties Act, valid service of notice, cause of action, relief which could be granted to plaintiff and whether the defendant was liable to pay for damages for use and occupation of the premises in question.

7. It is submitted that all the issues were in fact decided in favour of the plaintiff although the defendant/revisionist has clearly raised an objection regarding validity of service of notice under Section 106 of Transfer of Property Act.

8. In the present revision, the primary grounds raised by learned counsel pertained to jurisdiction of the District Court to entertain the suit with regard to objections raised regarding pecuniary jurisdiction. Another ground raised and pressed pertained to validity of service of notice, contradiction in statements as deposed by plaintiff witnesses and pleading in the plaint and the fact that the defendant/revisionist was not in arrears of rent.

9. It is submitted that once the trial court itself recorded a finding that the defendant was not in arrears of rent at least till March, 2018, it was incumbent upon the Court concerned to have taken the said fact into account and to have considered the plea of jurisdiction on the ground of lack of pecuniary jurisdiction. Learned counsel has placed reliance on judgments rendered in the cases of **Kiran Singh and Ors. v. Chaman Paswan and Ors.** reported in **AIR 1954 Supreme Court 340** and **Subhas Mahadevasa Habib v. Nemasa Ambasa Dharmadas and Ors.** reported in **AIR 2007 Supreme Court 1828**.

10. Learned counsel for opposite parties has refuted submissions advanced by learned counsel for revisionist with the submission that the objection regarding pecuniary jurisdiction was rightly ignored by the trial court inasmuch as the defendant/revisionist was required to take such a plea at the earliest possible opportunity as provided under Section 21 of the Code of Civil Procedure read with Section 11 of the Suit Valuations Act 1887. It is submitted that furthermore it was liability of the defendant to have indicated prejudice caused to him even if such a plea was not raised. It is submitted that in S.C.C. proceedings, mere service of valid notice under Section 106 of the Transfer of Property Act constitutes a valid cause of action for maintainability of the plaint and the aspect of arrears of rent even otherwise are irrelevant. It is thus submitted that since the defendant did not take any objection regarding

valuation indicated in the plaint at the time of filing of written statement, such opportunity was lost to the defendant in terms of statutory provisions indicated herein-above and even if this Court earlier had issued some directions regarding consideration of such a dispute, the same was to be seen only in terms of statutory provisions and not beyond that.

11. It has also been submitted that the issue pertaining to valid service of notice has also been rightly decided by the Court concerned placing reliance on Section 27 of the General Clauses Act.

12. Learned counsel has placed reliance on the following judgments:-

(i) *Mantoo Sarkar v Oriental Insurance Co. Ltd. & Anr.* reported in [(2009)2 SCC 244],

(ii) *Harshad Chiman Lal Modi v. D.L.F. Universal Ltd. & Anr.* reported in [(2005)7 SCC 791],

(iii) *Waqf Allal Aulad/Waqf Alkhair Allahtala, Dr. Ziaul Haq, Bijnor & Anr. versus Ist ADJ, Bijnor & Anr.* reported in [2008 (3) ARC 428],

(iv) *Smt. Santosh Kumari versus IVth Additional District Judge, Bareilly & Ors.* reported in 2013 (3) ACW 2877, and

(v) *Smt. Jaswant Kaur versus Additional District Judge Court No.1, Faizabad & Ors.* passed in S.C.C. Revision No.154 of 2015.

13. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that the predecessor-in-interest of plaintiff opposite parties had filed the suit for arrears of rent and ejection indicating a valuation of Rs.2,47,000/- and having paid Court fees to the tune of Rs.19,672.50/-. The calculation of valuation of suit has been indicated in paragraph 16 of the plaint.

14. Upon receipt of notice of institution of the suit, the defendant/revisionist put in appearance and filed written statement on 15.04.2019. It is quite relevant that no objection regarding valuation and pecuniary jurisdiction of the Court concerned has been raised in the aforesaid written statement. Such an objection in fact was raised subsequently in the application C-85 filed on 17.08.2021. Objections to the aforesaid application was filed by plaintiff and the said application was thereafter rejected vide judgment and order dated 19.08.2021. The said order was thereafter challenged in S.C.C. Revision No.25 of 2021 which was dismissed vide judgment and order dated 15.09.2021.

15. A perusal of the aforesaid judgment makes it evident that this Court while considering the aforesaid aspect has held that even presuming that the plaintiff had tried to claim certain amount which may be found to be barred by law, such an aspect would be decided at the time of hearing. The judgment thereafter observes as follows:

"From the facts of the case it is clear that application 85-C is filed mala fide by the revisionist/defendant-tenant only to delay the proceedings. Revisionist/defendant-tenant was given last opportunity to adduce his evidence and thereafter, only to delay the proceedings, revisionist/defendant-tenant has filed this application. The application contradicts the very purpose of the Small Cause Courts Act, 1887. No mini trial can be held by the Judge, Small Cause Courts Act. This point of consideration can only be decided at the time of hearing of the case. The revisionist/defendant-tenant would always get an opportunity to file a revision, whether it is before the district judge or before the High Court. Therefore, none of his rights are impacted."

16. Learned counsel for revisionist has laid much emphasis on the direction issued vide judgment and order dated 15.09.2021 that this point of consideration was to be decided at the time of hearing of the case and submits that despite such a direction, aforesaid point of consideration was not decided at all by the Court concerned rendering the judgment voidable.

17. For proper appreciation of submissions raised by learned counsel for revisionist pertaining to lack of pecuniary jurisdiction, it could be useful to advert to Section 21 of the Code of Civil Procedure which is as follows:-

*"21. **Objections to jurisdiction.**- ³⁶[(1)] No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.*

³⁷[(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.]

*³⁸[21-A. **Bar on suit to set aside decree on objection as to place of suing.**- No suit shall lie challenging the validity of a decree passed in a former suit between the same parties, or between the parties under whom*

they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing.

Explanation.- The expression "former suit" means a suit which has been decided prior to the decision in the suit in which the validity of the decree is questioned, whether or not the previously decided suit was instituted prior to the suit in which the validity of such decree is questioned.]"

18. At the same time, it would also be useful to advert to provisions of Section 11 of the Suits Valuation Act which are also in the following terms:

"11. Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.- (1) *Notwithstanding anything in Section 578 of the Code of Civil Procedure, 1908, an objection that by reason of the over-valuation or under-valuation of a suit or appeal a court of first instance or lower appellate court which had no jurisdiction with respect to the suit or appeal, exercised jurisdiction with respect thereto shall not be entertained by an appellate court unless-*

(a) the objection was taken in the court of first instance at or before the hearing at which issues were first framed and recorded or in the lower appellate court in the memorandum or appeal to that court, or

(b) the appellate court is satisfied, for reasons to be recorded by it in writing that the suit or appeal was over-valued, or under-valued and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1) but the appellate court is not satisfied as to both the matters mentioned in clause (b) of that sub-section and has before it the materials necessary for the determination of the other grounds of the appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the court of first instance or lower appellate court.

(3) If the objection was taken in that manner and the appellate court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the court with respect to the hearing of appeals, but if it remands the suit or appeal, or frames and refers issues, for trial; or requires additional evidence to be taken, it shall direct its order to a court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an appellate court shall, so far as they can be made applicable, apply to a court exercising revisional jurisdiction under Section 622 of the Code of Civil Procedure, 1908 or other enactment for the time being in force.

(5) This section extends to the whole of India, and shall come into force on the first day of July, 1887."

19. Upon examination of aforesaid two provisions, it is evident that objections pertaining to pecuniary limits of jurisdiction

cannot be allowed by any appellate or revisional Court unless such an objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement and unless there has been a consequent failure of justice.

20. Section 11 of the Suits Valuation Act, 1887 commences with the non-obstante clause pertaining to Section 578 (now Section 99) of the Code of Civil Procedure and specifies also that such an objection pertaining to pecuniary jurisdiction shall not be entertained unless the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded or in the lower appellate Court in the memorandum of appeal.

21. The said aspect has also been adjudicated upon in the judgment of **Kiran Singh** (supra) in the following manner:

" 7. Section 11 enacts that notwithstanding anything in Section 578 of the Code of Civil Procedure an objection that a Court which had no jurisdiction over a suit or appeal had exercised it by reason of over-valuation or under-valuation, should not be entertained by an appellate court, except as provided in the Section. Then follow provisions as to when the objections could be entertained, and how they are to be dealt with. The drafting of the Section has come in- and deservedly-for considerable criticism; but amidst much that is obscure and confused, there is one principle which stands out clear and conspicuous. It is that a decree passed by a court, which would have had no jurisdiction to hear a suit or appeal but for over- valuation or under-valuation, is not to be treated as, what it would be but for the Section, and void, and that an objection to jurisdiction based on over-valuation or under-valuation, should be dealt with under that Section and not otherwise.

The reference to Section 578, now Section 99, CPC, in the opening words of the Section is significant. That Section, while providing that no decree shall be reversed or varied in appeal on account of the defects mentioned therein when they do not affect the merits of the case, excepts from its operation defects of jurisdiction, Section 99 therefore gives no protection to decrees passed on merits, when the Courts which passed them lacked jurisdiction as a result of over-valuation or under-valuation, It is with a view to avoid this result that Section 11 was enacted. It provides that objections to the jurisdiction of a Court based on over-valuation or under-valuation shall not be entertained by an appellants Court except in the manner and to the extent mentioned in the Section. It is a self-contained provision complete in itself, and no objection to jurisdiction based on over-valuation or under-valuation can be raised otherwise than in accordance with it.

With reference to objections relating to territorial jurisdiction, Section 21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or revisional court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99, C. P. C.

and Section 11 of the Suits Valuation Act is the same namely, that when a case had been tried by a Court on the merits and judgement rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained under Section 11 of the Suits Valuation Act."

22. The case of **Kiran Singh** (supra) has been followed in the case of **Mantoo Sarkar** (supra) in the following manner:

"19. A distinction, however, must be made between a jurisdiction with regard to subject-matter of the suit and that of territorial and pecuniary jurisdiction. Whereas in the case falling within the former category the judgment would be a nullity, in the latter it would not be. It is not a case where the Tribunal had no jurisdiction in relation to the subject-matter of claim. As a matter of fact the civil court had no jurisdiction to entertain the suit. If the Tribunal had the jurisdiction to entertain a claim petition under the Motor Vehicles Act, in our opinion, the Court should not have, in absence of any finding of sufferance of any prejudice on the part of the first respondent, entertained the appeal.

In *Bikash Bhushan Ghosh v. Novartis India Ltd.*, [(2007) 5 SCC 591], this Court has held:

"17. There is another aspect of the matter which cannot be lost sight of. If the provisions contained in the Code of Civil Procedure are given effect to, even if the Third Industrial Tribunal, West Bengal had no jurisdiction, in view of the provisions contained in Section 21 of the Code of Civil Procedure, unless the respondent suffered any prejudice, they could not have questioned the jurisdiction of the court."

23. As well as in the case of **Harshad Chiman Lal Modi** (supra) in the following manner:

"28. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity."

24. The aforesaid aspect is also required to be seen in terms of Order 14 of the Code Civil Procedure particularly in view of submission advanced by learned counsel for revisionist that

although such a plea was not taken in the written statement but was subsequently taken in the application registered as C 85.

25. Order 14 Rule 1 of the Code of Civil Procedure particularly stipulates conditions for framing of issues and stipulates that issues arise when a material proposition of fact or law is affirmed by one party and denied by another party. Order 14 Rule 1(5) also stipulates that at the first hearing of suit, Court shall after reading the plaint and the written statements if any ascertain upon what material propositions of fact or law the parties are at variance and shall thereupon proceed to frame and record issues on which right decision of the case appears to defendant.

26. In view specific provisions of Order 14 of the Code of Civil Procedure, it is evident that the points of dispute on which issues are required to be framed are to be seen in terms of pleadings made in the plaint and the written statement. No law has been cited by learned counsel for revisionist to indicate that a subsequent application taking such a ground can be considered to be a part and parcel of pleadings raised in the written statement.

27. From the aforesaid, it is evident that no pleading with regard to pecuniary jurisdiction of the Court concerned was ever raised by the defendant/revisionist in the written statement and has in fact been raised after almost 2 years of filing the written statement. Considering the conditions indicated in Section 21 of the Code read with Section 11 of the Act of 1887, it is evident that the defendant/revisionist has failed to raise the objection pertaining to pecuniary jurisdiction at the first available opportunity.

28. Learned counsel for revisionist has placed reliance on judgment rendered in the case of **Subhas Mahadevasa Habib** (supra) which however also in paragraph 24 holds that objections regarding pecuniary limits of jurisdiction shall be allowed only in case such objections have been taken in the first instance at the earliest possible opportunity and unless there has been a consequent failure of justice. The aforesaid judgment is therefore also a proposition of law that such an objection regarding pecuniary jurisdiction is required to be raised by defendant at the first possible opportunity.

29. The other judgment cited by learned counsel for revisionist is that of **Kiran Singh** (supra) which is a proposition with regard to prejudice caused. However the aspect has been dealt with by Hon'ble the Supreme Court in the following manner:

"17. There is considerable authority in the Indian Courts that clauses (a) and (b) of Section 11 of the Suits Valuation Act should be read conjunctively, notwithstanding the use of the word "or". If that is the correct interpretation, the plaintiffs would be precluded from raising the objection about jurisdiction in an appellate Court. But even if the two provisions are to be construed disjunctively, and the parties held entitled under Section 11(1)(b) to raise the objection for the first time in the appellate Court, even then, the requirement as to prejudice has to be satisfied, and the party who has resorted to a forum of his own choice on his own valuation cannot himself be heard to complain of any prejudice. Prejudice can be a ground for relief only when it is due to the action of another party and not when it results from one's own act. Courts cannot recognise that as prejudice which flows from the action of the very party who complains about it.

Even apart from this, we are satisfied that no prejudice was caused to the appellants by their appeal having been heard by the District Court. There was a fair and full hearing of the appeal by that Court it gave its decision on the merits on a consideration of the entire evidence in the case, and no injustice is shown to have resulted in its disposal of the matter. The decision of the learned Judges that there were no grounds for interference under Section 11 of the Suits Valuation Act is correct."

30. In the aforesaid judgment, it is thus evident that the aspect of prejudice is to be seen as to whether there was a fair and full hearing by the Court giving its decision on merits on a consideration of the entire evidence in the case and no injustice is shown to have resulted in the disposal of matter.

31. In the present case, a perusal of impugned judgment will make it evident that opportunity for full and fair hearing was provided to the defendant/revisionist, which he himself failed to avail of within stipulated time. The decision is clearly on merits on a consideration of the evidence on record.

32. The aforesaid judgment also in fact does not aid the submissions of learned counsel for revisionist.

33. In view of discussion made herein-above, it is evident that the defendant/revisionist having failed to raise the plea of pecuniary jurisdiction at the first available opportunity, such a factor was rightly ignored by the Trial Court in terms of Section 21 of the Code of Civil Procedure read with section 11 of the Suits Valuation Act.

34. So far as the submission regarding service of notice is concerned, a perusal of issue no.3 pertaining to validity of service of notice is concerned, the trial court has specifically adverted to the fact that the aforesaid notice dated 28.07.2018 was sent to the residential address of the defendant through speed as well as registered post. It has thereafter relied on Section 27 of the General Clauses Act as well as the fact that

intimation with regard to such notice was also sent to defendant by whatsapp on 15.08.2018 which was replied to by the defendant.

35. Upon examination of judgment as well as material on record, it also transpires that the defendant has never objected to the fact that the notice was in fact sent at the correct address through speed post. The only objection raised by learned counsel for defendant/revisionist is that the endorsement of refusal was made in collusion with postal authorities and therefore it was incumbent upon the Court concerned to have examined the postman to ascertain the validity of service of notice.

36. With regard to aforesaid submission, Section 27 of General Clauses Act clearly stipulates that where a notice is sent to the addressee at the correct address by the registered post, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

37. In the case of ***C.C. Alavi Haji versus Palapetty Muhammed & Anr.*** reported in (2007) 6 SCC 555 it has been considered in the following manner

13. According to Section 114 of the Act, read with Illustration (f) thereunder, when it appears to the court that the common course of business renders it probable that a thing would happen, the court may draw presumption that the thing would have happened, unless there are circumstances in a particular case to show that the common course of business was not followed. Thus, Section 114 enables the court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Consequently, the court can presume that the common course of business has been followed in particular cases. When applied to communications sent by post, Section 114 enables the court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the GC Act is a far stronger presumption. Further, while Section 114 of the Evidence Act refers to a general presumption, Section 27 refers to a specific presumption. For the sake of ready reference, Section 27 of the GC Act is extracted below:

"27. Meaning of service by post.- Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve' or either of the expression 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter

containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered a post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service has to be presumed. (Vide Jagdish Singh v. Natthu Singh³; State of M.P. v. Hiralal and V. Raja Kumari v. P. Subbarama Naidus.) It is, therefore, manifest that in view of the presumption available under Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved.

38. The provisions of Section 27 of General Clauses Act clearly indicate a presumption of service once a letter is sent to the addressee at the correct address through registered or speed post which is not denied. The aforesaid aspect has been dealt with in judgment of Coordinate Bench of this Court in the case of **Smt. Santosh Kumari** (supra) in the following manner:

"43 When the endorsement made by a Postman by virtue of Section 14 of Act, 1898 is to be treated as prima facie evidence of correctness of endorsement, this is a statutory presumption of evidence and can be rebutted by the addressee by adducing adequate evidence failing which it is the addressee who will fail and not the sender. It is thus for the addressee to examine the postman to demonstrate that the endorsement made by him (postman) is not correct and mere fact that sender could not identify the Postman would make no difference since it is wholly irrelevant."

39. The said proposition has thereafter been followed by another Coordinate Bench of this Court in the case of **Smt. Jaswant Kaur** (supra).

40. In view of aforesaid, it being apparent that the defendant has never raised any objection to the fact that the notice in fact was addressed to him and was sent at the correct address, the presumption of Section 27 of the General Clauses Act would come into play and therefore no exception can be taken to the finding recorded by court concerned regarding validity of service of notice upon the defendant/revisionist.

41. The third ground taken by the revisionist pertains to the fact that there were no arrears of rent on the defendant and therefore also the suit was not maintainable.

42. It is quite evident from a perusal of Section 15 of the Provincial Small Cause Courts Act, 1887 that a suit for ejectment of a lessee under the aforesaid provisions does not make it mandatory for the lessee to be in arrears of rent for the suit to be maintainable. The provision is in stark contrast to Section 20 of U.P. Act No.13 of 1972 where it is mandatory for a lessee to be in arrears of rent for at least four months for maintainability of the suit.

43. The aforesaid aspect has been dealt with by Coordinate Benches of this Court in the case of **Waqf Allal Aulad /Waqf Alkhair Allahtala Dr. Ziaul Haq, Bijnor** (supra) in the following manner:

"6. If Rent Control Act does not apply, then tenant is liable to eviction simply after termination of tenancy. Default or no default is wholly immaterial. Revisional court itself held that building in dispute belonged to Waqf-allal-aulad and was beyond the purview of U.P. Act No. 13 of 1972. Thereafter, there was absolutely no sense in holding that the notice of termination of tenancy was invalid on the ground that tenant was not defaulter when notice was given. The view taken by the lower revisional court is quite strange and utterly untenable. Even if Rent Control Act applies and in the notice wrong period of default and wrong rate of rent is mentioned, still notice does not become invalid vide Full Bench authority of Gokaran Singh v. Ist Additional District and Sessions Judge, Hardoi and others, 2000 (1) ARC 653."

44. This Court is in respectful agreement with the aforesaid proposition of law. Section 15 of the Small Cause Court's Act does not at all make it mandatory for a lessee to be in arrears of rent for maintainability of a suit for ejectment of a lessee in terms of Section 15 thereof.

45. A perusal of grounds raised in the present revision would make it amply clear that no objection with regard to issues no.1 and 2 have been raised in the present revision particularly since landlord-tenant relation-ship is admitted between the parties and no objection has been raised regarding validity of notice issued under Section 106 of the Transfer of Property Act.

46. Considering the aforesaid facts and circumstances and the discussion on legal aspects, it is evident that no exception can be taken to the impugned judgment and order dated 25.04.2023.

47. A perusal of the judgment impugned also makes evident the litany of woes at the instance of defendant where the initial land-lord was unable to reap benefits of the decree. The Trial

Court has adverted to the order-sheet which has been reproduced to indicate the extent of harassment faced by landlord at the instance of the tenant. In such circumstances, cost of Rs.1,00,000/-(Rupees One Lakh) is hereby imposed upon the revisionist with 50% of the cost being payable to the opposite party no.1 and remaining to be shared between opposite parties no.2 and 3. The cost shall be realized in ongoing execution proceedings and be paid to decree holders.

48. Consequently, revision fails and is **dismissed** with cost as indicated herein-above. The Executing Court is directed to expedite final implementation therein.

Order Date :- 16.5.2024

Subodh/-