SUPREME COURT OF INDIA

Shyam Lal

Vs.

Rasool Ahmed (Dead) By Lrs.

(R Lahoti and B Agrawal JJ.)

09.04.2002

ORDER

1. The suit premises are non-residential situated in Sitapur city of the State of Uttar Pradesh. Proceedings for eviction of tenant were initiated by the landlord in the court of munsif exercising small causes jurisdiction on the ground available under Clause (a) of Sub-section (1) of Section 3 of the *U.P. (Temporary) Control of Rent and Eviction Act, 1947* (hereinafter referred to as 'the 1947 Act' for short) alleging that the tenant was in arrears of rent for more than three months and failed to pay the same to the landlord within one month from date of service of the notice of demand upon him. During the pendency of proceedings the 1947 Act was repealed by *UP Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972* (hereinafter 'the 1972 Act' for short) whereunder the tenant could have escaped from the consequences of default by making deposits in the court which the tenant did not do. It is not disputed that by virtue of Section 1A of 1972 Act, building or part thereof constructed after 1.1.1951 went out of the operation of the Act. The trial court found that the tenant had tendered rent by money orders which were refused by landlord and, therefore, he could not be treated as a defaulter. It also head the construction to be of a period prior to 1.1.1951. The suit for eviction was on these findings, directed to be dismissed. The revision preferred by the landlord under Section 25 of the Provincial Small Causes Courts Act has been allowed and the district judge has reversed the judgment of the trial court and held the tenant to be defaulter, the notice to be valid and the construction of shop of a period after 1951 and hence the tenant liable to eviction. A further revision preferred by the tenant under Section 115 of the Code of Civil Procedure before the High Court has been dismissed. The aggrieved tenant has filed this appeal by special leave.

2. The learned counsel for the appellant-tenant has raised three grounds in support of her challenge to the revisional order passed by the district judge and upheld by the High Court. Firstly, it is submitted that the learned district judge was not right in holding that the suit premises were constructed after the year 1951, and therefore, the Act was not applicable. We have carefully perused the judgment of the trial court as also of the district judge. The learned district judge has found that a court commissioner was appointed to carry out the local investigation and he found that the bricks used in constructing walls of the shop had the bricks which bore the inscription of year 1959 and the bricks used in constructing the verandah in front of the shop bore the inscription of year 1959. This was a very material

circumstantial evidence pointing out to the fact that the shop was constructed in the year 1955 or thereafter and the verandah was constructed in the year 1959 or thereafter. The existence of this circumstance, which could not have been denied, was found to be more weighty than the oral evidence adduced by the defendant-tenant in proof of his plea that the shop was constructed sometime in the late forties and tilted the balance. On the evidence and material available on record we are satisfied that the learned district judge was fully justified in interfering with the findings of fact recorded by the trial court to the contrary and which were clearly perverse. Section 1(A) of the 1972 Act provides, "Nothing in this Act shall apply to any building or part of a building which was under erection or was constructed on or after 1st January, 1951". As the shop and the verandah both were constructed after 1st January, 1951 the protection under the Act was not available to the tenant and he has been rightly held not entitled to it.

3. It was next submitted by the learned counsel for the appellant that the notice served by the landlord on the tenant prior to the initiation of the proceedings was illegal and assuming that the Act was not applicable to the suit premises still the landlord's claim for eviction should have been dismissed on the ground of invalidity of the notice, which, in the absence of rent control law being applicable should have satisfied the requirement of Section 106 of Transfer of Property Act. It is submitted by the learned counsel that copy of the notice filed by the landlord in the court did not bear the signature of the counsel issuing the notice, and therefore, the notice was invalid being an unsigned one. This submission too is liable to be rejected. Firstly, the plea as to the invalidity of the notice, on the ground and in the manner it is sought to be raised before this Court, was not urged before the trial court. A plea as to invalidity of notice was not specifically taken in the written statement filed in the trial court by setting out the ground of invalidity. Secondly, the receipt of the notice is admitted. If it is the case of the tenant-defendant that the notice was not signed by the landlord or his counsel then it was for the tenant to have produced the notice from his possession in the court to show that it was an unsigned notice and hence invalid. That was not done. Obviously because the tenant did not produce the notice which was in his possession, the landlord tendered the copy thereof in the court by way of secondary evidence. In such facts and circumstances the plea as to invalidity of the notice is not available to be urged by the tenant at all.

4. Lastly, it was submitted that the district court exercising revisional jurisdiction did not have jurisdiction to interfere with the findings of fact arrived at by the trial court. This submission is also liable to be rejected. Firstly, it was a revision preferred under Section 25 of the Provincial Small Causes Courts Act, the jurisdiction whereunder is not so limited as it may be under Section 115 of the Code of Civil Procedure. Secondly, as we have already pointed out the learned district judge had assigned convincing reasons for arriving at a finding different from the one arrived at by the trial court and on the material available on record the district judge though exercising revisional jurisdiction was fully justified in interfering with findings of fact arrived at by the trial court which overlooked the weighty relevant material available on record and clinching the issue.

5. For the aforesaid reasons we find that the appeal is devoid of any merit and is liable to be dismissed. However, looking to the fact that the tenant has been in pos session of the premises for a long time and sudden eviction may put him to serious in convenience, it is directed that the decree for eviction shall not be executed for a period of six months from today subject to the tenant clearing all the arrear of rent upto date and filing the usual undertaking, for giving vacant and peaceful possession over the premises to the landlord at the end of six months. Both the conditions to be ful filled within a period of four weeks from to day, No order as to costs.