

**SUPREME COURT OF INDIA**

Sudama Devi

Vs.

Vijay Nath Gupta

C.A.No.5903 of 2012

(R.K.Agrawal and Abhay Manohar Sapre, JJ.,)

17.04.2018

**JUDGMENT**

**Abhay Manohar Sapre, J.,**

1. This appeal is filed by the legal representatives of the defendant (tenant) against the final judgment and order dated 14.03.2011 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No.17758 of 1998 whereby the High Court dismissed the petition filed by the defendant and upheld the order dated 22.04.1998 passed by the Additional District Judge-XI, Gorakhpur in Civil Revision No.15 of 1997 by which he dismissed the revision filed by the defendant and confirmed the order dated 02.08.1997 passed by the Small Causes Court in Small Cause Case No.42 of 1986.

2. In order to appreciate the issue involved in the appeal, few relevant facts need to be mentioned infra.

3. The appellants are the legal representatives of original defendant - Chandrabhan Singh - who died during the pendency of the civil suit whereas the respondents are legal representatives of Parasnath Gupta, Manager of the plaintiff-Shri Ramchander Ji, owner of the suit house.

4. The plaintiff claiming to be the landlord of the suit house filed a civil suit through his Manager against the defendant-Chandrabhan Singh for his eviction from the suit house. The plaintiff, inter alia, alleged that Chandrabhan Singh was his monthly tenant living in the suit house. It was alleged that the defendant has all along been in arrears of rent inasmuch as he failed to pay the monthly rent from January 1977 onwards to the plaintiff.

5. It was further alleged that the defendant paid a sum of Rs.656.25 to the plaintiff, which the plaintiff adjusted against part of the arrears up to May 1980. It was alleged that despite the adjustment being made, the arrears still remained unpaid and default in payment of monthly rent continued to persist and hence notice for eviction and demand of arrears of rent was given by the plaintiff to the defendant followed by filing of the civil suit claiming a decree

for eviction of the defendant from the suit house and arrears of rent against the defendant. The plaintiff sought a decree for the defendant's eviction from the suit house on the ground of non-payment of arrears of rent as specified under Section 20(2)(a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act").

6. The defendant denied the averments made in the plaint and joined issues. One of the grounds raised by the defendant was that the provisions of the Act do not apply to the suit house because the suit house is the property of the Charitable Trust.

7. Issues were framed. Parties adduced their evidence. The Trial Court by its judgment/order dated 02.08.1997 passed the decree for eviction and arrears of rent. It was held that the suit is maintainable, that the provisions of the Act are applicable, that the defendant was a defaulter in payment of monthly rent and its arrears, and that a ground under Section 20(2)(a) of the Act is made out against the defendant for his eviction from the suit house. Accordingly, the decree for defendant's eviction from the suit house was passed.

8. The defendant felt aggrieved and filed a civil revision before the Additional District Judge, Gorakhpur. By order dated 22.04.1998, the Additional District Judge dismissed the revision and confirmed the judgment and decree of the Trial Court.

9. It may be mentioned here that one question was also raised by the parties in the case, namely, whether any case under Section 20(4) read with its proviso was made out by the parties or not?

10. It was the case of the plaintiff (landlord) that the defendant is not entitled to take any benefit of Section 20(4) of the Act to avoid the decree of eviction passed against him under Section 20(2)(a) of the Act because his son, who is a member of the tenant's family, as defined under Section 3(g) of the Act, has built his own house in the same city and hence the defendant's case would fall under proviso to Section 20(4) of the Act which would make Section 20(4) inapplicable to the tenant. The defendant opposed this contention on facts stating that his son lives separately from him and hence proviso will not apply. The contention of the plaintiff was upheld by the Revisional Court (ADJ) and accordingly the eviction decree passed under Section 20(2)(a) of the Act against the defendant was confirmed by denying the defendant the benefit of Section 20(4) of the Act.

11. The defendant felt aggrieved and filed writ petition under Article 227 of the Constitution of India before the High Court. By impugned order, the Single Judge of the High Court dismissed the writ petition and upheld the order of the Revisional Court (ADJ) and also affirmed all the findings of fact recorded by the Trial Court, giving rise to filing of this appeal by the defendant (tenant) by way of special leave in this Court.

12. Heard Mr. Nagendra Rai, learned senior counsel for the appellants and Mr. Bhuvan Mishra, learned counsel for the respondents.

13. Learned senior counsel for the appellants while assailing the legality and correctness of the impugned order argued only one point.

14. Learned counsel, by referring to Sections 20(2) (a) and 20(4) of the Act, submitted that eviction decree passed under Section 20(2)(a) of the Act is always subject to ensuring compliance of Section 20(4) of the Act. Learned counsel contended that the defendant/tenant was able to prove that he is entitled to claim benefit of Section 20(4) of the Act whereas the plaintiff has failed to prove that the defendant's case fell under proviso to Section 20(4) so as to deprive the defendant from taking benefit of sub-Section (4) of Section 20 and avoid the decree for eviction passed against him under Section 20(2) (a) of the Act.

15. Learned counsel further urged that since the defendant/tenant did not construct his own house though his son constructed the house in the same city but since his son was living separately from him, the proviso to Section 20(4) of the Act had no application to the case. It was his submission that the defendant was, therefore, entitled to claim the benefit of Section 20(4) of the Act and the eviction decree passed against him under Section 20(2)(a)of the Act is liable to be set aside.

16. In reply, learned counsel for the respondents supported the impugned order and contended that it does not call for any interference.

17. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeal.

18. Section 3(g), Section 20(2)(a) and Section 20(4) of the Act which are relevant for this case read as under :

“ Section 3(g)

“family” in relation to a landlord or tenant of a building, means, his or her-

(i) spouse;

(ii) male lineal descendants

(iii) such parents, grandparents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant, as may have been normally residing with him or her, and includes, in relation to a landlord, any female having a legal right of residence in that building Section 20(2)(a)

(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:

Provided that in relation to a tenant who is a member of the armed forces of the Union and in whose favour the Prescribed Authority under the Indian Soldiers (Litigation) Act, 1925 (Act No. IV of 1925), has issued a certificate that he is serving under special conditions within the meaning of Section 3 of that Act or where he has died by enemy action while so serving, then in relation to his heirs, the words “four months” in this clause shall be deemed to have been substituted by the words “one year”.

Section 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 costs 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 that ground, pass an order relieving the tenant against his liability for eviction on that ground:

Provided that nothing in this sub-section, shall apply in relation to a tenant who or any member of 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.”

19. Reading of Section 20(4) of the Act would go to show that when a landlord files a suit against his tenant seeking his eviction from the tenanted premises on the ground of arrears of rent as specified under Section 20(2)(a) of the Act, the Court has a discretion to pass a decree for eviction against the tenant, in case the Court finds that the tenant has ensured compliance of the requirements of Section 20(4) of the Act by depositing the rent, its arrears and damages together with interest as specified therein.

20. In other words, if the Court finds that the tenant has ensured compliance of conditions specified in sub-section (4) of Section 20 of the Act at the first hearing of the suit filed by his landlord for his eviction on the ground of arrears of rent under Section 20(2) of the Act, it is the discretion of the Court to either pass a decree for eviction against the tenant or relieve him from the rigor of the eviction decree.

21. The proviso, however, provides that sub-section(4) of Section 20 of the Act will not apply, if it is proved that a tenant or any member of his family, has either built or otherwise acquired the house in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area.

22. In our opinion, in order to attract the proviso, three facts need to be proved. First, the tenant or any member of his family, as specified under Section 3(g), has either built or otherwise acquired any residential building; Second, such residential building is in a vacant state; and third, such vacant residential building is situated in the same city, municipality, notified area or town area where the suit tenanted premises is situated.

23. Once these three facts are proved, the proviso would apply against the tenant disentitling him to claim the benefit of sub-section (4) of Section 20 to avoid decree for his eviction passed against him under Section 20(2)(a) of the Act.

24. The main reason behind enacting such proviso is that the tenant, in such circumstances, would not suffer any hardship, if he is asked to vacate the tenanted premises pursuant to eviction decree passed against him on the ground of arrears of rent under Section 20(2)(a) of the Act because he or any member of his family has built house or acquired it and got its vacant possession situated in the same city. Such tenant can, therefore, shift in the house of member of the family.

25. The submission of learned counsel for the defendant (tenant) was that in cases where the tenant's son is living separately from his father(tenant) in his own house then such tenant cannot be made to suffer the eviction decree once he complies with the requirements of sub-section(4) of Section 20.

26. In other words, the submission was that it is only when any member of tenant's family is living with the tenant in the tenanted premises and if he owns any vacant residential building in the same city, the tenant can be deprived of the benefit of sub-section(4) of Section 20 but not otherwise. We find no merit in this submission.

27. In our view, the language of proviso being plain and simple leaving no ambiguity therein, we cannot read the words of the proviso, the way learned counsel for the appellant wants us to read therein to accept his submission. In our view, if such was the intention of the legislature, then the proviso would have been worded accordingly. Such is, however, not the case here.

28. In the light of the foregoing discussion, we concur with the reasoning and the conclusion arrived at by the Courts below and accordingly hold that the tenant, having rightly suffered a decree for eviction on the ground contained under Section 20(2)(a), is not entitled to take the benefit of sub-section(4) of Section 20 because his case falls under the proviso to sub-section(4) by virtue of the fact that his son, who is member of family being a male lineal descendants as specified under Section 3(g)(ii) of the Act, has built his residential house in the same city and he is in its possession. The tenant can, therefore, shift in the said house once he is asked to vacate pursuant to eviction decree passed against him.

29. The appeal thus fails and is accordingly dismissed. The appellants are, however, granted three months' time to vacate the suit house provided they deposit the entire arrears of rent till date, if they have not so far deposited or paid to the respondents and also to deposit three months' rent by way of damages for use and occupation within two weeks from the date of order in the Court below. Failure to make deposit and submit an undertaking by the appellants to this Court within two weeks to vacate the suit premises within three months will entitle the respondents to execute the decree forthwith on the expiry of two weeks.