



2025:UHC:266

HIGH COURT OF UTTARAKHAND AT NAINITAL

Civil Revision No. 53 of 2023

07 January, 2025

Mohd. Khalid

...Revisionist

Versus

Suresh Chandra

...Respondent

Present:-

1. Mr. Lalit Sharma, learned counsel for the revisionist.
2. Mr. Siddhartha Sah along with Mr. Neeraj Garg, learned counsel for the respondent.

Hon'ble Vivek Bharti Sharma, J.

This present revision is preferred with prayer **to set-aside the impugned order dated 25.03.2023 passed by the Judge SCC/2nd Additional District Judge, Haldwani, District Nainital in Misc. SCC Case No. 06 of 2022 as well as the judgment and order dated 04.08.2022 passed by the Judge SCC/2nd Additional District Judge, Haldwani, District Nainital in SCC Case No. 11 of 2019.**

2. Heard.

3. Admit the revision.

4. Vide judgment and order dated 04.08.2022, the Judge Small Causes Court, Nainital in SCC Case No. 11 of 2019 '*Suresh Chandra vs. Mohd. Khalid*', allowed the application of the respondent/landlord



for eviction on the ground of non-payment of rent thereby directing the revisionist/tenant/defendant to handover the peaceful vacant possession of the tenanted premises to the respondent/applicant/landlord and to pay the arrears of rent amounting to ₹37,613/- with simple interest @ 3.5% and to pay the damages and mesne profit @ ₹800/- per month from 18.05.2019 till the date of handing over the peaceful vacant possession of the tenanted premises to the respondent/landlord.

5. Thereafter, the revisionist/tenant filed an application under Order 9 Rule 13 CPC before the trial court of Small Causes and the same was registered as Misc. Small Causes Case No. 06 of 2022 '*Mohd. Khalid vs. Suresh Chandra*'

The learned Small Causes Court, Nainital vide its another impugned order dated 25.03.2023, dismissed the said application.

6. Aggrieved by impugned judgment of Small Causes Court, Nainital dated 04.08.2022 in Small Causes Case No. 11 of 2019, and

Order dated 25.03.2023 of Small Causes Court in Misc. Small Causes Case No. 06 of 2022, the present single revision is preferred.

Submissions on behalf of the revisionist/tenant

7. Learned counsel for the revisionist/tenant would submit that the trial court of Small Causes erred in dismissing the application under Order 9



Rule 13 CPC without considering the fact that the judgment dated 04.08.2022 was passed due to the lack of knowledge to the revisionist/tenant about the date fixed and ill health of the revisionist/tenant's counsel; that, the trial court of Small Causes erred in closing the opportunity of cross-examination in a hurried manner, therefore, the revisionist/tenant could not get an opportunity to defend his case properly; that, the trial court without any cogent evidence, passed the impugned judgment dated 04.08.2022 thereby directing the revisionist/tenant to vacate the tenanted premises on the grounds of non-payment of rent and to pay the arrears of rent and damages as stated above.

Submissions on behalf of the respondent/landlord.

8. Mr. Siddhartha Sah along with Mr. Neeraj Garg, counsel for the respondent/landlord would submit that the grounds taken in the present revision and the submissions made by the learned counsel for the revisionist/tenant are not only misplaced but misconceived to the extent that these are nothing but sheer concoction; that, the revisionist/tenant had appeared before the trial court of Small Causes and filed his written statement; that, he had got the full opportunity to defend his case and if anything happens to his perceived disadvantage, then that is nothing but his own failing to adduce his evidence despite opportunity, for which the trial court cannot be blamed for; that, the application



under Order 9 Rule 13 CPC filed before the trial court of Small Causes registered as Misc. Small Causes Case No. 06 of 2022 is a camouflage to mislead the present Court as the judgment was not *ex-parte* and by filing this application, they wanted to assail the main judgment dated 04.08.2022, which was beyond limitation.

9. He would further submit that categorical objections have been taken in the reply/objections by the respondent/landlord, whereby it has been submitted that a single revision cannot be maintainable against the two judgment/order; that, the main judgment passed much earlier in time cannot be assailed along-with the order on the application filed under Order 9 Rule 13 CPC, which was decided in separate miscellaneous Small Causes Case No. 06 of 2022.

10. He would further submit that the present revision against the main judgment dated 04.08.2022 passed by the trial court of Small Causes in Small Causes Case No. 11 of 2019, is beyond limitation as the present revision is filed on 11.04.2023, as per the report of the Registry, hence time barred.

11. He would further submit that even the impugned order passed in Misc. Small Causes Case No. 6 of 2022 cannot be faulted with for the reason that as per the proviso to Section 17 of the Provincial Small Cause Courts Act, 1887 no such an application could have been filed without depositing the arrears of rent or by giving security for the



performance of decree.

12. He would further submit that it is an admitted fact that no such deposition was made by the revisionist/tenant in the trial court with the application under Order 9 Rule 13 Civil Procedure Code.

13. **Considered and perused the record in the light of the submissions made by learned counsel for the respective parties.**

14. It is pertinent to mention that the main judgment in Small Causes Case No. 11 of 2019 was passed by the learned trial court of Small Causes on 04.08.2022 and this revision is filed on 11.04.2023. Apparently, the present revision assailing the main judgment dated 04.08.2022 is much beyond the period of limitation provided for filing the revision.

It is also pertinent to note that the revisionist/tenant has not filed any application for condonation of delay in filing the present revision against the main judgment dated 04.08.2022, **therefore, the revision against the main judgment dated 04.08.2022 is beyond limitation, hence, liable to be dismissed on this count itself without going into the merits of the case.**

15. The revisionist/tenant has also challenged the order of dismissal of the application under Order 9 Rule 13 CPC dated 25.03.2023 passed in Misc. Small Causes Case No. 06 of 2022.



In the impugned order, **the learned trial court of Small Causes has unequivocally observed that the main impugned judgment dated 04.08.2022 in Small Causes Case No. 11 of 2019 was not an ex-parte judgment as full and complete opportunity was provided to the revisionist/tenant, but the opportunity to defend the case was not availed by the revisionist/tenant, only then the judgment dated 04.08.2022 in Small Causes Case No. 11 of 2019 was passed, therefore, the application under Order 9 Rule 13 CPC was not maintainable.**

But in the memo of revision, no specific ground challenging this observation of the learned trial court of Small Causes is taken by the revisionist/tenant, nor submitted by him at the time of argument of the case.

16. It is also important to note that in the impugned order dated 25.03.2023 in Misc. Small Causes Case No. 06 of 2022, the learned trial court of Small Causes further observed that in main Small Causes Case No. 11 of 2019 a third party had filed an application under Order 1 Rule 10(2) read with Section 151 CPC stating that the third party had purchased the tenanted premises from the revisionist/tenant, and therefore, he has an interest in the tenanted premises. That application of third party was rejected by the learned trial court of Small Causes on 15.07.2022.

It is also observed by the learned trial court



of Small Causes in the impugned order dated 25.03.2023 that the revisionist/tenant was afforded full and complete opportunity to adduce the evidence in his defence, but he himself absented and did not avail the benefit of the said opportunity given to him in order to delay the adjudication of Small Causes Case No. 11 of 2019. Consequently with above observation, the learned trial court of Small Causes dismissed the application under Order 9 Rule 13 read with Section 151 CPC.

Last but not least

17. In the impugned order dated 25.03.2023, the learned trial court of Small Causes also observed that the application under Order 9 Rule 13 read with Section 151 CPC was dismissed as direction of proviso to Section 17 of the Provincial Small Cause Courts Act, 1887 was not complied with by revisionist/tenant. The Section 17 of the Provincial Small Cause Courts Act, 1887 is as under:-

“Section 17. Application of the Code of Civil Procedure.—(1) *[The procedure prescribed in the Code of Civil Procedure, 1908 (5 of 1908), shall save in so far as is otherwise provided by that Code or by this Act,] be the procedure followed in a Court of Small Causes, in all suits cognizable by it and in all proceedings arising out of such suits:*

*Provided that an applicant for an order to set aside a decree passed ex parte or for a review of judgment shall, at the time of presenting his application, **either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give [such security for the performance of the decree** or compliance with the*



judgment as the Court may, on a previous application made by him in this behalf, have directed.”

Therefore, at the time of filing the application under Order 9 Rule 13 CPC the revisionist/tenant had to deposit the arrears of rent as per mandate of proviso to Section 17 of the Act.

Hon’ble Supreme Court in its judgment **‘Kedarnath vs. Mohan Lal Kesarwari and others, 2002(2) SCC 16’** on the point whether the application under Order 9 Rule 13 CPC without complying with the proviso to Section 17 of the Act is maintainable or not observed in paragraph nos. 8 & 9 of the judgment (*supra*) as under:-

“8. A bare reading of the provision shows that the legislature has chosen to couch the language of the proviso in a mandatory form and we see no reason to interpret, construe and hold the nature of the proviso as directory. An application seeking to set aside an ex parte decree passed a Court of Small Causes or for a review of its judgment must be accompanied by a deposit in the court of the amount due from the applicant under the decree or in pursuance of the judgment. The provision as to deposit can be dispensed with by the court in its discretion subject to a previous application by the applicant seeking direction of the court for leave to furnish security and the nature thereof.....

.....

9. In the case at hand, the application for setting aside ex parte decree was not accompanied by deposit in the court of the amount due and payable by the applicant under the decree. The applicant also did not move any application for dispensing with deposit and seeking leave of the court



for furnishing such security for the performance of the decree as the court may have directed. The application for setting aside the decree was therefore incompetent. It could not have been entertained and allowed.”

18. It would not be out of place to reiterate that the revisionist/tenant did not deposit the entire decretal amount at the time of filing the application under Order 9 Rule 13 CPC in trial court.

19. In view of the above, this Court is of the considered view and opinion that the present revision is not maintainable at all rather it is misconceived with oblique intention to continue in the possession of the tenanted premises by abusing the process of law provided for the revision when there was no case at all in favour of the revisionist/tenant.

It seems to this Court that application under Order 9 Rule 13 CPC was filed by the revisionist/tenant just only to give impression that the present revision is within limitation, though, the limitation to file revision against the main judgment dated 04.08.2022 had already expired long ago.

It is apparent that during pendency of the case before the learned trial court of Small Causes, an attempt to delay the adjudication was also made by getting filed an application under Order 1 Rule 10(2) CPC for impleadment through third party with allegations that he had purchased the tenanted premises from the revisionist/tenant.

20. These types of tendencies of unscrupulous litigants are pernicious to the judicial system and



shakes the faith and confidence of a common man in the judicial system.

The main judgment of the learned trial court of Small Causes in Small Causes Case No. 11 of 2019 was passed on 04.08.2022 and in the garb of application under Order 9 Rule 13 CPC and the present revision, the revisionist/tenant overstayed in the tenanted premises which he was directed to vacate within one month from date of judgment.

21. This Court is of the view that such type of pernicious tendencies to misuse the procedure of law to the disadvantage of other party on the basis of untenable grounds have to be curbed in order to discourage the unscrupulous litigants from filing frivolous appeals or revisions. Therefore, this revision is dismissed with exemplary cost of ₹20,000/- to be deposited in High Court Legal Services Committee, Nainital within 15 days.

In case, cost is not deposited before the Hon'ble High Court, the same shall be recoverable as the land revenue.

In the impugned judgment dated 04.08.2022, the learned trial court of Small Causes had directed the revisionist/tenant to pay the arrears of rent amounting to ₹37,613/- with simple interest @ 3.5% and to pay the damages and mesne profit @ ₹800/- per month from 18.05.2019 till the date of handing over the actual peaceful vacant possession of the tenanted premises to the respondent/landlord



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within a month from the date of judgment. The learned trial court of Small Causes in its impugned judgment dated 04.08.2022 had directed to pay the damages and mesne profit @ ₹800/- per month. Such a small amount as damages perhaps emboldens the unscrupulous litigants to play with law by filing the frivolous applications, appeals and revisions.

Because of the application of the revisionist/tenant filed under Order 9 Rule 13 CPC, which was dismissed by the learned trial court of Small Causes, against which the present revision is preferred, the possession was not handed over by the revisionist/tenant to the respondent/landlord.

22. In view of the above, the revisionist/tenant is directed to vacate and handover the peaceful vacant possession of the tenanted premises to the respondent/landlord on or before 15.01.2025 and to pay the damages and mesne profits @ ₹5,000/- per month from 04.09.2022 till handing over the peaceful vacant possession to the respondent/landlord.

In case, the revisionist/tenant fails to vacate tenanted premises and handover the peaceful vacant possession to the respondent/landlord, then he will liable to pay the damages @ ₹10,000/- per month thenceforth.

23. With the above observations and directions, the present Civil Revision is hereby dismissed.

(Vivek Bharti Sharma, J.)
07.01.2025

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