

Court No. - 4

Case :- MATTERS UNDER ARTICLE 227 No. - 10095 of 2019

Petitioner :- Salauddin And Another

Respondent :- Smt. Mahemunir And Another

Counsel for Petitioner :- Ajay Kumar Singh, Ashish Kumar Singh

Counsel for Respondent :- Ashutosh Kumar Singh, Mahendra Kumar Jain, Pranab Kumar Ganguli, Rajesh Kumar, Saurabh Vishwakarma, Vishnu Kumar

Hon'ble Ajit Kumar, J.

1. Heard Mr. Ashish Kumar Singh, learned counsel for the petitioners and Mr. Rajesh Kumar, learned counsel for the respondents and perused the record.
2. This petition arises out of an order dated 23.10.2019 passed by Additional District Judge, Court No. 14, Varanasi in Small Cause Revision No. 05 of 2019 affirming the judgment and decree passed by Judge, Small Causes, Varanasi dated 06.12.2018 in Small Cause Case No. 84 of 2008; Smt. Mahemunir and another vs. Salauddin and another.
3. Briefly stated facts are that landlord respondents instituted a case for eviction and recovery of arrears of rent in view of notice issued by them on 23rd September, 2008 determining the tenancy. In initial round of litigation, the trial court did not find the petitioners to be defaulter in payment of rent holding that sufficient deposits were made by them continuously in miscellaneous case instituted by the tenant petitioners filed under Section 30 (1) U.P. Act No. 13 of 1972 of which landlord had sufficient knowledge as he had filed objection to the same on 08.08.2000 itself prior to issuance of notice on 23rd September, 2008 and, therefore, neither the petitioners were in arrears of rent of four months to maintain a suit for eviction in view of Sub Section 2 (a) of Section 20 of Act No. 13 of 1972 nor guilty of violation of Rule 25 (1) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972. This judgment in revision was however,

reversed only on the ground that there was no sufficient compliance of Rule 21 (5) of 1972 Rules and, therefore, the deposit was not within the knowledge of respondents landlord and hence the suit would be maintainable. Thus, the trial court was directed to decide issue no. 4 regarding default in payment of rent by the petitioners afresh. Upon remand, this time the trial court held the petitioners to be guilty of non compliance of Rule 21 (5) of the Rules to hold them defaulter in payment of rent and hence liable to be evicted from the demised premises. The said order was challenged in appeal, which also came to be dismissed and now before this Court not only the order of trial court affirmed in appeal has been challenged but also earlier order of remand has been challenged on the ground that even remand was bad on the principles contained under Section 45 (2) CPC.

4. The only point for consideration of the Court is as to whether the finding returned by Judge, Small Cause on the point of default and non compliance of Rule 20 (5) of 1972 Rules was bad and, therefore, both, the order of trial Judge and the order of Revisional Court deserve to be set aside or not.

5. From perusal of the record, pleadings of parties and earlier judgment passed by the Trial Judge, which was reversed in revision, I find that earlier father of respondents had issued notices on 25.02.2000 demanding regular rent and arrears of rent, which was duly replied to, by sending a reply notice along with money order, which he had refused and it is in those circumstances that miscellaneous case under Section 30 (1) of U.P. Act No. 13 of 1972 was filed before the Civil Judge (J.D.) registered as Case No. 11 of 2000 and in that case an order was passed on 14th January, 2000 directing the petitioners to deposit rent and notice was directed to be issued to the defendants and plaintiff petitioners were directed to take steps. The trial court recorded a finding to the effect that original records of the case filed under Section 30 (1) of Act No. 13 of 1972 revealed that steps were taken and that reply notice was sent by the petitioners on 22nd March, 2000, which was marked as Paper No. 13-C filed before the Court in which a miscellaneous case registered under Section 30 (1) of U.P. Act No. 13 of 1972 was referred to. Earlier judgment

also revealed a fact that in miscellaneous case No. 11 of 2000 the present landlord respondents had filed their objections on 08.08.2008 and it was thereafter that they had sent notice on 23rd September, 2008. Thus, the landlord respondents had full knowledge of deposit being made under section 30 (1) while they sent notice on 23rd September, 2008. This notice was duly replied to, because I find from the plaint allegation vide paragraph-6 referring to the reply dated 15.10.2008 as the date of service of notice, in my view this date could not have been mentioned in the plaint unless the landlord respondents had knowledge of the reply. They have taken 15.10.2008 in the plaint allegation itself to be a date of service of notice. A case came to be instituted for eviction only on 18.11.2008. So considering the fact that landlord respondents had already filed objections to the miscellaneous case in which rent was being deposited and they had sent notice for rent only on 23rd September, 2008, they could not have claimed the petitioners to be in arrears of rent as on 18.11.2008, but the findings based upon these facts came to be reversed by the Court sitting in revision in the earlier round of litigation only on the plea that no steps were taken to serve upon the landlord continuously and since the said miscellaneous case was dismissed and came to be restored only on 15th March, 2008 and no rent was deposited during that period and, therefore, petitioners were in arrears of rent, inasmuch as, there was no compliance of Rule 21 (5) of the Rules. The Court proceeded to rely upon the statement of D.W. 1 in the miscellaneous case, since there was no *Talmana* being made no such steps were taken. Upon matter being remanded on this above point, the trial Judge, this time reiterated the findings returned by the Court sitting in revision to hold that there was no compliance of Rule 21 (5).

6. Learned counsel for the petitioners has placed before me a judgment of Co-ordinate Bench of this Court in the case of ***Smt. Chameli Devi vs. VIth Additional District Judge, Pilibhit and another; 2004 (1) AWC 660***, in which it has come to be held vide paragraph-7 thus:-

"The purpose of deposit of process fee and notice in Form F is to give information of the deposit to the landlord. The statement of tenant in his replies dated 5.10.1997 and

20.2.1998 given by him to the landlord in reply to his notices sufficiently informed the landlord about the subsequent deposits made by the tenant under Section 30. In my opinion, therefore, the subsequent deposits cannot be held to be invalid."

7. In view of the above legal position, if one examines the findings of the courts below on the point of non compliance of Rule 21 (5) one would find that the original records very clearly revealed that process was taken pursuant to the order passed on 14th January, 2000 by the petitioners and this fact has not been disputed in both the findings except that continuously petitioners did not take process, which in view of the above judgment was not required. Thus, to hold that petitioners was guilty for non compliance of Rule 21 (5) of 1972 Rules and further to hold that those deposits would not be taken into account for want of knowledge at the end of landlord and hence the petitioners committed default in payment of rent is bad and cannot be sustained in law.

8. Besides the above, I also find that reply notice sent by the present petitioners tenants has been admitted in the plaint and in the statement of P.W. 1 during cross examination it has come to be averred that in the year 2000 notice was sent by his father and in the year 2008 again notice dated 23rd September, 2008 was sent by his father whereas on record notice that has been annexed, was sent on 23rd September, 2008 by the Advocate on behalf of petitioners, copy whereof has been filed as annexure-9 to the petition, which has not been disputed. Thus, it is clear that in 2000, when notice was sent by the father of landlord respondents and reply was made and further deposit was continuously made and yet father of landlord respondent did institute suit for eviction and when on 23rd September, 2008 notice was sent by landlord respondents they had already filed objection in miscellaneous case and it is also established on record record that petitioners had been continuously depositing rent in that miscellaneous case, which has also come to be admitted by the plaintiffs during cross examination held on 9.5.2012. In these set up of facts emerging out from the pleadings on records, it is clear that petitioners neither defaulted in payment of rent, nor were in arrears of rent to maintain a suit under Section 20 of Act No. 13 of 1972.

9. It was also argued that notice having been claimed to have not been sent by the landlord respondents as it was stated by P.W. 1 herself in her statement that notice was sent by the father whereas notice was sent in their behalf, it, therefore, was required to be proved by the plaintiffs but they failed to prove the same. The law is well settled that rent deposited under Section 30 if within the notice of the landlord, then the tenant cannot be held in default in payment of rent of four months to maintain a suit under Section 20 (2) (a) in view of the judgment of this Court in the case of ***Smt. Krishna Devi and others vs. Mahavir Prasad and others; 2008 (4) AWC 3656***. So far as the point raised regarding challenge to the findings returned earlier by the Court sitting in revision on the principle contained under Section 45 (2) CPC as petitioners had earlier no statutory right of appeal is concerned, in my considered view this issue need not be gone into because I have already held above that the findings on the question of default in payment of rent and maintainability of suit returned by Prescribed Authority as well as the Court sitting in revision to be bad and the suit deserved to be dismissed.

10. At this stage, learned counsel for the respondents states that petitioners have not paid any rent, after the suit was decreed. Since I am allowing this petition by setting aside the judgment and decree passed by the Trial Judge in S.C.C. case and the order affirming the same by the Court sitting in revision, I further hereby provide that whatever the arrears of rent due to be paid by the petitioners to the landlord respondents shall be paid within a maximum period of 60 days from today and in the event, they fail to deposit any rent within the prescribed period as directed hereinabove, it will remain open for the landlord respondents to recover this amount by instituting appropriate proceedings even by presenting application under Contempt of Courts Act 1971 and they would also be able to institute a fresh case for eviction of the tenants-petitioners.

11. In the circumstances, this petition succeeds and allowed as above. The judgment and decree dated 06.12.2018 passed by Judge, Small Causes, Varanasi in Small Cause Case No. 84 of 2008 and the order dated 23.10.2019 passed by

Additional District Judge, Court No. 4, Varanasi in Small Cause Revision No. 05 of 2019, are hereby set aside.

12. There shall be no order as to cost.

Order Date :- 8.1.2025

Shiraz