IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No.2627 of 2013 (M/S)

Smt. Kiran and another …Petitioners

Versus

Smt. Nirmal Kumari and others …Respondents

Present: Mr. Siddhartha Singh, Advocate for the petitioners.
Mr. Nikhil Singhal, Advocate for the respondents.

Hon'ble Sharad Kumar Sharma, J.
(Via Video Conferencing)

Heard learned counsel for the parties.

2. It is a tenant's petition, wherein the tenant has put in challenge to the impugned judgment dated 28.05.2011, as was passed by the Judge Small Causes Court/Civil Judge (Sr. Div.), Hardwar in S.C.C. Case No.13 of 2002, Smt. Nirmal Kumari and another vs. Ram Prakash through L.Rs., which, on a challenge being given by the petitioners in a revision under Section 25 of the Act; being S.C.C. Revision No.18 of 2011, Ram Prakash Lrs. vs. Nirmal Kumari and others; which had ultimately, resulted into the dismissal of the revision by the judgment dated 07.10.2013, and hence apparently it seems that there were a concurrent finding of facts, which has been recorded by the court below, while considering the S.C.C. Suit No.13 of 2002 which was preferred by respondents landlord for the purposes of seeking an eviction and recovery of arrears of rent from the tenants/petitioners, in the SCC Suit, which was thus instituted by the respondents.

3. To be very précised and instead of elaborating, the findings, which had been recorded on the merits of the matter, this Court is confining its finding only to a limited extent,

(i) a**s to what impact and bearing would the provisions contained under Section 20(4) of the Act No.13 of 1972 would have, in the light of the subsequent acquisition of the property by the tenant** over an SCC suit, which was an issue and an aspect which was agitated before the SCC court, but was not considered and no finding has been recorded or returned by the revisional court on the same, and

(ii) furthermore, on the impact **as to what would be the scope of interference of the revisional court with regards to the implications of Order 15 Rule 5**.

4. If the trial court's judgment is taken into consideration, the point of determination, as it had been modulated by the said court has been detailed with in para 5 of the judgment, which reads as under:-

> ''1– क्या वाद पत्र कथनानुसार प्रतिवादी प्रश्नगत सम्पत्ति का किराया, टैक्स अदायगी का नादेहंदा है?
> 2– क्या वाद पत्र कथनानुसार वादी प्रतिवादी से बकाया किराया, टैक्स तथा मुआवजा इस्तेमाली कुल अंकन 7755 रूपये को प्राप्त करने का अधिकारी है?
> 3– क्या वाद अल्पमूल्यांकित है तथा प्रदत्त न्यायशुल्क अपर्याप्त है?
> 4– क्या वाद धारा 20 यू पी एक्ट 13 सन् 1972 के प्रावधानों से बाधित है?
> 5– क्या प्रतिवादी का प्रेषित नोटिस दिनांक 27.10.01 विधि के विरूद्व एवं अवैद्य है?
> 6– क्या प्रतिवाद पत्र कथनानुसार प्रतिवादी धारा 20 141 यू पी एक्ट 13 सन् 1972 का लाभ पाने का अधिकारी है?
> 7– क्या प्रश्नगत सम्पत्ति यू पी एक्ट 13 सन् 1972 से बाधित है?
> 8– क्या वादी किसी अनुतोष को प्राप्त करने का अधिकारिणी है, यदि हां तो क्या?
> 9– क्या वादीगण द्वारा प्रतिवादी संख्या 1/2 को अनावश्यक रूप से पक्षकार बनाया गया है और वाद में अनावश्यक पक्षकार बनाये जाने का दोष आरिज है, जैसा कि प्रतिवादी पत्र की धारा 18 में दर्शित है? यदि हॉ तो प्रभाव?

5. Particularly a reference may be had to the issue no.7, which was dealing with the issue of applicability of the Act and hence, it was undisputedly held that the provisions of Act No.13 of 1972 was applicable over the tenement in question. But for the impact of issue on Section 20(4); **issue no.6** was considered and it was an issue dealt with as to whether the tenant would be entitled for the benefit of Section 20(4) of the Act or not? But however, the learned trial court in its finding recorded on issue no.9 has dealt with the impact of the subsequent acquisition of the property by the defendants by virtue of the sale deed, which was referred therein as to be Paper No.53 Ga, which was in consideration before the revisional court.

6. The learned trial court by the judgment dated 28.05.2011, had considered the impact of the date of first hearing because according to the argument extended by the counsel for the petitioners, the manner in which the interpretation of deposit which had made on the first date of hearing, has been given by the court below, it had been wrongly inferred, because according to him the point of determination was framed by the trial court on 20.02.2003; though in this case, that even much prior to it i.e. framing of point of determination, his tender of depositing of rent as was claimed in the notice, which was issued under Section 106 of Transfer of Property Act, was already remitted by the petitioners on 03.09.2002 and hence, the argument of the counsel for the petitioners, is that the said interpretation, which had been given, to the benefit of rejecting the notices for termination of tenancy was wrongly interpreted by the court; and was not given to the petitioners of terminating the tenancy, in the light of as to what would be

the implication and interpretation of the date of first hearing. However, the issue no.9, when it was dealt with by the Court and also recorded a finding that though it may not be quite an absolute finding, in relation to the acquisition of the property, which was also one of the ambit which was considered while interpreting the impact of the provisions contained under Section 20(4) of the Act.

7. Be that as it may. However, this judgment of the learned trial court, was ultimately put to challenge by the petitioners, in a SCC Revision and the revisional court while dealing with this revision, has confined its finding with regards to the implications contained under Section 15 Rule 5, as made applicable, by the State amendment, which applied to the State of U.P., and now in Uttarakhand also after its bifurcation in view of the provisions contained under Section 87 of the Re Organization Act.

8. The argument of learned counsel for the petitioners, is that the interpretation given by the courts to the impact of Order 15 Rule 5, with regards to the continuance of deposit of rent, as it had been made is perverse because according to him, his argument and case is that the rent was continued to be paid; even during the proceedings of the case before the court below, which has been argued to the contrary by the learned counsel for the respondents/landlord his case was that in fact, after 31.08.2002, the petitioners/tenants had not remitted any rent and as such, since there was a snapping of the remittance of rent after 31.08.2002, in that eventuality, the striking of defence as contemplated under Order 15 Rule 5

of C.P.C. was rightly attracted by the revisional court. This Court is of the view that so far as the aspect of striking of the defence is concerned under Order 15 Rule 5, then the issue would be as to whether, it would also entail empower the revisional jurisdiction, of venturing into the matter on its merits, while deciding the revision itself, because it happens to be a provision, which entails a consideration of both facts and evidence both and rather a per the judicial precedents, it is a provision, which read to be in parlance with the provisions contained under Section 96 of the Code of Civil Procedure. Apart from it, if the revisional court's judgment, which is impugned in the present writ petition, is taken into consideration, there is no finding recorded in relation to the aspects of issue no.9, which was dealt by the Judge, Small Causes, with regards to the impact of an acquisition of the property by the petitioners/tenants during the pendency of the suit, which was an issue dealt with by the learned trial court.

9. On that limited count itself that the revisional court has not dealt with all the aspects, which were the subject matter of consideration before the learned trial court; for eg.

(a) with regards to Order 20 Rule 4 i.e. the effect of deposit to be made on the first date of hearing,

(b) also with regards, to as to what implication will 20(4) of the Act, No.13 of 1972 would have with regards to the subsequent acquisition of property by the tenants

(c) as to whether the implications of Order 15 Rule 5 of C.P.C. striking of a defence, would itself entail deciding the revision itself

on its merit has not been appropriately dealt with by the revisional court and as such, on that limited count itself, this writ petition is partly allowed. The judgment of the revisional court dated 07.10.2013 is hereby quashed.

I. While upholding the judgment of the trial court, which will be still a subject matter to be considered in a revision, which is in pursuance to today's order, is directed to be decided on its own merit. However, the revisional court will return its finding while considering the aspect pertaining to Section 20 (4) of the Act i.e. the deposit to be made on the first date of hearing.

II. The impact of Section 20(4) of the Act, once again with regards to the effect of the acquisition of the property by the tenants at a later stage.

III. As to what implications would the provisions of Order 15 Rule 5 will have over a revision, which itself entails a striking of a defence, in an event of non remittance of continued rent during the pendency of the proceedings.

10. Apart from above, the revisional court is directed to decide the said revision exclusively on its own merits, within a period of six months from the date of the receipt of certified copy of the judgment. Accordingly, the writ petition partly succeeds. The matter is remanded to the revisional

court for its fresh decision. However, there will be no order as to cost.

(Sharad Kumar Sharma, J.)
18.12.2020

Arti