

ALLAHABAD HIGH COURT

Abhinandan Kumar Jain

Vs.

4th Addl. District Judge

Civil Misc. Writ Petn. No. 6239 of 1979

(N.D. Ojha, J.)

02.04.1980

ORDER

N.D. Ojha, J.

1. Respondent No. 2, who is the landlord of an accommodation, instituted a suit for ejectment of the petitioner, who was occupying the said accommodation as a tenant after determining his tenancy by serving upon him a notice under Section 106 of the T. P. Act. On 27th April, 1977 an application was made by respondent No. 2 for striking off the defense of the petitioner on the ground that he had committed breach of Order 15 Rule 5, C.P.C. inasmuch as he had not deposited the monthly rent regularly within the time prescribed by the said rule. The application was dismissed by the Judge, Small Causes, in whose Court the suit was pending on the ground that after the new amendment of the C.P.C. the provisions of Order 15 Rule 5, C.P.C. "stand no more". On this view the Judge, Small Causes, did not go into the merits of the application made by respondent No. 2. Aggrieved by that order, respondent No. 2, preferred a revision before the District Judge which was allowed by the IVth Additional District Judge, Bijnor, on 7th May, 1979, on the finding that the petitioner had committed a default inasmuch as he did not deposit the monthly rent regularly within the time prescribed by Order 15, Rule 5, C.P.C. He directed the defense of the petitioner to be struck off. It is this order of respondent No. 1 which is sought to be quashed in the present writ petition.

2. The U. P. Civil Laws (Reforms and Amendment) Act, 1976 (hereinafter referred to as U. P. Act No. 57 of 1976) came into force on 1st Jan., 1977. By Section 7 of this Act Rule 5 of Order 15 C.P.C. was substituted. In pursuance of the substituted R.5 the defendant in a suit filed by his lessor after the

determination of the lease for his eviction and for recovery of rent or compensation for use and occupation was, *inter alia*, required that "he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual" failing which "the Court may subject to the provisions of sub-rule (2) strike off his defense." Sub-rule (2) contemplates that before making an order for striking off defense, the Court may consider any representation made by the defendant in that behalf provided such representation in the case of deposit of the monthly rent is made within 10 days of the expiry of the week referred to in Sub-Section (1). In the instant case, even if the plea raised by respondent No. 2 that the petitioner had not deposited the monthly rent regularly for the period before the amendment of Rule 5 of Order 15, Civil P.C. also, is excluded from consideration, it is apparent from a perusal of the impugned order passed by respondent No. 1 that the rent accruing due on various months even after the commencement of U.P. Act No. 57 of 1976 was not deposited within a week of its becoming due. It is also apparent from the said order that no representation was made in this behalf by the petitioner within 10 days of such rent becoming due as contemplated by sub-rule (2) of Order 15 Rule 5, C.P.C. as substituted, by U.P. Act No. 57 of 1976. It has not been seriously disputed by counsel for the petitioner that if O.15. R.5, C.P.C. as substituted by U.P. Act No. 57 of 1976 was applicable the petitioner cannot be said to have complied with the requirement of that rule on the findings recorded by respondent No. 1. What has, however, been urged by him is that since the suit had been instituted prior to the commencement of U.P. Act No. 57 of 1976, the provisions of Order 15 Rule 5, C.P.C. as they stood before the commencement of U.P. Act No. 57 of 1976, could alone be applied to the facts of the instant case, even in the matter of making the regular deposit of the monthly rent during the continuance of the suit and that respondent No. 1 has committed an error in applying the amended provisions in this behalf. Having heard counsel for the petitioner at some length, I find it difficult to accept this submission.

3. Counsel for the petitioner, while elaborating his submission, urged that the provisions contained in the unamended Rule 5 of Order 15, C.P.C. did pertain to procedure alone, but also conferred substantive rights on the petitioner and as such in the absence of any express or implied provision the substituted rule could not be applied to a pending suit. To me it appears that the said Rule 5 of

Order 15 C.P.C. did not confer any substantive right on the petitioner. On the other hand, it only placed him under an obligation in a suit of the nature referred to in the said rule, *inter alia*, to regularly deposit the monthly amount due and on his failure to do so he was to suffer the liability of having his defense struck off. This was purely a matter regulating the procedure in regard to the maintainability of the defense in a suit of the nature referred to in the said rule. If at all any element of right is to be culled out from the said rule it may be said that on the tenant's failure to comply with the requirements of Order 15 Rule 5, C.P.C. the landlord had a right to have the defense of the tenant struck off. Order 15, R.5, C.P.C. as has been substituted by U.P. Act No, 57 of 1976, does not in any way affect that right of the landlord in any adverse manner. Indeed it purports to safeguard that right more effectively. It would further be seen that in the matter of depositing regularly the monthly rent due during the continuance of the suit the question of finding out the true import of the term 'first date of hearing occurring in Order 15 Rule 5, C.P.C. does not arise. It is true that under the unamended rule no time had been fixed for depositing the monthly rent whereas after its amendment a week's time from the date of its becoming due has been fixed but that in my opinion, does not make any difference. Even in the absence of a time limit a reasonable time is always the requirement and in the matter of depositing regularly the monthly rent a week's time from the date of its becoming due would be a reasonable time. As such what was otherwise necessarily implied in Order 15 Rule 5, C.P.C. has been made express. It appears that notwithstanding the intention of the framers of R.5, O.15, C.P.C. that in a suit of the nature referred to therein the monthly rent payable to the landlord should be deposited by the tenant regularly during the continuation of the suit so as to safeguard the interest of the landlord, the said rule was being misused as there was no time fixed in the unamended rule for making such deposit. It is to obviate this misuse that it seems to have been provided in the substituted R.5 that the monthly rent due has to be deposited within a week of the date of its accrual. For the same reason it was also provided that a representation in this behalf is to be considered only if it is made within ten days of the accrual of the monthly rent. In this view of the matter I am of opinion that such monthly rent which became due after the commencement of U.P. Act No. 57 of 1975 had to be deposited by the defendant to a suit of the nature referred to in Order 15, Rule 5 C.P.C. in the manner provided for by the said rule as it stood amended by U.P. Act No. 57 of 1976, namely, within a

week of its becoming due and in case of failure by the defendant in making such deposit his defense was to be struck off unless the default was condoned by the court on a representation made by the defendant within ten days of the rent becoming due. I accordingly find no substance in the submission made by counsel for the petitioner that respondent No. 1 committed an error in applying Order 15, Rule 5 C.P.C. as substituted by U.P. Act No. 57 of 1976 to the facts of the instant case.

4. It was then urged by counsel for the petitioner that Order 15, Rule 5, C.P.C. applied only to a suit for eviction of a lessee filed after the determination of his lease. Relying on certain observations made by the Supreme Court in *V. Dhanpal Chettiar v. Yesodai Ammal*¹ it was urged that it was not necessary for the landlord to determine the tenancy of his tenant before filing a suit for ejectment on any of the grounds mentioned in Section 20 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "U.P. Act XIII of 1972"). As such, the present suit could not be treated as a suit for eviction having been filed against the petitioner "after the determination of his lease" as contemplated by Order 15, Rule 5, C.P.C. notwithstanding the fact that the suit had actually been filed after the determination of the lease of the petitioner inasmuch as the determination of such lease was unnecessary.

5. *V. Dhanpal Chettiar's* case (supra) was not a case of a suit for ejectment having been filed by the landlord but a case in which an application had been made by him under Section 10(3)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 for eviction of the tenant on the ground of personal necessity. I find it unnecessary to consider the submission made by counsel for the petitioner on the basis of that case that determination of tenancy was not necessary even for filing a suit for ejectment inasmuch as in view of the clear language of Sections 20 and 21 of U.P. Act No. XIII of 1972 it is apparent that even though determination of tenancy is not necessary for making an application by the landlord for release of an accommodation on the ground that he needed it for his own use under Section 21 of the Act it was necessary if a suit for ejectment was filed on a ground mentioned in Section 20 thereof. Sub-Section (4) of Section 21 provides that an application for release can be made even if tenancy has not been determined. Further on such an application being

allowed, the tenancy stands determined by operation of law on the expiration of a period of thirty days from the date of such order as contemplated by Sub-Section (6) thereof. As, such if eviction of a tenant is applied for under Section 21, determination of his tenancy would certainly not be needed. Sub-Section (2) of Section 20 of U.P. Act No. XIII of 1972, on the other hand, reads;

"A suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the following grounds namely;

....." (Emphasis supplied.) Sub-Section (1) of Section 20 of this Act *inter alia* contemplates;

Save as provided in Sub-Section (2), no suit shall be instituted for the eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner;

....."

Sub-Sections (1) and (2) of Section 20 read together make it clear that a suit for eviction of a tenant cannot be filed unless (1) the tenancy has been determined and (2) any of the grounds mentioned in Sub-Section (2) is available.

6. I am not inclined to accept the aforesaid submission for another reason. In order to find out whether Order 15, Rule 5, C.P.C. is applicable or not, what is, in my opinion, necessary to find out is as to whether the suit has actually been filed after the determination of the lease of the tenant and for this purpose it is the allegation made in the plaint which alone would be relevant. It has not been disputed that in the instant case the suit had actually been instituted by respondent No. 2. against the petitioner "after the determination of his lease."

7. No other point has been urged.

8. In the result, I find no merit in this writ petition. It is accordingly dismissed and the interim order staying further proceedings in the suit is vacated. In the circumstances of the case there will be no order as to costs.

Petition dismissed.

Cases Referred.

1. (AIR 1979 SC 1745)