

Court No. - 5

Case :- CIVIL REVISION No. - 49 of 2021

Revisionist :- Raish Hasan @ Babu

Opposite Party :- Addl. Dist. Judge Court No.1 Lko And Others

Counsel for Revisionist :- Mohd.Saulat Wasim,Arshad Hafeez

Khan,Mohd Shadab Khan,Munnawar Sultan,Pervesh Kumar Mishra,Sunil Kumar Srivastava

Counsel for Opposite Party :- Irshad Ali,Diwakar Singh

Gautam,Goverdhan Lal

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the revisionist and Shri Goverdhan Lal, learned counsel appearing for the respondents no. 2 to 5.
2. With the consent of learned counsel appearing for the contesting parties, the revision is being finally decided.
3. The contention of learned counsel for the revisionist is that a suit was filed before the learned District Judge Lucknow by Shri Kadir Aaga, the husband of the respondent no. 2 and father of respondents no. 3 to 5 praying for ejectment of the revisionist herein and praying for payment of arrears of rent. The property in dispute is a flat / apartment. The revisionist put in appearance before the learned trial court and filed his written statement, a copy of which is annexure 5 to the revision, specifically indicating that he is not a tenant of the premises in dispute rather there was an agreement for sale entered into between the plaintiff and him of which a substantial amount has already been paid and possession has been given.
4. However, as alleged arrears of rent were not deposited, consequently the plaintiff filed an application under Order XV Rule 5, Code of Civil Procedure indicating that as the alleged arrears of rent have not been deposited consequently right of defense of the revisionist herein should be forfeited.
5. Learned trial court vide the order impugned dated 07.09.2021 after considering certain judgements of this Court was of the

view that as the revisionist herein has failed to deposit the arrears of rent consequently his right of defense is being forfeited. Learned trial court has also considered the xerox copies of the agreement of sale which was filed by the revisionist herein but was of the view that as the original document has not been filed and as the plaintiff has described the said document to be fake and fraudulent document consequently no reliance can be placed upon the same and hence the order impugned.

6. Challenging the aforesaid order, the instant revision has been filed.

7. The argument of learned counsel for the revisionist is that he was only required to deposit the arrears of rent on the date of first hearing when he admitted that he was a tenant and that the arrears were admittedly due. His contention is that while filing the written statement, it was categorically stated by the revisionist herein that at no stretch of time the revisionist has ever been a tenant of the premises in dispute rather an agreement of sale had been entered into between Shri Kadir Aaga the plaintiff and landlord and the revisionist, of which a substantial amount had been paid which aspect of the matter has not been considered by learned trial court while passing the order impugned in as much as the division bench of this Court in the case of **Kunwar Baldevji vs XIth Additional District Judge, Bulandshahr, 2003 (1) ARC 637** upon a reference being made to it pertaining to interpretation of Order XV Rule 5, Code of Civil Procedure has held that if the amount of rent is admitted then it is not required to be adjudicated by the Court but in case the tenant denies any rent to be due the Court shall be required to decide the same and in such circumstances the Court will have to **adjudicate** and its finding will come subsequent to the "first date of hearing" contemplated under

Order XV Rule 5, Code of Civil Procedure.

8. Placing reliance on the aforesaid judgment the argument of learned counsel for the revisionist is that when a dispute had been raised by the respondent pertaining to he not being a tenant and consequently the revisionist not being in arrears of rent as such it was the duty of learned trial court to have first framed an issue with regard to deciding as to whether any rent is in fact due to be paid by the revisionist herein and only after recording the said finding could the "first date of hearing" as contemplated under Order XV Rule 5, Code of Civil Procedure would arise and as such, without deciding the said issue the learned trial court has patently erred in law in passing the impugned order dated 07.09.2021 whereby the defense of the revisionist has been forfeited.

9. On the other hand, Shri Govardhan Lal, learned counsel for the private respondents argues that the xerox copy of the agreement of sale filed by the revisionist was fake as has been specifically recorded by learned trial court. Reliance has been placed on the judgement of Hon'ble Apex Court passed in **Civil Appeal No. 4682 of 2022 in re: Asha Rani Gupta vs Sri Vineet Kumar** decided on 11.07.2022 to contend that Hon'ble Supreme Court has held that the trial court would have ample power of striking off the defense of the tenant in failure to pay or deposit the dues of rent on the first date of hearing.

10. Heard learned counsel for the parties and perused the record.

11. From the arguments as raised by learned counsel for the contesting parties as well as perusal of record it emerges that Shri Kadir Aaga filed a suit before the learned District Judge praying for ejectment of the revisionist herein on the ground of arrears of rent. The dispute pertains to a flat / apartment. The

plaintiff claimed that the revisionist herein is a tenant who has not paid the rent of the property in dispute. The revisionist filed his written statement wherein he categorically denied of ever having been a tenant of the property in dispute rather he categorically stated that the plaintiff and the revisionist had executed an agreement of sale for the said property in dispute of which a substantial amount has already been paid by the revisionist yet the sale deed could not be executed and thus prayed for dismissal of the said suit.

12. Subsequent thereto the plaintiff filed an application under Order XV Rule 5, Code of Civil Procedure contending that as the revisionist herein has failed to deposit the rent as per provisions of Order XV Rule 5, Code of Civil Procedure and Section 20(4) of the Act No. XIII of 1972, as such his right of defense should be forfeited.

13. Learned trial court vide order impugned dated 07.09.2021 after considering the provisions of Order XV Rule 5, Code of Civil Procedure held that admittedly, the revisionist having failed to deposit any rent, has forfeited his right of defense and thus passed the order impugned.

14. The argument of learned counsel for the revisionist is that the provisions of Order XV Rule 5, Code of Civil Procedure would only be applicable where the rent is due. His argument is that when the revisionist was never a tenant of the property in dispute consequently he was not required to deposit the alleged arrears of rent on the "first date of hearing" as provided under Order XV Rule 5, Code of Civil Procedure which aspect of the matter has not been considered by the learned trial court while passing the order impugned and as such the order merits to be set aside.

15. For considering the aforesaid argument the Court would

have to see the provisions of Order XV Rule 5, Code of Civil Procedure, which for the sake of convenience, is reproduced below:

"5. Striking off defence for failure to deposit admitted rent, etc. — (1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent. per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may, subject to the provisions of sub-rule (2), strike off his defence.

Explanation 1.— The expression "first hearing" means the date for filing written statement for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.

Explanation 2.— The expression "entire amount admitted by him to be due" means the entire gross amount, whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account and the amount, if any, paid to the lessor acknowledged by the lessor in writing signed by him and the amount, if any, deposited in any Court under section 30 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

Explanation 3.— (1) The expression "monthly amount due" means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account.

(2) Before making an order for striking off defence, the Court may consider any representation made by the defendant in that

behalf provided such representation is made within 10 days of the first hearing or, of the expiry of the week referred to in sub-section (1), as the case may be.

(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff.

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited:

Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same."

16. From perusal of the aforesaid provisions of Code of Civil Procedure it emerges that if in any suit by a lessor for eviction of a lessee after determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendants shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon and where he admits any amount to be due he shall throughout the continuance of the suit regularly deposit the monthly amount due. As per the explanation (1) the explanation "first hearing" means the date of filing of the written statement or for hearing mentioned in the summons.

17. Upon filing of the suit the revisionist herein denied that he was a tenant and thus he stated that no rent is due to be paid by him.

18. Whether in view of the denial of revisionist of he being a tenant he was still required to deposit the admitted rent is a question to be answered by the Court.

19. The aforesaid question is no longer res integra having been considered by a Division Bench of this Court in the case of **Kunwar Baldevji (supra)** wherein upon a reference being made by Hon'ble Single Judge pertaining to two different

interpretations being given by various single judges of this Court, the reference has been answered as follows:

"13. If amount of rent is admitted, then it is not required to be adjudicated by the Court. In case, tenant denies any rent to be due, Court shall be required to decide the same. It is obvious that in such contingency, Court will have to adjudicate and its finding will come subsequent to the 'first date of hearing' contemplated under Order XV, Rule 5, Code of Civil Procedure. It is, therefore, evident that by the time the Court will render its finding, 'first date of hearing' - which is cut off date for depositing rent, shall be over. It also requires no comment that such an issue is first to be framed and thereafter adjudicated after parties have led evidence in accordance with law.

19. Our answer to the question referred to us is that Order XV, Rule 5, Code of Civil Procedure does not contemplate that when Court decides the question of liability of payment of rent in future, the same should be treated as the admitted rent due within the meaning of the expression contained under Order XV, Rule 5, Code of Civil Procedure."

20. From perusal of the judgement of this Court in the case of **Kunwar Baldevji (supra)** it emerges that the division bench of this Court has held that where a tenant denies any rent to be due the Court is required to decide the same and in such contingency the Court will have to **adjudicate** and its finding will come subsequent to the "first date of hearing" as contemplated under Order XV Rule 5, Code of Civil Procedure.

21. Incidentally, the division bench of this Court in the case of **Kunwar Baldevji (supra)** has placed reliance on another division bench judgement of this Court in the case of **Ladly Prasad vs Ram Shah Billa, AIR 1976 ALL 261** wherein the division bench while considering the pre-amended provisions of Order XV Rule 5, Code of Civil Procedure has held as under:

"6. Under Rule 5 the defendant is required to deposit the entire amount of rent or damages for use and occupation which is admitted by him to be due. If the whole or a part of the amount claimed by the plaintiff is admitted by the defendant in his

written statement or during the examination under Order X, the law requires that he shall deposit the amount admitted to be due and thereafter throughout the continuance of the suit continue to deposit regularly the amount of monthly rent or compensation for use and occupation due at the rate admitted by him. If, however, the defendant does not admit that any amount is due to the plaintiff as rent or damages for use and occupation, he need not make any deposit. At this stage the court is not required to decide the questions whether any amount is really due and whether the lease has been validly terminated. The court cannot under this rule order or compel the defendant to deposit the amount claimed by the plaintiff and on the failure of the defendant to make the deposit as claimed by the plaintiff refuse to entertain any defence or strike off his defence. It is only when the defendant commits default in depositing the amount admitted by him to be due or in continuing to deposit regularly the amount of monthly rent or compensation for use and occupation due at the rate admitted by him that the court would be competent to refuse to entertain any defence or to strike off his defence."

22. From a perusal of the aforesaid judgements of **Kunwar Baldevji (supra)** and **Ladly Prasad (supra)** it emerges that where there is a dispute pertaining to rent or damages then the defendants need not make any deposit. Further the issue in this regard is to be framed and thereafter adjudicated and in the instant case once the dispute was raised by the revisionist of no rent having due to be paid by him consequently learned trial court should have first adjudicated the said question which has not been done by learned trial court while passing the order impugned dated 07.09.2021.

23. So far as the judgement of Hon'ble Supreme Court in the case of **Asha Rani Gupta (supra)** is concerned, incidentally Hon'ble Supreme Court has considered both the division bench judgements of this Court in the case of **Kunwar Baldevji (supra)** and **Ladly Prasad (supra)** and has specifically observed in paragraph 12.1 of the said judgement that the judgement of **Ladly Prasad (supra)** does not require much

dilation when it remains indisputable that it is not always obligatory on the Court to strike off the defence.

24. Moreover, Hon'ble Supreme Court in the judgement of **Asha Rani Gupta (supra)** has itself observed that though in the written statement the defendants had denied the relationship of landlord and tenant between the plaintiff and himself yet he had not denied his status as tenant in the suit. Thus in the said case there was no dispute pertaining to the defendants being a tenant while in the instant case the revisionist has denied of he being a tenant in the property in dispute. Thus the judgement of **Asha Rani Gupta (supra)** is clearly distinguishable on its own facts.

25. Keeping in view the aforesaid discussion, the revision is **allowed**. The order impugned dated 07.09.2021 is set aside. The matter is remitted to learned trial court to decide the application filed by the plaintiff under Order XV Rule 5, Code of Civil Procedure after considering the objections as raised by the revisionist herein in accordance with law and keeping in view the discussions made above within a period of six weeks from the date of receipt of a certified copy of this order.

26. It is further provided that no adjournment shall be sought by the revisionist before the learned trial court on any pretext whatsoever. In case any adjournment is sought and the learned trial court is of the view that adjournment is to be granted on compelling circumstances then the same shall only be granted on payment of heavy cost.

Order Date :- 28.3.2024

J. K. Dinkar