2023 INSC 323

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1874 OF 2015

MAN SINGH **... Appellant**

Versus

SHAMIM AHMAD (DEAD) THR. LRS. **...Respondent(s)**

J U D G M E N T

SUDHANSHU DHULIA, J.

1. This is a tenant's appeal, arising out of rent and eviction proceedings from a Small Causes Court. The landlord's suit for eviction was allowed and the tenant's J.S.C.C. Revision and Writ Petition respectively have been dismissed. Leave was granted by this Court on 11.2.2015 and the impugned order was stayed, subject to certain conditions.

2. The premises in question is a shop situated in Kotla, Gangoh-Town, Nukur-Tehsil, District-Saharanpur, Uttar

Pradesh (hereinafter referred to 'premises') which was given on rent to the present appellant on 06.01.1982 on a monthly rent of Rs. 165/- per month. Later, the rent was increased to Rs. 195/- p.m. and then from 01.01.1990 onwards to Rs. 250/- p.m. This is the admitted position. We must, however, record here that the landlord's claim of the rent being further increased up to Rs.300/- per month was denied by the tenant though the Trial Court and the Revisional Court have given their findings on the enhanced rent, in favour of the landlord.

3. The appellant's case is that he was a tenant in the shop, on a monthly rent of Rs.250/- per month. In June, 1993, the landlord refused to accept the rent which was then paid by the tenant through money order which was returned with an endorsement of refusal. Under these circumstances when the rent was being refused by the landlord, the tenant started depositing the rent in the Court of Civil Judge (Junior Division) (hereafter referred to as 'Court'). An amount of Rs.750/- which at the rate of Rs.250/- per month was the rent for May, June and July which was thus deposited, and continued to be deposited in the Court, by the tenant.

4. A notice was given by the landlord on 05.04.1995, admittedly received by the tenant/appellant on 10.04.1995, where the landlord demanded rent from May, 1993 onwards. The notice did not result in the deposit of the rent before the landlord and consequently the landlord filed a J.S.C.C. Suit No.179 of 1995, in the Court of Judge, Small Causes, Saharanpur for arrears of rent and eviction, on the grounds of arrears of rent from 01.05.1993 onwards. In the plaint it was alleged by the landlord that though earlier the monthly rent of the shop was Rs.250/- per month but later through an oral settlement in the year 1993, it was agreed between the parties that there shall be an increase of Rs.25/- per month every year and therefore it became Rs.275/- per month from 01.05.1993 onwards and Rs.300/- per month from 01.05.1994 onwards etc., and thus, the tenant-appellant was in default of rent. Since this rent has not been paid the tenancy stands terminated on notice already served and hence the landlord sought an order of eviction.

5. In his reply the appellant denied that there was any oral agreement between the parties for yearly enhancement of rent by Rs.25/- per month. The actual and admitted rent is

Rs.250/- per month, which is being duly paid in court since May, 1993, and continuously being deposited thereafter and the tenant has never been at any point of time a defaulter for the payment of rent. At this juncture, it is necessary to refer to the provision of law which is applicable in the present case. The statute which governs the field is 'The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act No. 13 of 1972").

6. Under Section 20 Sub-section (2) a suit for eviction of a tenant from a building can be instituted, *inter alia*, on the grounds given in sub-section 2 (a) of Section 20 reads as follows:

> *"(2) A suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the following grounds, namely:*
>
> *(a) that the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand:"*

The ground of non-payment of rent by the tenant therefore has to be for not less than 'four months' and which has not

been paid within one month of service of demand of the notice. Moreover, even when this rent is not paid and the landlord files his suit for eviction, the law provides yet another opportunity to the tenant to unburden this liability, which is by payments of the entire rent and arrears, before the first hearing of the suit. This is in sub-section (4) of Section 20 which reads as under:

> *"20(4). In any suit for eviction on the ground mentioned in clause (a) of sub-section (2), if at the first hearing of the suit the tenant unconditionally pays or [tenders to the landlord or deposits in court] the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's cost of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under sub-section (1) of Section 30, the Court may, in lieu of passing a decree for eviction on the ground, pass an order relieving the tenant against his liability for eviction on the ground:*
>
> > *Provided that nothing in this sub-section, shall apply in relation to a tenant or any member of the whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same*

city, municipality, notified area or town area.

[Explanation.- For the purposes of this sub-section-

(a) the expression "first hearing" means the first fate for any step or proceeding mentioned in the summons served on the defendant;

(b) the expression "cost of the suit" includes one-half of the amount of counsel's fee taxable for a contested suit.]"

As we have already referred above the case of the appellant/tenant has been that on refusal of the landlord to receive the rent, he was constrained to deposit the same in the "Court". The Act No. 13 of 1972 provides under Section 30, an avenue for the tenant to deposit rent in court, *inter alia,* in the event such rent is being refused by landlord the.

*"**30. Deposit of rent in Court in certain circumstances**.-*
(1) If any person claiming to be a tenant of a building tenders any amount as rent in respect of the building to its alleged landlord and the alleged landlord refuses to accept the same then the former may deposit such amount in the prescribed manner and continue to deposit any

rent which he alleges to be due for the any subsequent period in respect of such building ***until the landlord in the meantime signifies by notice in writing to the tenant his willingness to accept it****.*

(2) Where any bona fide doubt or dispute has arisen as to the person who is entitled to receive any rent in respect of any building, the tenant may likewise deposit the rent stating the circumstances under which such deposit is made and may, until such doubt has been removed or such dispute has been settled by the decision of any competent Court or by settlement between the parties, continue to deposit the rent that may subsequently become due in respect of such building.

(3) The deposit referred to in sub-section(1), or sub-section (2) shall be made in Court of the Munsif having jurisdiction.

(4) On any deposit being made under sub-section(1), the Court shall cause a notice of the deposit to be served on the alleged landlord, and the amount of deposit may be withdrawn by that person on application made by him to the Court in that behalf.

(5) On a deposit being made under sub-section (2), the Court shall cause notice of the deposit to be served on the person or persons concerned and hold the amount of the deposit for the benefit of the person who may be

> *found entitled to it by any competent Court or by a settlement between the parties and the same shall be payable to such person.*
>
> *(6) In respect of a deposit made as aforesaid, it shall be deemed that the person depositing it has paid it on the date of such deposit to the person in whose favour it is deposited in the case referred to in sub-section (1) or to the landlord in the case referred to in sub-section (2).”*
>
> (***emphasis provided***)

7. The case of the landlord is that after the notice dated 05.04.1995 was served on the tenant (on 10.05.1995), and he refused to pay the rent within the stipulated period of one month, his tenancy stood terminated and he had therefore filed a suit for eviction before the Judge, Small Causes Court, Saharanpur for his the eviction. The position of the tenant throughout has been that there was no occasion for him to deposit the rent on receiving the notice dated 10.05.1995, or on the first hearing under Section 20(4) of the Act, for the simple reason that he had never defaulted in payment of rent as the entire rent at the rate of Rs. 250/- per month was being deposited by him in the Court under Section 30 of the Act. The Judge, Small Cause Court gave a finding that the

tenant was in arrears of rent, holding that the rent was Rs.300/- per month and not Rs.250/- per month which admittedly has never been deposited anywhere, and consequently a decree of eviction and recovery of rent was passed against the tenant. The tenant then filed JSCC Revision before the District Judge, Saharanpur which was dismissed on 31.07.2003 and so was his writ petition, later by the Allahabad High Court on 17.02.2012.

8. The Allahabad High Court though, has set aside the findings of the Trial Court and the Sessions Court, on the enhanced rent. The High Court held that there was no evidence before the trial Court of any 'oral agreement' set up by the landlord, which provided for a periodical increase of rent from Rs. 250/- per month to Rs. 275/- per month, and then to Rs.300/- per month, and so on. Since the so-called oral agreement between the parties was not proved, it would be deemed that the correct rent between the parties was Rs. 250/- per month, which was being paid by the tenant in the Court under Section 30 of the Act.

9. The High Court then proceeded to decide the legal position post notice dated 05.04.1995. Section 30 of the Act

provides that the deposit may be made in the Court on refusal of the rent by the landlord, but this position only lasts till the landlord expresses his willingness to receive the rent. This willingness to receive the rent has to be seen in his notice dated 05.04.1995 received on 10.05.1995, by the tenant. The High Court dealt with this aspect and held that once the notice of demand was sent to the tenant by the landlord on 05.04.1995 (received by the appellant on 10.04.1995), demanding a rent at the enhanced rate, then the tenant had no option but to deposit the rent before the landlord, as against depositing it in the Court. He could though deposit the admitted rent (i.e. Rs.250/-) and not the enhanced rent (Rs.300/-), but the deposit had to be made to the landlord.

10. This was not done and the defence of the tenant that he continued to deposit the "admitted rent" in the Court will not come to his rescue as once the landlord had expressed his willingness to accept the rent, which was expressed in his notice of demand dated 05.04.1951 then such a rent was liable to be given to the landlord and not in the Court. We are of the considered view that the reasoning given by the

learned Single Judge of Allahabad High Court, which follows a Full Court judgment of the High Court, correctly lays down the law. Section 30 gives an opportunity to the defendant to deposit the admitted rent in Court, but this arrangement lasts only till the landlord expresses his willingness to receive the rent directly.

11. Let us again examine sub-section (1) of Section 30 under which the tenant can deposit rent in the Court. The above provisions have already been referred above, but we would like to emphasize the last few lines of the provision which says:

> ***'...until the landlord in the meantime signifies by notice in writing to the tenant his willingness to accept it'***

In other words, the tenant can only deposit rent in the Court, as long as the landlord has refused to accept the rent. Once the landlord expresses his willingness to accept the rent, which in the present case he does by serving the notice dated 05.04.1995 (received on 10.04.1995), the tenant has no option but to deposit the rent to the landlord. This has not been done by the appellant.

12. The Full Bench decision of which reference has been given by the Allahabad High Court in its impugned judgement dated 17.02.2012 is ***Gokaran Singh*** *v.* ***I^st^ Additional District and Sessions Judge, Hardoi and Ors.***[1] There were three questions before the Full Bench, all of them were relating to the Act No.13 of 1972. One of the questions with which we are presently concerned was:

> "*In a case where the landlord had earlier been refusing to accept rent at the correct rate and had been claiming rent at higher rate and the tenant had as a consequence of landlords earlier refusal in the past, deposited the rent in Court under Section 30 and thereafter, landlord serves a formal notice of demand again at a higher rate, whether the tenant without tendering rent at the correct rate to the landlord has a right straight away to deposit the same under Section 30 (1).*"

After discussing the entire law on the subject, the conclusion derived by the Full Bench to this question is as follows:

> *37. (2) If the landlord has been refusing to accept the rent at the correct rate and has been claiming rent at higher rate, the tenant as a consequence of landlord's earlier refusal in the past, deposited the rent in the Court under Section 30 and if*

[1] 2000 SCC OnLine All 174

> *thereafter landlord serves formal notice to of demand against the higher rate and expresses his willingness to accept the rent, the tenant after receipt of notice is under an obligation to tender the rent at least at the rate admitted to him to the landlord and has got no right to straight away deposit the same under Section 30(1) of the Act."*

13. The learned counsel for the appellant Sh. U.K. Uniyal, would rely on a later decision of this Court which is ***Ajai Agarwal and Ors.*** *v.* ***Har Govind Prasad Singhal and Ors.***[2]. We are afraid that the facts of the said case were entirely different. In the case cited above, the tenant was given the benefit of sub-section (4) of Section 20 of the Act, as he had deposited the "admitted rent" before the first date of hearing. The question before the Court was whether in order to get the benefit of sub-section (4) of Section 20 the tenant was liable to deposit the enhanced rate of rent as claimed by the landlord, or will he be relieved of the liability if he deposits the admitted rent. This court was of the opinion, which was in fact the settled position of law, that in case a tenant deposits the admitted rent, under sub-section 4 of

[2] (2005) 13 SCC 145

Section 20, he would get the benefit. Paragraph 19 of the above cited judgement clears this position.

> *19. In the absence of any proper evidence regarding the purported agreement for periodical enhancement of the rents, it becomes difficult to accept the story of such agreed enhancement as made out on behalf of the landlord or its application to the provisions of Section 20(4) of the Act. Since there is no such evidence on record, except for the uncorroborated statement of the landlord, we have no other option but to accept the story of the appellant tenants that the parties had agreed to the increase of the monthly rent up to a maximum of Rs 100 per month and that too after the renovation had been effected to the shop room and a shutter had been fixed therein. If such be the case, the appellants would also be entitled to the protection of Section 20(4), since the rents admitted to be in arrears at the rate of Rs 100 per month had been duly deposited by the tenant within the time prescribed under such provision of the Act.*

14. The learned counsel of the appellant Shri Uniyal, sought to draw a parallel with the said case and would argue that in the present case as well the tenant has been depositing the admitted rent. However, as we have already noticed the facts of the two cases are entirely different. The above case therefore has no application to the present case.

15. We therefore find no merit in the appeal which is hereby dismissed. All interim Orders shall stand vacated.

.....J.
[ANIRUDDHA BOSE]

.....J.
[SUDHANSHU DHULIA]

New Delhi.
April 05, 2023.