Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7988 OF 2015
(Arising out of S.L.P. (Civil) No. 9202 of 2012)

Samar Pal Singh ... Appellant

Versus

Chitranjan Singh ...Respondent

J U D G M E N T

Prafulla C. Pant, J.

This appeal is directed against judgment and order dated 20.12.2011, passed by the High Court of Judicature at Allahabad in Civil Revision No. 8 of 1990 whereby the revision filed by the defendant No.1 is allowed, and order of eviction against the tenants passed by Judge, Small Causes Court/Xth Additional District Judge, Meerut, is set aside.

2. We have heard learned counsel for the parties and perused the papers on record.

3. Brief facts of the case are that plaintiff No.1/appellant is owner and landlord of house bearing municipal no. 831 (old no. 446), situated in Mowana, District Meerut. The house was let out to Nawab Singh (father of the respondents) and a rent note (Annexure P-2) was executed on 15.02.1975. The building under lease consists of ground floor used for commercial purposes and the first floor for the residential purpose. It was pleaded by the plaintiffs that the defendants stopped payment of rent of the building, after August, 1981. Consequently, a notice on 16.08.1982 was served on the defendants, and when they failed to pay rent within one month of service of notice, a suit for eviction and recovery of arrears of rent was filed by the plaintiffs before Judge, Small Causes Court/District Judge, Meerut.

4. Only defendant no.1 (respondent before us) contested the suit and filed written statement. It is admitted that the plaintiff/appellant is the landlord of the house in question. It is also admitted that property was let out to Nawab Singh, father of answering defendant, on rent at the rate of Rs.440/-

per month. However, it is denied that there was any default in payment of rent, on the part of the defendants. It is stated that no notice of demand of arrears of rent and termination of the tenancy was served on the defendants. In the additional pleas, the answering respondent has stated that the rate of rent was only Rs. 200/- per month which was paid up to December, 1981 to Kishan Pal Singh (father of plaintiff no.1). It is further pleaded that thereafter, the rent was not accepted by the landlord. It is pleaded that answering defendant tendered amount of Rs. 20,000/- before the trial court in May, 1984 which included arrears of rent, nine percent interest and costs. As such, in view of the provision contained in sub-section (4) of Section 20 of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short "U.P. Act No. 13 of 1972"), the defendants are protected from the decree of eviction, and the suit is liable to be dismissed.

5. The trial court framed following issues on the basis of the pleadings of the parties:-

> "1. Whether defendants are in arrears of rent from 01.09.1981 and have committed default?

2. Whether rate of rent is Rs.440/- per month as alleged by the plaintiff or is Rs.200/- per month as alleged by the defendant?

3. Whether the plaintiff has served valid notice upon the defendants u/s 106 Transfer of Property Act?

4. Whether defendant is entitled to the benefits of the provisions of Section 20 (4) of the U.P. Act 13 of 1972?

5. To what relief, if any, is the plaintiff entitled?"

6. The parties led their oral and documentary evidence before the trial court. After hearing the parties, all the issues were decided in favour of the plaintiffs, and the suit was decreed for ejectment of the defendants from accommodation in question, and also for arrears of rent amounting Rs.5,632/- and mesne profits at the rate of Rs.440/- per month till dispossession of the defendants. Aggrieved by said judgment and decree dated 06.12.1989, passed in SCC Suit No. 5 of 1983 by Judge, Small Causes Court/ Xth Additional District Judge, Meerut, Civil Revision was filed under Section 25 of Provincial Small Causes Court Act, 1887 which was allowed by the High Court vide impugned order, challenged before us, in this appeal.

7. The High Court has not disturbed the findings of trial court on issue Nos. 1, 2 and 3. The High Court has observed in its order that the defendants have not disputed the findings of the trial court on issue Nos. 1, 2 and 3, as such, the same have attained finality. The only findings on issues No. 4 to 5 were challenged before the High Court which relate to provision contained in sub-section (4) of Section 20 of U.P. Act No. 13 of 1972.

8. Clause (a) of sub-section (2) of Section 20 of U.P. Act No. 13 of 1972 allows a landlord to seek eviction of tenant from a building after determination of his tenancy, on the ground 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 of notice of demand upon him. But sub section (4) of Section 20 protects the tenant from decree of eviction if he deposits entire arrears of rent with nine percent interest and costs before date of first hearing in the suit.

9. Sub-section (4) of Section 20 of the Act reads as under:-

"(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.

Explanation:- For the purpose of this sub-section-

(a) the expression "first hearing" means the first date for any step or proceeding mentioned in the summons served on the defendant;

(b) the expression "cost of the suit" includes one-half of the amount of counsel's fee taxable for a contested suit."

10. From the record, it appears that initially suit was decreed ex-parte against the defendants, and they got the same set

aside vide order dated 25.05.1984. On the next day i.e. 26.05.1984, on behalf of the defendants, a tender was submitted for depositing Rs. 20,000/- in favour of the landlord towards arrears of rent, 9% interest and costs of the suit. It is also apparent from the record that after the tender was passed by the Court, the amount was deposited on 28.05.1984. It is not disputed by the learned counsel for the appellant that the amount deposited was sufficient to cover what was required to be deposited under the sub-section quoted above. As to the date of first hearing, also no argument is advanced before us as such there is no scope of interference with the conclusion of the High Court on that point.

11. What is vehemently argued before us on behalf of the landlord is that in view of the proviso to sub-section (4) of Section 20, since the defendants have acquired as many as four houses within municipal limits of the city, as such, they are not entitled to protection provided under the sub-section. On the other hand, on behalf of the tenants, it is contended that the proviso to sub-section (4) deprives a tenant only if he has built or otherwise acquired a residential house in a vacant

state in the city and in this connection it is further submitted that properties acquired by the tenants are commercial.

12. From the language of sub-section quoted above, it is clear that under the proviso it is provided that nothing in the sub-section could 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. Learned counsel for the tenant/respondent did not dispute that the respondent has acquired property Nos. 621, 42, 43 and 72 in the municipal limits of Mowana (District Meerut). What the High Court has held is that the proviso deprives the tenant of the protection under sub-section (4) only if he has acquired residential building. On carefully going through the record, we are unable to agree with the High Court that none of the properties acquired by the tenant are residential. From the evidence on record, it is clear that only property no. 621 and property no. 42 are shops. The record reveals that property no. 43 consists of two rooms, one hall on the ground floor, and one room with Sehan on the first floor and property no.72

consists of five rooms. There is no specific finding that the nature of these two buildings is exclusively commercial. In our opinion, High Court has erred in law by treating these two properties as commercial without there being evidence to that effect. A building which can be used for residential as well as commercial purposes cannot be said to be excluded from the clutches of proviso to sub-section (4), if built, or acquired in vacant state within limits of the municipal area in which the house from which eviction is sought by the landlord. Needless to say in the present case building in question was let out for residential-cum-commercial purposes.

13. It cannot be said that object of sub-section (4) of Section 20 is to protect those tenants who have built, or acquired in vacant state a house which can be used for residential as well as commercial purposes. If word "residential" mentioned in the proviso is taken to mean what has been interpreted by the High Court, the object of the proviso would get defeated. As such, in our opinion, the High Court has erred in law in reversing the judgment and decree passed by the Judge Small Cause Court.

14. For the reasons as discussed above, we are unable to uphold the impugned order passed by the High Court. Therefore, the appeal is allowed and impugned order passed by the High Court in revision is set aside. The decree passed by the Judge Small Causes Court/Xth Additional District Judge, Meerut in SCC Suit No. 5 of 1983 is restored. The defendants are directed to vacate premises in question within a period of sixty days from today. No order as to costs.

.....J.
[Dipak Misra]

.....J.
[Prafulla C. Pant]

New Delhi;
September 28, 2015.