

Neutral Citation No. - 2025:AHC:26938

Judgment Reserved on 31.01.2025

Judgment delivered on 27.02.2025

Court No. - 2

Case :- WRIT - A No. - 17408 of 2024

Petitioner :- Lavendra Singh

Respondent :- Devendra Kumar Nagariya

Counsel for Petitioner :- Ravi Anand Agarwal, Shreya Gupta

Counsel for Respondent :- C.S.C., Kamlesh Kumar Tiwari, Priya
Tiwari, Yogesh Shukla

HON'BLE PIYUSH AGRAWAL, J.

- 1.** Heard Ms. Shreya Gupta, learned counsel for the petitioner and Sri Atul Dayal, learned Senior Counsel assisted Sri Kamlesh Kumar Tiwari, learned counsel for the respondents.
- 2.** By means of this writ petition, the petitioner has assailed the judgment and order dated 05.10.2024 (Annexure No.1) passed by the Additional District Judge, Court No.2, Jhansi in Misc. Civil Appeal No. 40 of 2024 (Lavendra Singh Vs. Devendra Kumar Nagariya) and the order dated 12.07.2024 (Annexure No.2) passed by Additional District Magistrate (F/R)/ Rent Authority, Jhansi in Case No. 14/2023 (780/2023) (Devendra Kumar Nagariya Vs. Lavendra Singh).
- 3.** Brief facts of the case are that the petitioner is a tenant of one shop forming part of House No.173 (New No.297) situated in Mohalla Talaiya, Minarwa Crossing, Jhansi, at a monthly rate of Rs. 350/-. The respondent/landlord filed an eviction application before the Rent Authority constituted under the U.P. Act No.16 of 2021 to which the petitioner filed a detailed objection but without considering the same, the eviction application was allowed vide order dated 12.07.2024. Against the said order, the petitioner

approached the Tribunal by means of filing Rent Appeal No. 40 of 2024, which was dismissed by the impugned order dated 05.10.2024. Hence the present petition.

4. Learned counsel for the petitioner submits that an eviction application was filed by the respondent-landlord mainly on four grounds; (a) The rent was not paid for the two consequent months; (b) The petitioner was desirous of rebuilding and altering the premises for which it is necessary to get it vacated; (c) The petitioner/tenant has installed a door on the southern wall of the tenement and is using it as a passage to his adjoining shop; (d) The petitioner/tenant has started doing business from another shop. She further submits that a detailed objection was filed by the petitioner to the said application, but the same was not considered by any of the authorities below.
5. She further submits that after the enforcement of the new act named as 'The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021' (hereinafter referred to as 'the new Act'), which contemplates that the agreement in writing is necessary and in the event of no agreement in writing, in view of the provision of the new Act, proceedings cannot be initiated. She further submits that the respondent-landlord is not remedi-less, but can move an appropriate application/suit before the Judge, Small Causes Court Act.
6. In support of her submission, she has placed reliance upon the definition prescribed under Section 2 (i), 2 (j), Section 4 (3) and its Sub-clauses, Section 7, Section 38 (2) and Section 21 (2) (a) (b) of the new Act.
7. To buttress her submission, she submits that the tenancy agreement must be in writing executed between the landlord and tenant for the purpose of letting out the premises in consideration of rent payable.

She further submits that the tenant is paying the rent as prescribed under Section 2 (j) of the new Act.

8. Further, she emphasizes that Section 4 (1) of the new Act, which prescribes that the tenancy agreement must be in writing and the rent authorities must be informed about tenanted property within two months from the date of execution of the tenancy agreement. She further refers Section 4 (3) (b) of the new Act and submits that after reducing the agreement in writing, if the landlord or tenant fails to jointly present a copy of tenancy agreement or fails to reach an agreement within the specified period under the Act, such tenant and landlord shall separately files the particulars about such tenancy agreement with the Rent Authority within a period of one month from the date of expiration of the period as mentioned in Clause 3 (b) of the new Act. If the landlord has submitted his particulars within the specified period, but the tenant fails to submit such particulars, the landlord may file an application for eviction on this ground alone.
9. Further, Section 4 (7) of the new Act provides that the fact of tenancy shall be of conclusive proof for Sub-sections 1, 2 & 3 and in absence of any statement of information, the landlord may file an application for eviction on this ground alone.
10. Counsel for the petitioner submits that Section 4 (7) of the new Act has to be read in consonance with proviso of Section 4 (3) of the new Act and not in isolation.
11. Ms. Gupta further submits that in the event, information is not provided after enforcement of the new Act, it will not empowers the landlord to move an application for eviction.
12. Ms. Gupta further submits that the case in hand, either of the parties have not informed particulars about the said tenancy to the rent

authority within a period of one month after commencement of this Act.

13. Ms. Gupta refers Section 38 (2) of the new Act and submitted that the jurisdiction of the rent authorities is limited to the tenancy agreement submitted to it as specified in First Schedule. She further submits that either of the parties has not executed any tenancy agreement or reached an agreement within the specified time. Once, in writing in a prescribed format not filed to the rent authorities by either of parties, the proceedings initiated by the rent authorities are without jurisdiction.
14. She further submits that the jurisdictional issue can be raised at any stage of proceedings and if the authorities have passed the order, without having jurisdiction, the same is nullity.
15. She has placed reliance upon the judgments of Hon'ble Apex Court passed in the cases of *R. Kandaswamy (since dead) & Ors. Vs. T.R.K. Sarawathy & Anr. (Civil Appeal No. 3015 of 2013)*, *Chief Engineer, Hydel Project & Ors. Vs. Ravinder Nath & Ors., AIR 2008 Supreme Court 1315* and *M/s Geo Miller & Co.Pvt. Ltdl Vs. UP Jal Nigam and others (Civil Misc. Arbitration Application No. 4 of 2024)*.
16. To support her submission, she has placed further reliance upon the judgment of this Court passed in the case of *Amit Gupta Vs. Gulab Chandra Kanodia; 2023 0 Supreme (All) 710* and submits that while considering the issue where the suit of small cause court and new Act came into force then what would be its future wherein after considering the the relevant provision, this Court has held in para nos. 96 & 97 that only for the written agreement, as per the Rule 4 (3), the tenant can be evicted and not otherwise.

17. Once, the judgment has been given by this Court, holding that until and unless, a written agreement exists, the tenant cannot be evicted under Section 4 (7).
18. The subsequent judgments passed by this Court in the cases of *Amarjeet Singh Vs. Shiv Kumari Yadav*; 2024 0 Supreme (All) 1262, *Mahesh Chandra Agarwal Vs. Rent Tribunal, Addl. District & Sessions Judge, Court No.7, Lko. And others*, 2024 0 Supreme (All) 185 and *Vishal Rastogi Vs. Rent Controller/Additional District Magistrate (Judicial) and Another (Writ-A No. 12878 of 2024)* requires reconsideration.
19. She further submits that the judicial discipline requires that the Bench of equal quorum should not take a different view and the reference of question may be made to the Larger Bench.
20. In support of her submission, she has placed further reliance upon the judgments of the Hon'ble Apex Court passed in the cases of *Mary Pushpam Vs. Telvi Curusumary & Ors.*, 2024 LiveLaw (SC) 12, *Rajasthan Public Service Commission and Another Vs. Harish Kumar Purohit and others*; 2003 AIR SC 3476 and *Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another*; (2005) 2 Supreme Court Cases 673.
21. *Per contra*, Sri Atul Dayal, learned Senior Counsel submits that the proceedings have rightly been initiated under the new Act as the parties to the proceedings have failed to file written agreement as prescribed under the new Act. Once either of the parties failed to file written statement bringing on record to the notice to the rent authority about the tenancy, the proceedings were rightly been initiated by the landlord against the petitioner.
22. In support of his contention, he has referred various Sections of the new Act i.e. 2 (b), 2 (c), 2 (g), 2 (i), Sections 4 (1), 4 (3) & 4 (7)

and submits that the provisions prescribed for submission of particulars about the tenancy, but in the event, the landlord has submitted his particulars, but the tenant has failed to submit, the landlord can file an application for eviction on this ground alone.

23. He further submits that the provision is silent where no particulars were submitted by the landlord. The Legislature in its wisdom did not curtail the rights of landlord even in absence of particulars being furnished. He further submits that the proviso can not be read in isolation to the main section.
24. He emphasizes Section 4 (7) of the new Act, which specifically mandates that in absence of any statement of information, the landlord may file an application for eviction.
25. In support of his submission, he has placed reliance upon the judgments of this Court passed in the cases of *Amarjeet Singh Vs. Shiv Kumari Yadav (Civil Misc. Writ Petition No. 3023 of 2024)*, *Alok Gupta Vs. District Judge Rent Tribunal and others;[2024 (1) ARC 532]*, and *Vishal Rastogi Vs. Rent Controller/Additional District Magistrate (Judicial) and Another (Writ-A No. 12878 of 2024)*.
26. He further submits that all the subsequent three judgments of the Co-ordinate Bench of this Court has distinguished the judgment of *Amit Gupta Vs. Gulab Chandra Kanodia (S.C.C. Revision No.158 of 2022)* and therefore, has no binding effect upon the present proceedings. He next submits that the subsequent judgment passed by the Co-ordinate Bench of this Court clinches the issue in hand. He prays for dismissing the present writ petition.
27. After hearing the counsel for the parties, the Court has perused the records.
28. The issue raised in the case in hand is jurisdictional issue which goes into the root of the matter, which can be considered at any

stage as held by the Hon'ble Apex Court in the cases of ***Chief Engineer, Hydel Project & Ors. Vs. Ravinder Nath & Ors., 2008 AIR SCW 1412*** and ***R. Kandasamy (since deceased) & Ors. Vs. T.R.K. Sarawathy & Anr. (Civil Appeal No 3015 of 2013)***.

29. Various legal issues have been raised by either of the parties. Counsel for the petitioner has heavily relied upon the judgment of ***Amit Gupta (supra)***; whereas Sri Atul Dayal, learned Senior Counsel appears for the respondent heavily relied upon the judgment of ***Amarjeet Singh (supra)*** and tried to impress upon the Court that the proceedings initiated under the new Act is valid.
30. Be that as it may, recently, this Court on 23.01.2025 has delivered a judgment and order in the case of ***Sri Raman Arora Vs. Susheel Kumar (S.C.C. Revision No.95 of 2023)*** wherein it has been held that in absence of written agreement after the enactment of new Act, proceedings under the Judge, Small Causes Courts are maintainable. The relevant paragraph nos. 6 to 11 of the said judgment is quoted as under:-

“6. Having heard learned counsel appearing for respective parties and having perused the order passed by Judge Small Causes/ Additional District Judge, Court No. 15, Bulandshahar dated 15.07.2023 and the judgment in the case of Amit Gupta (supra) and the judgment in the case of Amarjeet Singh (supra) I find force in the submissions advanced by learned counsel appearing for respondent even though I do not find myself in agreement with the view taken by the Judge Small Causes that the new Act being Act No. 16 of 2021 should be taken to have been brought into force only with effect from 24.08.2021. The Judge Small Causes though has referred to the ordinance earlier issued by the Governor on 11.01.2021 which later on got translated into a legislative enactment but has failed to appreciate Sub-Section 4 of Section 1 of the Act No. 16 of 2021. Sub-Section 4 of Section 1 runs as under:

"1.(4) It shall be deemed to have come into force with effect from January 11, 2021."

7. From a bare reading of the aforesaid provision it is clear that legislature intended to give retrospective effect to the Act No. 16 of 2021 with effect from the issuance of ordinance i.e. 11.01.2021 and, therefore, there is no scope of doubt left to hold that the Act would be taken to have come into force with effect from 11.01.2021.

8. The question now arises as to the legal position qua maintainability of eviction suits in cases of unwritten agreement. While in Amit Gupta's case (supra) such suits have been held to be maintainable, under Provincial Small Causes Courts Act, 1887 despite Act No. 16 of 2021 coming into existence but recently a Co-ordinate Bench in the matter of Amarjeet Singh (supra) has taken a different view holding that written agreement is not sine qua non to maintain a case for eviction at the instance of landlord under Section 21 (1) of the Act No. 16 of 2021. The principle evolved is that new Act provides a forum to cover all rent cases when tenancy is admitted to the parties. With great respect to his Lordship, I find there to be hardly any discussion as to the scope of Section 28 (2) of the Act No. 16 of 2021 in as much as the status of small causes courts' jurisdiction under U.P. Civil Law Amendment Act, 1972 which has the Presidential assent. The language of Section 38 (2) is very clear and it bars in quite an unequivocal terms exercise of jurisdiction by Rent Authority in cases when written agreement are not there between landlord and tenant as per format prescribed under Ist Schedule to Act No. 16 of 2021. No provision which is very clear in its language can be interpreted otherwise to either enlarge its scope of application or to narrow it down. The legislature uses every word cautiously and with a meaningful purpose. The new Act aims at improving upon the existing tenancy laws with new legislation and intends to bind parties to enter tenancy agreements in writing to remove uncertainties as to rent, terms and tenure of tenancy with an object to protect interest of both landlord and tenant. Any interference to present rent authority to entertain cases in cases of unwritten tenancy would defeat the very object of the Act.

Much detailed analysis has been done in Amit Gupta's Case but all that has remained virtually unnoticed in subsequent judgment of a Co-ordinate Bench in Amarjet Singh's case. The Court has not discussed and analysed the aspect whether that such an interpretation as was being made in the case (Amarjeet Singh's case) would give an overriding effect to State Act with only Governor's assent upon earlier enactment having presidential assent and if yes, whether such an interpretation would be justified.

9. Now, question is about binding judicial precedent qua this subsequent judgment. The Courts have repeatedly held that if a Bench of same strength arrives at a different view on a point of law from earlier view expressed by an earlier Bench, it should in propriety, refer the matter to a larger Bench. Recently in the case of Mary Pushpam v. Telvi Curusumary and others (2024) 3 Supreme Court Cases 224 vide paragraphs 20 and 21 the Court has held thus:

"20. The legal position on coordinate Benches has further been elaborated by this Court in State of Punjab v. Devans Modern Breweries Ltd:

339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred to a larger Bench.

340. In Halsbury's Law of England (4th Edn) Vol. 26 at pp 297-98 para 578, it is stated ' A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before, it in which case it must decide which case to follow.'

21. We have already discussed about the importance of ensuring judicial discipline and the same has also been upheld by various judgment of this Court in Central Board of Dawoodi Bohra Community v. State of Maharashtra, this court has summed up the legal position of rules of judicial discipline as follows:

12. ... (1) The law laid down by this Court in a decision delivered by a Bench of larger strength is

binding on any subsequent Bench of lesser or coequal strength.

(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted"

(Emphasis added)

10. Thus, if a bench of same strength comes to conclude that earlier co-ordinate Bench had either ignored a particular provision of law or has failed to properly appreciate the same, it has only option to refer it to a larger Bench. It, in propriety and to maintain judicial discipline can not take a different view altogether.

11. Thus, since, the small cause suit in the matter of unwritten agreement between the parties under Section 15 of the Provincial Small Causes Courts Act have been made applicable by the U.P.Civil Laws (Amendment) Act, 1972 with the Presidential assent, I hold the suit to be maintainable on this count in view of the law laid down also by this Court also in the case of Amit Gupta (supra)."

31. In view of the peculiar facts and circumstances as stated above as well as law laid down in the case of ***Sri Raman (supra)***, the impugned orders cannot be sustained and are accordingly quashed.

32. The writ petition is ***allowed***.

Order Date :- 27.02.2025

Pravesh Mishra/-

(PIYUSH AGRAWAL, J.)