

SUPREME COURT OF INDIA

Ram Krishna Singh

Vs.

Thakurji Shivji

C.A.No.1709 of 2006

(Aftab Alam and Chandramauli Kr. Prasad JJ.)

07.10.2010

ORDER

1. Heard Ms. Tulika Mukherjee, counsel for the appellants and Ms. Swati Sinha, counsel appearing for the respondent.
2. This is a tenants' appeal arising from a suit for eviction and arrears of rent under the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short 'the Act').
3. The suit was filed in the year 1975 against the original tenant Kali Prasad, whose heirs and legal representatives are now the appellants before this Court. It was decreed ex-parte on September 25, 1975.
4. When the decree was put to execution, the tenant filed an application under Order IX, Rule 13, on October 7, 1 1978 for setting aside the ex-parte decree. This petition was dismissed by the Judge, Small Causes Court, Gorakhpur. In course of the proceedings before the Small Causes Court, Kali Prasad had died and was substituted by his heirs and legal representatives (the present appellants). They took the matter in revision. The Additional District Judge, Gorakhpur, allowed the revision by order dated January 31, 1983 holding that the summons in the suit were actually not served on Kali Prasad and hence, the ex-parte decree was liable to be set aside. Ten days later, on February 10, 1983, the tenants deposited all the arrears of rent in court. Over two and a half years later, on December 13, 1985, the record of the case was received back in the Small Causes Court and the proceedings in the suit were resumed before the Small Causes Court on January 3, 1986. At that stage, a petition was filed on behalf of the respondent- landlord for allowing the suit and directing the eviction of the tenants on the ground that the arrears of rent had not been paid on the first date of hearing. The Small Causes Court did not accept the petition and proceeded with the suit. Finally, on February 19, 1988 it decreed the suit for recovery of 2 arrears of rent but dismissed it in regard to the relief for eviction holding that the tenants were entitled to the protection under Section 20(4) of the Act.

5. In revision, preferred by the respondent, the Revisional Court held that the appellants-tenants were not entitled to the protection of Section 20(4) of the Act and were liable to be evicted for non-deposit of the arrears of rent on the first date of hearing. It, accordingly, allowed the revision and passed the order of eviction.

6. The appellants challenged the order passed by the Revisional Court in a writ petition filed before the High Court, which was eventually dismissed and they then brought this matter to this Court.

7. Ms. Mukherjee, learned counsel contended that the High Court and the Revisional Court were seriously in error in taking the view that the arrears of rent ought to have been deposited at the time of the filing of the petition under Order IX, Rule 13 for recall of the decree. She submitted that the summons of the suit issued by the Small Causes Court were not received by Kali Prasad, as held and found by the 3 Revisional Court, while setting aside the ex-parte decree. Therefore, the date mentioned in the summons for the appearance of the tenant and the first date of hearing of the case had no application to the facts of the case. She further submitted that in the facts of this case, the deposit of the arrears of rent within a few days of the setting aside of the ex-parte decree and long before the proceedings in the suit resumed must be deemed to be complete compliance with the requirement of Section 20(4) of the Act. In support of the submission, she relied upon decisions of this Court in (i) *Siraj Ahmad Siddiqui v. Prem Nath Kapoor*¹, (paragraphs 13, 15 & 16); (ii) *Advaita Nand v. Judge, Small Causes Court, Meerut & Ors.*², (paras 7,8 & 11); (iii) *Sudershan Devi & Anr. v. Sushila Devi & Anr.*³, (paras 14, 21, 27 & 31) and (iv) *Ashok Kumar & Ors. v. Rishi Ram & Ors.*⁴, (paras 6, 7 & 8).

8. The submissions made by Ms. Mukherjee, cannot be said to be entirely without substance and may call for a consideration by this Court in an appropriate case. In the facts of this case, however, we are not inclined to exercise our jurisdiction under Article 4 136 of the Constitution in favour of the appellants.

9. It is noted above that the respondent's suit was originally decreed ex-parte on September 25, 1975 and the petition for setting aside the decree was made on October 7, 1978. The ex-parte decree was finally set aside on January 31, 1983. We may discount the eight years, thus, wasted because there is the finding of the Revisional Court that the summons in the suit were not served on Kali Prasad, the defendant-tenant.

10. But the conduct of the appellants in course of the later proceedings disentitles them from any relief.

11. It is noted above that the appellants challenged the order of their eviction passed by the Revisional Court in a writ petition (Civil Misc. Writ Petition No.8301 of 1991) filed before the Allahabad High Court. That writ petition was first dismissed for default on March 11, 2002. The dismissal of the writ petition revived the execution proceedings instituted on the

basis of the order of the Revisional Court and the respondent-landlord got the possession of the suit premises on May 31, 2002. Thereafter, the writ petition was restored by order dated September 5, 2002. It was dismissed for a second time, once again for default on September 1, 2003, but was again restored by order dated October 22, 2003. It was finally dismissed on merits by the impugned order passed on July 13, 2004.

12. The way the proceedings took place before this Court is not very different. The present appeal too was dismissed for non-prosecution by order dated April 8, 2010 and it was later restored by order dated May 14, 2010.

13. It is, thus, obvious that the appellants have conducted the proceedings in this case with complete lack of seriousness and in a highly cavalier manner.

14. It is true that in this appeal an interim order was passed directing the respondent not to create any third party interests in the suit premises during the pendency of this appeal, but this order was passed on March 20, 2006. The respondent had got possession of the suit premises on May 31, 2002, that is to say about four years earlier. It is not known whether or not the suit premise was rented out in the meanwhile.

15. If it was in fact let out on rent to a third party, any order passed in this case in favour of the appellants-tenants is bound to create further complications. Even otherwise it would appear that the respondent is held to ransom for the past more than six years for absolutely no fault on his part but simply because of the laches on the part of the appellants.

16. Ms. Mukherjee submitted that there was no laches or negligence on the part of the appellants and the writ petition before the High Court and the appeal before this Court were dismissed due to oversight on the part of the concerned lawyers. We are unable to accept this as sufficient justification for penalizing the respondent.

17. In the facts of this case, as noted above, we are not inclined to pass any order in favour of the appellants. The appeal is dismissed leaving the question of law raised by Ms. Mukherjee open.

18. Before parting with the record of the case, we would like to record our appreciation for both Ms. Tulika Mukherjee and Ms. Swati Sinha, counsel for the appellants and respondent, respectively, for the assistance rendered by them to the Court.

¹(1993) 4 SCC 406

²(1995) 3 SCC 407

³(1999) 8 SCC 31

⁴(2002) 5 SCC 641