

Subhash Chand Jain

Vs

First Additional District And Sessions Judge, Saharanpur and Four Others

Civil Appeal No. 1728 Of 1989

(CJI R. S. Pathak, M. M. Dutt, M. H. Kania JJ)

24.02.1989

JUDGMENT

PATHAK, C.J. –

1. Special leave granted.
2. This tenant's appeal by special leave arises out of a suit for ejectment and recovery of arrears of rent and damages.
3. The suit was brought by the respondents who claimed that a shop owned by them had been let to the appellant, that the appellant had fallen in arrears of rent from February 1, 1968 and had not paid the arrears, notwithstanding a notice of demand dated January 8, 1975 served on the appellant. The suit was decreed ex parte by the trial court and the decree was set aside by the first appellate court. In writ petition before the High Court, it was urged on behalf of the appellant that the appellant had deposited the arrears of rent under sub-section (4) of Section 20 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, and that therefore the court should have made an order relieving the appellant against his liability for eviction on the ground of arrears of rent. The High Court noted that the suit was filed on February 12, 1975 and as the appellant did not appear on April 4, 1975, the day fixed in the summons, the suit proceeded ex parte and was decreed. The High Court also noticed that upon subsequent application made by the appellant the ex parte decree was set aside on March 24, 1977, and on May 30, 1977, the fresh date now fixed, the appellant made a deposit of Rs. 2912 accompanied by an application stating that the said date was the first date of hearing and he was making a deposit of the entire arrears of rent. The appellant first stated that he was not obliged to deposit the entire arrears of rent as they were barred by time. However, the appellant prayed for amendment of his pleadings. On September 29, 1977, the appellant sought to deposit the time-barred arrears also and got the tender passed for that purpose. In pursuance of the tender the amount was deposited on October 1, 1977. The amendment application was allowed but, when the matter came before the learned First Additional District Judge, he took the view that the appellant had failed to comply with the conditions of sub-section (4) of Section 20 of the Act. He held that August 30, 1977 was the date of first hearing in the suit within the meaning of sub-section (4) of Section 20. He recorded that the parties did not dispute that the time-barred arrears claimed by the respondents were also required to be deposited under sub-section (4) of Section 20. As the time-barred arrears had been deposited by the appellant on October 1, 1977 only, the High Court took the view that entire arrears of rent had not been deposited on or before the date of first hearing. The High Court declined to go into the further question whether the deposits made by the appellant on October 1, 1977 ought to relate back to September 29, 1977. In the result the High dismissed the writ Petition.

4. We have heard learned counsel for the parties and we see no reason to take a different view from that adopted by the High Court. The High Court was plainly right in holding that August 30, 1977 was the date of first hearing in the suit. As the suit was in the nature of a small cause suit, and as the Provincial Small Causes Courts Act did not contemplate the fixation of any date for settlement of issues, it must be taken that August 30, 1977 was the date of first hearing in the suit, and inasmuch as the entire amount due as arrears of rent had not been deposited within time, the High Court was right in dismissing the writ petition.

5. Accordingly the appeal is dismissed but there is no order as to costs.

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