SUPREME COURT OF INDIA

Mohammad Ahmad & Anr.

Vs.

Atma Ram Chauhan & Ors.

C.A.No.4422 of 2011

(Dalveer Bhandari and Deepak Verma,JJ.,)

13.05.2011

JUDGMENT

Deepak Verma,J.,

SLP(Civil)No.6319 of 2007

1. Leave granted.

2. One half of the lis between landlord and tenant would not reach courts, if tenant agrees to pay the present prevalent market rate of rent of the tenanted premises to the landlord. In that case landlord would also be satisfied that he is getting adequate, just and proper return on the property. But the trend in the litigation between landlord and tenant shows otherwise. Tenant is happy in paying the meagre amount of rent fixed years ago and landlord continues to find out various grounds under the Rent Acts, to evict him some how or the other. This case appears to be another classic example of the aforesaid scenario.

3. Thumb nail sketch of the facts of the case are mentioned hereinbelow:-

> "Appellants herein are the tenants of two shops admeasuring 10x12 feet each, equivalent to 240 sq. ft., situated at National Highway Chakrata Saharanpur (U.P.). The map attached alongwith counter affidavit of the Respondent Nos. 1 to 3 (which is not disputed by the Appellants) shows that these shops are part of the building known as Jaitpur Sadan, now coming under commercial area. As per the sketch on record, it is bounded by 110 ft. wide National Highway to the east, a 90 ft. wide Town Hall Road to the west, a 20 ft. by lane to the south, and nothing is shown and no construction appears to be there in the north. In all, Jaitpur Sadan has five shops of the same size facing east and four shops of the same size and one adjoining mini-store (which is probably another smaller shop) and staircase for reaching first floor, facing west."

4. Earlier when the abovementioned Jaitpur Sadan was constructed, it appears that the same was about 20 Kms. away from the city of Saharanpur. Now with the passage of time, the outer limits of the city have grown and have come to include the said building. Thus, it can be called a commercial area.

5. Respondent No. 1 who was working as the Medical Officer at Zila Parishad, Saharanpur retired on 31.07.1992. For his personal bonafide need he needed these two small shops, i.e. an east-facing room (for consultation and setting up medical equipment) and an adjoining west-facing room (to serve as a waiting room for patients). The sketch map shows that one of the shops facing western side is already in his occupation. He had requested both Appellant No.1 and Respondent No.4, Shri Md. Ahmad Iqbal, respectively, for release of any one pair of shops, but neither of the two acceded to his request.

6. Thus, he filed an application under Section 21(1)(a) of the U.P. Act No. 13 of 1972 (hereinafter shall be referred to as the 'Act') against the Appellants/Tenants as well as the Respondent No.4 praying for release of any one pair of the said two pairs of shops in his favour. At that time the Appellants were paying rent at Rs. 40 and Rs. 20/- (total Rs. 60/- per month) for the pair of shops in their possession.

7. The matter was contested by the Appellants before the Prescribed Authority/IV Additional Civil Judge, Saharanpur, whereby and whereunder the said authority allowed the application of Respondents Nos.1 to 3 - landlords and on a comparative assessment of facts and circumstances, released the property (shown as Item A in the Map annexed) in which Respondent No.4 was a tenant, in their favour.

8. Feeling aggrieved thereof Rent Control Appeals were preferred by both the parties, i.e., Respondent Nos.1 to 3 - landlords and Respondent No.4 before Additional District Judge, Saharanpur. Vide judgment and order dated 24.08.2004, the Appellate Court upheld the decree of the IV Additional Civil Judge, Saharanpur but modified it, to the extent that the pair of shops in tenancy of present Appellants be released (shown as Item B in the Map annexed), instead of the pair of shops in the possession of Respondent No.4 as decreed by the Trial Court, and furthermore, they were directed to deliver peaceful and vacant possession thereof to the Respondent Nos. 1 to 3, within one month from the date of the said order. Thus, the order of release passed by Prescribed Authority came to be partially modified by the Appellate Authority in as much as the order of release for two shops in their favour was maintained.

9. Thus, unsatisfied and feeling aggrieved thereof the Appellants preferred Civil Miscellaneous Writ Petition No. 39727 of 2004 before learned Single Judge of the High Court of Judicature at Allahabad. It appears while considering the application for stay, the learned Single Judge directed that the Appellants will not be dispossessed from the shops in dispute provided, w.e.f. September, 2005 onwards they pay the Respondent Nos. 1 to 3, rent at the rate of Rs. 600/- per month by 7th of each succeeding month. In case of two defaults, the stay order would stand vacated automatically. Non-payment of rent may also be a ground

for dismissal of the writ petition. The said order was passed by learned Single Judge in the Appellants' Writ Petition on 14.09.2005.

10. It appears that the said writ petition continued to be pending before learned Single Judge. The same matter again came up for hearing before another learned Single Judge on 13.02.2007. On the said date learned counsel for Respondent Nos. 1 to 3 submitted that the rent of the shops is too meagre looking to the present rent available for other similarly situated shops,so a prayer was made that it be increased reasonably according to market rate. On this offer being made, learned counsel appearing for the Appellants submitted that the case for enhancement of rent may be considered by the court according to the condition, location and situation etc. of the tenanted shops. It was further submitted by the learned counsel for the Appellants that in case Appellants are evicted from the disputed shops then they would suffer irreparable loss and injury. Lastly, it was contended by them that even though many accommodations are available nearby but none would be available at the rent, which is being paid presently by Appellants to landlords.

11. In the light of aforesaid offer having been made by the Respondents and duly considered by the Appellants, the learned Single Judge thought it fit to enhance the rate of rent from Rs. 600/- per month for both the shops to Rs. 2100/- per month, payable from February 2007.

12. Even though, the Appellants' writ petition was kept pending and directed to be listed in the month of July, 2007 for reporting compliance of the aforesaid directions, the Appellants feeling aggrieved thereof have preferred this appeal on variety of grounds.

13. We have accordingly heard Mr. Dinesh Kumar Garg for the Appellants and Mrs. Rachna Gupta and Mr. R.C. Kaushik for the Respondents and perused the record.

14. The first thrust of the arguments of learned counsel for Appellant was that the rent having been enhanced to Rs. 600/- per month only on 14.09.2005, no case was made out for further enhancement from Rs. 600/- to Rs. 2100/- per month vide the impugned order dated 13.02.2007, within two years thereof. It was then submitted that this Court has deprecated severely the practice of enhancement of rent in petitions filed under Articles 226/227 of the Constitution of India, during the pendency of those petitions on merits in the High Court, that too without any valuation report. To advance contention in this regard, several unreported orders of this Court have been placed before us. They are judgment and order dated 19.01.2009 passed in Civil Appeal No. 316 of 2009 titled Md. Iqbal Vs. Atma Ram & Ors.;order dated 03.01.2008 passed in Civil Appeal No. 14 of 2008 titled Md. Safi (D) Th. his LRs. & Ors. Vs. Sri Farhat Ali Khan and order dated 20.10.2008 passed in Civil Appeal No. 6171 of 2008 titled Sadan Gopal Gautam Vs. Sushila Devi & Ors.

15. Critical scrutiny of the aforesaid judgments/ orders would show that in these cases neither there was any offer made by the landlord nor any corresponding acceptance by the tenant, still the High Courts, in each of these cases, had enhanced the rates of rent unilaterally. But in the case in hand it is clearly reflected that Respondents-landlords made an offer to the Appellants/tenants which they agreed, only thereafter the rent was enhanced from

Rs. 600/- per month to Rs. 2100/- Mper month, for both the shops. Thus, the ratio of the aforesaid judgments cited by learned counsel for Appellants has no application to the facts of the present case.

16. On the other hand learned counsel appearing for Respondents strenuously contended that building known as Jaitpur house, with the passage of time has come within the market area of Saharanpur and can therefore be called as falling within the meaning of commercial area. It was also contended that looking to various factors such as the nature of construction, its prime location in the city, being situated on the main highway, and thus having easy accessibility to it and the availability of all other amenities and facilities etc. even the rent fixed by learned Single Judge at the rate of Rs. 2100/- per month for both the shops is on the lower side and too meagre. According to her, the total area under occupation of the Appellants would be 240 sq. ft. and with the rent fixed at Rs.2100/-, the rent would come to Rs.87.50 per sq. ft. This according to her is too low, keeping in mind the present trend and the prevalent market rate of rent. She thus submitted that no case for interference is made out and the appeal being devoid of merit and substance deserves to be dismissed.

17. Thus, looking to the matter from all angles we are of the considered opinion that the rent as has been fixed by the learned Single Judge for the two shops having total area 240 sq. ft. to Rs. 2100/- per month is not only reasonable but would be just and proper. Any enhancement in rent will not ipso facto be deemed to be unreasonable and exorbitant, unless the party aggrieved is able to give cogent reasons for the same. In this context, we may profitably refer to the judgment pronounced by this Court, reported in (2005)1 SCC 705 titled Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd. The relevant portion thereof is reproduced hereinbelow:-

> "In the case at hand, it has to be borne in mind that the tenant has been paying Rs. 371.90/- rent of the premises since 1944. The value of real estate and rent rates have skyrocketed since that day. The premises are situated in the prime commercial locality in the heart of Delhi, the capital city. It was pointed out to the High Court that adjoining premises belonging to the same landlord admeasuring 2000 sq. ft. have been recently let out on rent at the rate of Rs. 3,50,000/- per month. The Rent Control Tribunal was right in putting the tenant on terms of payment of Rs. 15,000/- per month charges for use and occupation during the pendency of appeal. The tribunal took extra care to see that the amount was retained in deposit with it until the appeal was decided so that the amount in deposit could be disbursed by the appellate Court consistently with the opinion formed by it at the end of the appeal. No fault can be found with the approach adopted by the Tribunal. The High Court has interfered with the impugned order of the Tribunal on a erroneous assumption that any direction for payment by the tenant to the landlord of any amount at any rate above the contractual rate of rent could not have been made. We cannot countenance the view taken by the High Court. We may place on record that it has not been the case of the tenant-respondent before us, nor was it in the High Court, that the amount of Rs. 15,000/- assessed by the Rent Control Tribunal was unreasonable or grossly on the higher side".

In fact, learned Single Judge has also taken note of the aforesaid judgment of this Court and only thereafter, the rental was worked out from Rs. 600/- per month for two shops to Rs. 2100/- per month.

18. No doubt, it is true that learned Single Judge has applied his own yardstick in working out the rent but only after both parties' contentions were taken into account and the said yardstick appears to be absolutely correct and perfect method of working out the present market rental of the premises.

19. Even though, the report of the valuation was not taken into consideration as there was none but the assessment and judgment of the learned Single Judge cannot be disallowed, even though detailed reasons have not been assigned by the learned Single Judge for enhancing the rate of rent because the ultimate conclusion arrived at by him does not suffer from any infirmity, illegality or perversity.

20. Thus in our considered opinion, the appeal from such an interim order of the learned Single Judge, being devoid of merit and substance deserves to be dismissed. We accordingly do so.

21. According to our considered view majority of these cases are filed because landlords do not get reasonable rent akin to market rent, then on one ground or the other litigation is initiated. So before saying omega, we deem it our duty and obligation to fix some guidelines and norms for such type of litigation, so as to minimise landlord-tenant litigation at all levels. These are as follows:-

> “(i) The tenant must enhance the rent according to the terms of the agreement or
> C.A. No.__@ SLP(C)No. 6319 of 2007 at least by ten percent, after every three years and enhanced rent should then be made payable to the landlord. If the rent is too low (in comparison to market rent), having been fixed almost 20 to 25 years back then the present market rate should be worked out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas, let out on rent recently.
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> (ii) Apart from the rental, property tax, water tax, maintenance charges, electricity charges for the actual consumption of the tenanted premises and for common area shall be payable by the tenant only so that the landlord gets the actual rent out of which nothing would be deductible. In case there is enhancement in property tax, water tax or maintenance charges, electricity charges then the same shall also be borne by the tenant only.
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> (iii) The usual maintenance of the premises, except major repairs would be carried out by the tenant only and the same would not be reimbursable by the landlord.
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> (iv)But if any major repairs are required to be carried out then in that case only after obtaining permission from the landlord in writing, the same shall be carried out and

modalities with regard to adjustment of the amount spent thereon, would have to be worked out between the parties.

(v) If present and prevalent market rent assessed and fixed between the parties is paid by the tenant then landlord shall not be entitled to bring any action for his eviction against such a tenant at least for a period of 5 years. Thus for a period of 5 years the tenant shall enjoy immunity from being evicted from the premises.

(vi) The parties shall be at liberty to get the rental fixed by the official valuer or by any other agency, having expertise in the matter.

(vii) The rent so fixed should be just, proper and adequate, keeping in mind, location, type of construction, accessibility with the main road, parking space facilities available therein etc. Care ought to be taken that it does not end up being a bonanza for the landlord."

22. These are some of the illustrative guidelines and norms but not exhaustive, which can be worked out between landlord and tenant so as to avoid unnecessary litigation in Court.

23. As mentioned hereinabove, the aforesaid appeal is dismissed with costs throughout.

24. Counsels' fee Rs. 10,000/-.