

Court No. - 5

Case :- MATTERS UNDER ARTICLE 227 No. - 16368 of 2019

Petitioner :- Smt. Haseen Bano

Respondent :- Addl. Dist. And Session Judge/Spl. Judge
P.C.Act. Court No8ando

Counsel for Petitioner :- Nitya Nand Mani Tripathi, Archana
Rawat, Deepa Mishra, Dileep Kumar Pathak, Matri Datt
Tripathi, Salma Bano, Shresth Agarwal

Counsel for Respondent :- Deepak Chandra Jain, Ravi Kant
Shukla, Sant Vijay Singh, Som Kartik Shukla

Hon'ble Abdul Moin, J.

1. Second supplementary affidavit filed today in Court is taken on record.

2. Heard Sri Shresth Agarwal, learned counsel for the petitioner, and Sri Deepak Chandra Jain, learned counsel for respondent no.3.

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

"(I) Pass an order to set aside/quash the impugned orders dated 30.03.2019 and 21.11.2012 passed by the opposite party no.1 and 2 as contained in Annexure No.1 and 2 to this petition.

(II) Pass an order directing the respondents not to evict the petitioner from the house no.283/701/182, Arti Nagar, Garhi Kanaura, Police Station Alambagh, Lucknow."

4. The case set forth by the learned counsel for the petitioner is that the petitioner was the tenant of the house in dispute. The said house was purchased from the previous owners Sri Ram Kisan and Smt. Meena Devi by the respondent no.3 herein by means of a registered sale deed. Subsequent thereto, the respondent no.3 filed an SCC Suit No.131 of 2010 in re: Smt.

Suman Sahu vs. Smt. Haseen Bano for eviction of the petitioner herein from the said house solely on the ground that the petitioner/tenant is in arrears of rent. The rent as indicated before the trial court was said to be Rs. 500/- per month as per the averment made by the petitioner herein in Original Suit No.69 of 2010 which was a suit pending before the learned Civil Judge (J.D.) North, Lucknow filed by the tenant against the erstwhile owners of the said house for permanent injunction.

5. Learned trial court framed four issues of which issue no.3 was as to whether tenant (respondent therein) was in default of rent. The said issue was decided in favour of the landlord by the learned trial court, as stands recorded in the judgment and order dated 21.11.2012, a copy of which is Annexure-2 to the writ petition. Learned trial court while deciding the said issue took into consideration the averment made in Original Suit No.69 of 2010 filed by the tenant where in paragraph 1 of the plaint she had indicated that she was a tenant on a rent of Rs.500/- per month. Learned trial court after considering the aforesaid fact was of the view that despite admission by the landlord of the tenant depositing an amount of Rs.250/- per month in Court, the entire amount of Rs.500/- per month has not been paid and thus the learned trial court vide judgment and order dated 21.11.2012 held the tenant to be in arrears of the rent and consequently has ordered for eviction of the tenant.

6. Being aggrieved, the tenant filed a revision namely Revision No.104 of 2012 in re: Smt. Haseen Bano vs. Smt. Suman Sahu. Before the revisional court it was specifically urged that the tenant has to pay rent of Rs.250/- per month. Learned revisional court however has dismissed the revision vide judgment and order dated 30.03.2019, a copy of which is Annexure-1 to the writ petition and has affirmed the order dated 21.11.2012 as passed by the learned trial court.

7. Being aggrieved, instant petition has been filed.

8. The specific case of the learned counsel for the petitioner/tenant is that the issue no.3 has been decided against the tenant by holding that the tenant though has admitted of being a tenant at a rent of Rs.500/- per month has only paid Rs.250/- per month which has been deposited in the court and which also stood admitted by the landlord as stands recorded by the learned trial court while deciding the said issue. However, the fact is that the plaint itself had been amended by means of an amendment application which had been allowed by the learned court in Original Suit No.69 of 2010 by order dated 02.05.2011 which has been filed earlier and today also by means of a second supplementary affidavit. The order dated 02.05.2011 is part of Annexure SA-2 to the said affidavit.

9. Placing reliance on the order dated 02.05.2011 the argument of learned counsel for the petitioner is that the learned court in Original Suit No.69 of 2010 has allowed the amendment application with the result that the admission of the petitioner/tenant stood recorded as Rs.250/- per month so far as it pertains to the admitted amount of rent. He further contends that the amendment has been allowed on 02.05.2011 which order was brought on record before the learned trial court as would be apparent from the perusal of the judgment itself as stands recorded at internal page 4 of the judgment of the learned trial court. Thus, the argument is that though earlier, the petitioner/tenant might have indicated the rent payable as Rs.500/- per month in the Original Suit No.69 of 2010 but by means of an amendment application which was allowed by the learned trial court the rent was modified to read as Rs.250/- per month vide order dated 02.05.2011 which had been brought on record before the learned trial court in the aforesaid SCC suit and which also stands indicated in the judgment passed by the

learned trial court yet the learned trial court has failed to take into consideration the aforesaid fact of the rent of Rs.250/- per month and thus the issue which has been decided by the learned trial court and the judgment itself whereby the learned trial court has held the petitioner/tenant to be in arrears of rent is itself erroneous and as such on this ground alone the impugned judgment passed by the learned trial court merits to be set aside. He further contends that this aspect of the matter was also indicated before the learned revisional court while filing the revision as stands recorded in paragraph 5 of the revision, a copy of which has been filed as Annexure-6 to the writ petition, but the learned revisional court has also failed to appreciate this aspect of the matter rather has simply reiterated the judgment of the learned trial court and thus there has been patent non-application of mind on the part of the learned revisional court in not appreciating the said fact and thus on this ground alone the judgment of the learned revisional court also merits to be set-aside.

10. On the other hand, Sri Deepak Chandra Jain, learned counsel for respondent no.3, has defended the orders passed by the learned trial court as well as by the revisional court.

11. Heard learned counsels for the contesting parties and perused the records.

12. From perusal of the record, it emerges that the respondent no.3 had purchased the property in dispute through a registered sale deed from the previous owners namely Sri Ram Kisan and Smt. Meena Devi. Subsequent thereto, the landlord/respondent no.3 herein filed an SCC suit for eviction of the petitioner on the ground of arrears of rent and damages. It was a specific case of the landlord that the rent as was admitted by the tenant as per averments made in Original Suit No.69 of 2010 filed by the

tenant against the erstwhile owners namely Sri Ram Kisan and Smt. Meena Devi before the learned Civil Court was Rs.500/- per month and only an amount of Rs.250/- has been deposited in the court and hence the tenant runs in arrears of the entire amount of rent and consequently he is to be evicted on the ground of being in arrears of rent.

13. The tenant put in appearance before the learned trial court and specifically filed the order of the learned Civil Judge dated 02.05.2011 by which the amendment application filed by the tenant in Original Suit No.69 of 2010 had been allowed and the rent as stood indicated in the said plaint of its Original Suit No.69 of 2010 was amended to be as Rs.250/- per month. Filing of the order dated 02.05.2011 is specifically recorded in the judgment of the trial court dated 21.11.2012. Despite the aforesaid order dated 02.05.2011 being on record the learned trial court only considering the averment made in the unamended plaint of Original Suit No.69 of 2010 and recording that the tenant has admitted the rent of Rs.500/- per month and has only deposited an amount of Rs.250/- per month in Court, held the tenant to be in arrears of rent and consequently passed the judgment and order dated 21.11.2012 per which the tenant/petitioner herein has been directed to be evicted.

14. Upon a challenge being raised by the tenant by filing a revision against the judgment and order dated 21.11.2012 of the learned trial court and despite specifically averring in paragraph 5 of the said revision of the rent being only Rs.250/- per month the learned revisional court has failed to appreciate this aspect of the matter and has dismissed the revision.

15. From the arguments as raised by the learned counsels for the parties and perusal of records it emerges that admittedly on the date of passing of the order impugned dated 21.11.2012 by

the learned trial court in the aforesaid SCC suit the pleadings of Original Suit No.69 of 2010 stood amended vide order dated 02.05.2011 and the admission on the part of the tenant of the rent being Rs.500/- per month stood reduced to Rs.250/- per month. Despite the order dated 02.05.2011 being on record the learned trial court has failed to appreciate this aspect of the matter rather has only proceeded on the basis of averments made in the unamended plaint filed in Original Suit No.69 of 2010. This itself is a glaring error which was pointed out by the petitioner/tenant while filing a revision as specifically indicated in paragraph 5 of the revision but this aspect of the matter has not been appreciated/failed to be considered by the revisional court while dismissing the revision vide judgment and order dated 30.03.2019, as such, on this short question alone the order impugned dated 30.03.2019 passed by the revisional court becomes patently vitiated.

16. Keeping in view the aforesaid discussion, the petition is allowed. The order impugned dated 30.03.2019 passed by the learned revisional court, a copy of which is Annexure-1 to the writ petition, is set-aside. The matter is remitted to the learned revisional court to decide the matter afresh after hearing all the parties concerned which order is to be passed within a period of three months from the date of filing of a certified copy of this order.

17. The amount deposited by the petitioner in pursuance to the order of this Court dated 25.04.2022 be released in favour of respondent no.3/landlord in accordance with rules within a period of two weeks, which would be subject to the orders passed by the learned revisional court.

18. However, before parting with the matter the Court may also indicate the conduct of the learned counsel for the petitioner as

has been recorded in detail vide orders dated 12.01.2024 and 24.01.2024.

19. Learned counsel for the petitioner being a young counsel is cautioned to be more careful in future.

20. The Court may also observe that it is a settled proposition of law that for a fault of counsel litigant should not suffer (See: **Rafiq and another vs. Munshilal & another - AIR 1981 SC 1400**).

Order Date :- 7.2.2024

A. Katiyar