



HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE SRI JUSTICE SUBHASH UPADHYAY

CIVIL REVISION NO.22 OF 2019

10^h July, 2026

Smt. Manju Rani Verma

...Revisionist

Versus

M/s Goldman Distillery, Unit of Kamdhenu Ghee Ltd.

...Respondent.

Counsel for the revisionist : Mr. Siddhartha Singh, learned counsel.

Counsel for the respondent : Mr. Amit Tyagi, learned counsel.

JUDGMENT: (per Mr. Subhash Upadhyay, J.)

The present civil revision under Section 25 of the Provincial Small Cause Courts Act has been preferred assailing the judgment and order dated 19.02.2019 passed by the Judge, Small Cause Courts / 1st Additional District Judge, Dehradun in S.C.C. Suit No.24 of 2015, "Smt. Manju Rani Verma Vs. Golden Distilleries". By the impugned order, suit of the revisionist /plaintiff was dismissed.

2. The facts which are evidenced from the records are that S.C.C. Suit was filed in the year 2015 for recovery of arrears of rent, eviction and mesne profit whereby revisionist / plaintiff contended that she is owner / landlord of the suit property and the defendant is a tenant wherein initially a rent



@₹65,000/- per month was to be paid from 25.04.2014 to 24.07.2014 and, thereafter, @₹83,000/- per month from 25.07.2014. The plaintiff contended that the defendant defaulted in payment of rent and despite being served with legal notice dated 08.04.2015 for terminating of tenancy of the tenanted portion, neither the arrears of rent was paid nor the suit property was vacated.

3. The defendant had initially filed an application for dismissal of the suit on the ground that the property is covered under the provisions of U.P.Z.A. & L.R. Act and the suit is not maintainable. The aforesaid application was allowed and the suit was dismissed. However, a Co-ordinate Bench of this Court vide order dated 15.09.2017 in Civil Revision No.36 of 2016 set aside the said order and directed the learned J.S.C.C. to decide the suit afresh. The learned Trial Court dismissed the suit on 19.09.2019 against which the present revision has been preferred.

4. Learned counsel for the revisionist / plaintiff assailing the impugned order submitted as hereunder:

- i) Though rent agreement and a copy of the legal notice was enclosed with the plaint and the evidence was led by the husband of the plaintiff, however, despite the fact that the husband of the



plaintiff, who appeared as PW1 proved the plaint averment and corroborated the documentary evidence filed by the plaintiff, the said evidence was wrongly discarded by the learned Trial Court.

ii) The cross-examination conducted by the defendant was only confined to the authority of the husband of the plaintiff who appeared as a witness (PW1) and in regard to the power of attorney dated 26.06.2015, subsequently, filed by the PW1 on behalf of the plaintiff. In the cross-examination, neither the plaint averments were confronted nor any suggestion was put forwarded to PW1 in regard to the case set up by the defendant in the written statement.

iii) The learned J.S.C.C. recorded a finding that the rent agreement was executed between the plaintiff and the respondent, firstly, on 23.04.2014 for a period from 25.04.2014 to 25.07.2014; secondly, on 25.07.2014 for a period from 25.07.2014 to 15.01.2015; and, lastly, on 25.01.2015 for three months and also rendered a finding that a notice terminating tenancy was sent by the plaintiff on 08.04.2015.



iv) The learned J.S.C.C. dismissed the suit on the sole ground that the plaintiff herself had not appeared for oral evidence, as such, the plaintiff's averments were not proved and the evidence of the husband of the plaintiff was not accepted as evidence on behalf of the plaintiff. Though a reference to section 120 of the Evidence Act was made, but misinterpreting the ambit and scope of Section 120 of the Evidence Act it was held that the husband of the plaintiff cannot depose on her behalf, and as the plaintiff herself had not proved the contents of the agreement, as such, the relationship of landlord-tenant could not be established.

v) The finding recorded by the Court was in utter disregard to the law laid down by the Hon'ble Apex Court in the Case **of Man Kaur (Dead) by LRs Vs. Hartar Singh Sangha, (2010) 10 SCC 512** and the recent judgment of the Hon'ble Apex Court in the case of **Nilima Das Gupta (Deceased) through its LRs Vs. On the death of Abdur Rouf his Legal Heirs & Ors. 2025 INSC 1037.**



5. Per contra, learned counsel for the respondent had made the following submissions:

i) The plaintiff Maju Rani Verma never entered the witness box and in her place her husband sought to depose on her behalf regarding the fact which were within the personal knowledge of the plaintiff.

ii) A power of attorney holder or any other representative can depose only with respect to act performed by him / her personally and cannot depose regarding the matter which are within the knowledge of the plaintiff and the said issue was considered by the Hon'ble Apex Court in the case of **Janki Vashdeo Bhojwani & Anr vs Indusind Bank Ltd. & Ors AIR 2005 Supreme Court 439.**

iii) The alleged tenancy, payment of rent, default, service of notice and other material facts pleaded in the plaint were to be proved by the plaintiff herself and the failure of the plaintiff to enter in the witness box entitled the Court to draw an adverse inference against her and the said issue is covered by the judgment of the Hon'ble Apex Court in the



case of **Vidhyadhar vs Manikrao & Anr. (1999)**
3 SCC 573.

iv) The power of attorney was brought on record after the conclusion of cross-examination and the date on which PW1 entered the witness box and was cross-examined, no authority was there in his favour to depose on behalf of the plaintiff.

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

7. The learned Trial Court had framed the issue as to whether there exists relationship of landlord-tenant between the plaintiff and the respondent and as to whether the tenancy of the defendant had been terminated by the plaintiff by notice dated 08.04.2015.

8. The learned Trial Court, in view of the order dated 15.09.2017 passed by the Court in Civil Revision No.36 of 2016, concluded that it had the jurisdiction to try the suit. With regard to the issue as to whether there exists a relationship of landlord-tenant between the plaintiff and the respondent, it was held in paragraph no.17 of the judgment that it was evident that there exists a rent agreement in which the signatures of the plaintiff and the respondent are



seen. The finding recorded in paragraph no.17 of the said judgment reads as under:

“17. उपरोक्त वाद के संदर्भ में यह तथ्य भी दर्शित होता है कि वादिनी द्वारा अपने वादपत्र में यह कथन किया गया है कि उसके और प्रतिवादी के मध्य वादग्रस्त सम्पत्ति जो प्रतिवादी के अध्यासन में है, के संदर्भ में किरायानामा विलेख निष्पादित किया गया था। प्रथम बार किरायानामा विलेख दि० 23.4.14 को निष्पादित किया गया, जिसमें किरायेदारी की अवधि 25.4.14 से आरम्भ होकर 25.7.14 तक होने का जिक्र किया गया है तथा 25.7.14 के पश्चात किरायेदारी समाप्त होने का जिक्र किया गया है। उक्त किरायानामा मूल रूप से पत्रावली पर का०सं०-42ग है। इसके अतिरिक्त एक अन्य किरायानामा दि० 25.7.14 को निष्पादित हुआ था, जिसकी अवधि 25.7.14 से 15.1.15 थी। यह प्रपत्र मूल रूप से पत्रावली में 43ग के रूप में संलग्न है। इसके अतिरिक्त एक अन्य किरायानामा अनुबंधपत्र का०सं०-44ग दि० 25.1.15 से तीन माह हेतु निष्पादित किया गया। उपरोक्त किरायानामा अनुबंधपत्रों के अवलोकन से स्पष्ट होता है कि प्रश्नगत सम्पत्ति बावत बनाये गये किरायानामा अनुबंधपत्र वादिनी व प्रतिवादी के मध्य निष्पादित हुए थे, जिसमें वादिनी व प्रतिवादी के हस्ताक्षर मौजूद हैं।”

9. The issue of relationship of landlord-tenant and as to whether the tenancy was terminated by legal notice dated 08.04.2015 was decided against the plaintiff on the premise that the plaintiff herself had not appeared before the Court to give her evidence and the evidence given by the husband of the plaintiff as PW1 was not admissible as per Section 120 of the Evidence Act. It was also recorded that on the basis of the power of attorney PW1 could not depose on behalf of the plaintiff. The learned Trial Court relied on the judgment of the Hon'ble Apex Court in the case of **Janki Vashdeo Bhojwani (supra)**.

10. The legal issue which crops up before this Court is as to whether evidence led by PW1 i.e. husband of the plaintiff was admissible under law and as to whether the



learned J.S.C.C. was justified in discarding the said evidence based on Section 120 of the Evidence Act.

11. The learned Trial Court though made a reference to the said Section, however, held that the said evidence would confine only to the personal knowledge. The issue with regard to Section 120 of the Evidence Act was considered by the Hon'ble Apex Court in the case of **Nilima Das Gupta (*supra*)** and considering the said Section the Hon'ble Apex Court held in paragraph no.17 to 22, 25 and 26 as hereunder:

"17. The understanding of the High Court as regards Section 120 of the Indian Evidence Act is also not correct. Over and above the reliance on the two decisions of this Court is also misconceived.

18. We may explain the principle and scope of Section 120 of the Indian Evidence Act. However, before proceeding to explain Section 120, we must highlight Section 118 of the Indian Evidence Act. Section 118 of the Evidence Act reads thus:

"118. Who may testify.-All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation. -- A lunatic is not incompetent to testify, unless he is prevented by his lunacy from



understanding the questions put to him and giving rational answers to them.”

19. Thus, under Section 118 all persons are competent to testify, unless the court considers that by reason of tender years, extreme old age, disease, or infirmity, they are incapable of understanding the questions put to them and of giving rational answers. Competency of a person to testify as a witness is a condition precedent to the admissibility and credibility of his evidence.

20. Section 120 of the Indian Evidence Act reads thus:

“120. Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial.-In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.”

21. Under Section 118 referred to above, all persons except those excepted therein are competent to give evidence. Competency is the rule and incompetency the exception.

22. Section 120 declares that the parties to the suit and their husbands or wives are competent witnesses in all civil proceedings and that in criminal proceedings against any person, the husband or wife of such person is a competent witness, whether for or against.

23....

24....

25. Having explained the scope and purport of Section 120 of the Indian Evidence Act, as above, we should now look into the understanding of the High Court as regards why D.W.5, i.e., the son of the Defendant No. 1 could not be said to be a competent witness to enter the box and depose. The High Court has observed as under:



“8. The Court of the Munsiff dismissed the counter claim of Nilima Das Gupta because she did not appear before the Court and offered herself for cross-examination. In her place, her son deposed on her behalf. The Trial Court opined that since she failed to offer herself for crossexamination, it could be presumed that she had set up a false case. The aforesaid view of the Munsiff was based upon a ratio laid down by the Supreme Court in the case of Vidhyadhar v Manik Rao reported in (1999) 3 SCC 573. The Trial Court did not rely upon the evidence of the son of Nilima Das Gupta who examined himself as D.W. 5. No power of Attorney was given to DW 5 to depose on behalf of Nilima Das Gupta. This time, the Trial Court relied upon the decision of the Supreme Court that was rendered in Janki Vashdeo Bhojwani v. Indusind Bank Limited reported in (2005) 2 SCC 217, which held that since there is no Power of Attorney, the DW-5 is not entitled to give evidence on behalf of his mother. The appellate Court simply held that D.W. 5 is entitled to give evidence on behalf of his mother.

9. I have given my anxious consideration to the submissions made by the learned counsels for the parties. Here at this stage, the Section 120 of the Indian Evidence Act maybe visited. It reads has under:

“120. Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial.—In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.”



10. In the case of Vidhyadhar (supra), in paragraph-17, the Supreme Court has held as under:

“17. the son of the landlady is not a person covered under the aforesaid provision and as such is not a competent to depose on her behalf.”

11. This view has been followed by the Supreme court in the case of Man Kaur (Dead) by LRS reported in (2010) 10 SCC 512.

12. DW 5 is entitled to appear as an independent witness or attorney but because of the embargo of Section 120 of the Evidence Act, he is not entitled to step into the shoes of his mother. He cannot adduce evidence on behalf of his mother.”

26. We may only clarify that by virtue of Section 120 of the Indian Evidence Act alone the D.W.5 cannot be termed as an incompetent witness. In other words, the line of reasoning assigned by the High Court gives us an impression that since son and mother do not figure in Section 120 of the Indian Evidence Act and only husband and wife figures, the son cannot depose on behalf of his mother. That understanding is not correct. It is not in dispute that Defendant No. 1 did not enter the witness box, however, D.W.5 her son entered the box and deposed.”

12. In the present case the husband of the plaintiff had filed the evidence affidavit on behalf of plaintiff and was cross-examined by the defendant. In view of Section 120 of the Evidence Act he was competent to depose on behalf of his wife i.e. plaintiff. Thus, the dismissal of the suit by learned J.S.C.C. solely on the ground that PW1 could not



depose on behalf of the plaintiff was against the settled principle of law. The order passed by the learned J.S.C.C., as such, is not sustainable and the same is set aside.

13. The suit is pending before the Court since 2015 and the revisionist before the pendency of the present revision (which is pending before the Court since 2019) had approached the Hon'ble Apex Court wherein directions were issued to dispose of the revision expeditiously.

14. Thus, looking into the totality of the facts, the present revision is disposed of in the following terms:

1) The impugned order dated 19.02.2019 is set aside and the matter is remanded to the learned Trial Court to decide the same, as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order by the Trial Court.

2) The learned Trial Court shall not grant unnecessary adjournment to any of the parties and will try to hear the suit on day-to-day basis.

3) The present order has been passed in presence of learned counsel for the respondent, who also conceded that he has no objection in case



the matter is remanded. The counsel for the respondent undertakes to inform the respondent about the present order.

4) The Trial Court shall commence the proceedings of the suit from the stage of evidence and shall hear and decide the suit on its merit after providing an opportunity to the parties to lead evidence and the husband of the plaintiff would be allowed to give evidence on her behalf.

5) In case the parties adhere to the evidence already led by them then the Trial Court shall proceed with the suit on the basis of the evidence available on record. In that case the evidence of PW1 on behalf of the plaintiff shall be considered as an evidence of plaintiff.

15. Pending application, if any, also stands disposed of.

16. Let a copy of this judgment be forthwith sent to the court concerned for due compliance.

17. LCR be also sent back.

SUBHASH UPADHYAY, J.

Dt:10.07.2026

Sukhbant