

Sulabh Singh vs Smt. Asha Lodhi on 31 January, 2025

Author: Pankaj Bhatia

Bench: Pankaj Bhatia

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LK0:6937

Judgment Reserved on 18.12.2024

Judgment Delivered on 31.01.2025

Case :- S.C.C. REVISION No. - 13 of 2022

Revisionist :- Sulabh Singh

Opposite Party :- Smt. Asha Lodhi

Counsel for Revisionist :- Komal Prasad Tiwari, Malik Faiyaz Ahmed

AND

Case :- S.C.C. REVISION No. - 19 of 2023

Revisionist :- Sulabh Singh

Opposite Party :- Smt. Asha Lodhi

Counsel for Revisionist :- Rajeiu Kumar Tripathi, Komal Prasad Tiwari

Counsel for Opposite Party :- Sudhanshu Chauhan, Sachin Garg

Hon'ble Pankaj Bhatia, J.

1. Heard Sri Rajeiu Kumar Tripathi, learned Counsel for the revisionist and Sri Sudhanshu Chauhan, learned Counsel for the opposite party.

2. As common questions of law and facts arise in both the revisions and as such both the revisions are being decided by means of this common judgment.

3. The SCC Revision No.13 of 2022 challenges the order dated 19.07.2022, whereby, the application filed by the revisionist for recall of the ex-parte judgment dated 07.10.2021 was rejected. SCC Revision No.19 of 2023 challenges the order dated 07.10.2021, whereby, the suit filed by the respondent was decreed ex-parte.

4. The respondent is the owner of Plot No.B-4/ 90, situated at Vineet Khand, Gomti Nagar, Lucknow. The said property was taken on rent by the revisionist at the rate of Rs.12,000/- per month, for which, a rent agreement was also executed, however, the same was not registered and was for a term of 11 months. The rent agreement is on record as Annexure No.A-1 to the SCC Revision No.19 of 2023, which records that in terms of the agreement, the land along with the room, admeasuring area 8 x 5 ft. with a tin shed was given on rent. In para 6 of the agreement, it was mentioned that the tenant would not damage the property nor would raise any construction without the permission of the landlord. It was also prescribed that in case, the parties are agreeable, the rent agreement can be extended subject to fresh agreement. It is the common ground in between the parties that no fresh agreement was executed in between the parties.

5. It is the case of the revisionist that the revisionist/ defendant incurred several lacs of rupees for raising constructions in the form of a restaurant and the restaurant was started in the name and style of "Kalika Chulha". It is stated that subsequently on 28.06.2014 and 08.07.2014, an order came to be passed, whereby, the property was sealed by the Lucknow Development Authority, Lucknow. It is pleaded that on 18.11.2015, a notice determining the tenancy and demand of rent was served upon the revisionist alleging that the rent was due and payable from 01.09.2015 and thereafter a suit for recovery of rent and ejectment was filed on 13.01.2016, which was registered as SCC Suit No.6 of 2016. Subsequently, notices were issued and the revisionist filed his written statement to the suit. The revisionist had also filed an application under Order XV Rule 5 of C.P.C. for depositing the rent. The said application was allowed and the tender for deposit of the rent was also passed. It is pleaded that in terms of the said permission, an amount of Rs.1,06,820 (One lac six thousand eight hundred twenty) was deposited on 12.04.2016.

6. In the written statement, it was pleaded by the revisionist that the tenancy in respect of a vacant plot was not maintainable before the learned Judge Small Causes. It is further pleaded that monthly rent was being regularly deposited by the revisionist, however, the cheque deposited for the month

of October, 2018 to December, 2018 was dishonoured and after coming to know of the said dishonour of the cheque, an application was filed for repayment of the rent, which was not considered and was kept pending.

7. It is also pleaded that earlier the application, which was numbered as C-21, filed by the opposite party for striking of defence of the revisionist/ defendant and the Application C-57 filed by the revisionist seeking permission to deposit rent since October, 2018 onward were rejected by the learned Additional District Judge vide order dated 17.09.2021 fixing 01.10.2021 for evidence of opposite party, a copy whereof is annexed as Annexure-9 in SCC Revision No.19 of 2023.

8. Aggrieved against the order dated 17.09.2021, SCC Revision No.32 of 2019 was filed by the revisionist before this Court, which taken up for hearing on 07.10.2021 and the notices were directed to be issued but no interim order was passed. As the question of maintainability was raised that a revision is not maintainable against two orders, an amendment application filed by the revisionist was taken into consideration that the SCC Revision No.13 of 2022 be confined only to the order dated 19.07.2022 and a fresh SCC Revision No.19 of 2013 was filed challenging the other order. In the said revision, the delay was condoned vide order dated 19.05.2023 subject to the condition of payment of dues to the tune of Rs.3.5/- lac by 23.05.2023 through demand draft. It is stated that the said amount of Rs.3.5/- lac was paid through a demand draft, which was also recorded by this Court vide order dated 26.05.2023 and directions were issued for payment of the monthly rent. It is stated that the rent has been paid in terms of the said order and no dues remain payable.

9. It is also stated that on 01.10.2021, an affidavit was filed by the plaintiff-opposite party being Paper No.C-62 and on the same day, opportunity of cross-examination was closed and the case was fixed for 04.10.2021 for final arguments. On 04.10.2021, the defendant was not present and the ex-parte arguments were heard and the trial court fixed 05.10.2021 for argument of the defendant. On 05.10.2021, no one was present so, the trial court fixed 07.10.2021 for delivery of judgment.

10. It is stated that on 05.10.2021, the Central Bar Association had passed a resolution that no adverse orders can be passed in the absence of the counsel for the parties and further decision was taken for abstaining from work for 06.10.2021 and 07.10.2021. It is also stated that the orders dated 04.10.2021 and 05.10.2021 were not in the knowledge of the revisionist, as such, he could not participate in the proceedings and the ex-parte judgment came to be passed on 07.10.2021. After the ex-parte judgment, the petitioner moved an application under Order IX Rule 13 of C.P.C. on 21.10.2021 seeking setting aside the judgment and order dated 07.10.2021, to which, objections were also filed by the plaintiff-opposite party. On 27.01.2022, as the final judgment had already been passed, the SCC Revision No.32 of 2021 was dismissed as having become infructuous with liberty to the revisionist to file a fresh revision against the final decree. On 19.07.2022, the application filed under Order IX Rule 13 seeking setting aside of the ex-parte judgment dated 07.10.2021 came to be rejected on the ground of non-compliance of the mandatory provisions of Section 17 of the The Provincial Small Cause Courts Act, 1887 (In short 'PSCC Act'). Aggrieved against the said order dated 07.10.2021 and 19.07.2021, the abovesaid SCC Revision No.13 of 2022 was filed on 04.08.2022.

11. Sri Rajeiu Kumar Tripathi, learned Counsel for the revisionist argues that following points emerge for consideration of the revision; (I) whether, the suit of the plaintiff-opposite party is cognizable under the PSCC Act; (II) whether the order of striking of defence passed on 17.09.2021 suffers from error of law and jurisdiction and its effects; and (III) whether, the closure of opportunity of cross-examination, renders the entire decree as being in violation of principles of natural justice.

12. Further arguing on the first point, it is argued that under Section 15 of the PSCC Act read with Section 25 of the Bengal, Agra and Assam Civil Courts Act, 1887 (in short "the BAACC Act"), there are provisions for providing jurisdiction of Small Cause Courts Act. The said sections had undergone amendments. Section 15, after this amendment and Article 4 of the Second Scheduled are being quoted below:

"15. Cognizance of suits by Courts of Small Causes.-

(1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exceptions specified in that Schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed twenty five thousand shall be cognizable by Court of Small Causes.

Provided that in relation to the suits by the lessor for the eviction of a lessee from a building after determination of his lease or for recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease, or of compensation for use and occupation thereof after the determination of lease, the reference in this sub-section to five thousand rupees shall be construed as a reference to one lakh rupees.

Explanation.- for the purpose of sub-section, the expression "building" has the same meaning as in Art. (4) in the second schedule.

(Note: Section as reproduced hereinabove is being reproduced by taking note of amendment of section vide U.P. Act No. 14 of 1970, U.P. Act No. 37 of 1972, U.P. Act No. 57 of 1976 and U.P. Act No. 14 of 2015).

Art. 4 of the Schedule II of the Provincial Small Causes Courts Act as mentioned in Explanation to Section 15 is being reproduced herein below.

"(4) a suit for possession of immovable property or for the recovery of an interest in such property, but not including a suit by a lessor for the eviction of a lessee from a building after the determination of his lease, and for the recovery from him of that building station for the use and occupation of that building after such determination of lease.

Explanation. For the purposes of this Article, the expression, building' means a residential or non-residential roofed structure and includes any land (including any garden), garages and outhouses, appurtenant to such building and also includes any fittings and fixtures affixed to the building for the more beneficial enjoyment thereof."

[The Uttar Pradesh Civil Laws (Amendment) Act, 1972 (U.P. Act No. 37 of 1972)]"

13. Section 25 of the Bengal, Agra and Assam Civil Courts Act, 1887 is quoted hereinbelow:

"Section 25 (1) The High Court may by notification in the Official Gazette, confer within such local limits as it thinks fit, upon any Civil Judge or Munsif, the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 or the trial of suits cognizable by such Courts, upto such value not exceeding five thousand rupees as it thinks fit, and may withdraw any jurisdiction so conferred "Provided that in relation to suits of the nature referred to in the proviso to sub-section (3) of Sec. 15 of the said Act, the references in this sub section to two thousand rupees and one thousand rupees shall be construed respectively as references to five thousand rupees and two thousand rupees"

(2) The State Government may, by notification in the Official Gazette, confer upon any District Judge or Additional District Judge, the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, for the trial of all suits (irrespective of their value), by the lessor for the eviction of a lessee from a building after the determination of his lease, or for the recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease or of compensation for the use and occupation thereof after such determination of lease, and may withdraw any jurisdiction so conferred.

Explanation.-For the purposes of this sub-section, the expression "building" has the same meaning as in Article 4 in the Second Schedule to the said Act.

(4) Where the jurisdiction of a Judge of a Court of Small Causes is conferred upon any District Judge or Additional District Judge by notification under this section, then, notwithstanding anything contained in Sec. 15 of the Provincial Small Cause Courts Act, 1887, all suits referred to in sub- section (2) shall be cognizable by Court of Small Causes."

(Note: Section as reproduced hereinabove is being reproduced by taking note of amendment of section vide U.P. Act No. 14 of 1970, U.P. Act No. 37 of 1972, U.P. Act No. 57 of 1976 and U.P. Act No. 17 of 1991)."

14. It is thus proposed to be argued that on the plain reading of the abovesaid two sections, it is evident that the jurisdiction of Small Cause Court is applicable only to immovable property and the building, which is explained as the building means a "residential" and "non-residential" roofed structure. It is foundational case of the revisionist that the property given under tenancy to the revisionist was a plot through agreement dated 06.01.214 and although a room was standing

thereupon, the same was only 1.25% of the entire plot and thus it has to be inferred that open piece of land/plot was given on rent. It is further argued that in the entire rent agreement, the phrase used is "land" and thus, the plaintiff could not have described the said property as building. It is further argued that in the notice determining the tenancy, the tenanted premise was described as Plot No.B-4/90 and constructions made thereupon, and the nature of extent of construction was deliberately concealed. It is argued that similar pleading was made in the plaint to mislead the court and in terms of the written argument that there was no clarification with regard to the extent of construction standing on the property in question, which according to the revisionist was deliberately done to mislead the court concerned. It is thus argued that in terms of the agreement and the pleadings, it was a land which was given under tenancy and in view thereof, the suit is not cognizable by the Small Cause Courts. The Counsel for the revisionist relied upon the judgments in the case of M/s Bharat Petroleum Corporation Limited vs Smt. Parvati Devi and others; 1997 SCC OnLine All 795 and in the case of Meghnath vs XIth ADJ, Varanasi and others; 2008 SCC OnLine All 583.

15. As regards the contention of the Counsel for the revisionist whether the striking of the defence by the trial court on 17.09.2021 was illegal and its affect, reliance is placed upon the mandate of Order XV Rule 5 of C.P.C. as applicable in the State of Uttar Pradesh, it is argued that striking off defence is not a matter of right and is only an enabling provisions to compel the tenant to deposit the dues of the rent and the revisionist had deposited substantial rent in terms of the permissions given by the JSC Court and there was only default in respect of payment of rent from October, 2018 to December, 2018 only because the cheque was dishonoured and on coming to know of the said fact, an application was filed and still, in a very casual manner, the defence has been struck off without giving the benefit of the judgment of Hon'ble Supreme Court in the case of Suo Moto Writ Petition (Civil) No.3 of 2020; In Re: Cognizance For Extension of Limitation.

16. The Counsel for the revisionist also relied upon the judgment of Hon'ble the Supreme Court in the case of Asha Rani Gupta vs Vineet Kumar; 2022 SCC OnLine SC 829, which according to the Counsel for the opposite party has been wrongly relied upon by the revisionist. Reliance is also placed upon the judgment of Hon'ble Supreme Court in the case of Bimal Chand Jain vs Sri Gopal Agrawal; (1981) 3 SCC 486, which explains that after the striking of defence, the closure of opportunity of cross-examination and closure of the right to argue is in violation of principles of natural justice. It is lastly argued that the trial court erred in closing the right of cross-examination and also argued that in view of the strike declared by the Central Bar Association, the opportunity of argument was denied to the revisionist. In support of the said contention, reliance is placed upon the judgment rendered in the case of Modula India vs Kamakshya Singh Deo; (1988) 4 SCC 619. No other arguments have been raised in the written argument filed by the revisionist.

17. The Counsel for the opposite party argues that the property was given to the revisionist on monthly rent of Rs.12,000/- which was to be increased on yearly basis @ 10% per annum and notice was given determining the tenancy and the revisionist had raised an illegal construction and had failed to pay the rent after 31.08.2015. It is argued that service of notice was duly admitted in para 5 of the written statement. It is further stated that in the SCC Suit itself, in para 1, it was stated that the tenant had raised construction thereupon and the said fact was not disputed in the written

statement.

18. The Counsel for the respondents states that in para 1 of the written statement filed by the revisionist, it is admitted that the opposite party was the landlady; in para 2, it is admitted that the monthly rent of Rs.12,000/- was fixed; in paras 4 and 6, after service of notice, six months monthly rent was paid in advance in cash is admitted. Similarly in para 5, the service of notice dated 17.11.2015 determining tenancy is admitted. In paras 11 and 12, the revisionist admits that only a plot of land having a boundary wall was let out for the purpose of running a restaurant. The commercial electricity connection was obtained on 06.12.2013 in the name of landlady is admitted in para 19 of the written statement. The monthly rent was to be enhanced by 10% on yearly basis in para 14 and no agreement in writing was executed between the parties in para 21 are admitted. In para 22 of the written statement, the revisionist admits that the opposite party had got blank stamp papers and plain paper signed by the revisionist but no rent agreement was executed in between the parties and no rent agreement was filed in the proceeding before the trial court.

19. It is further argued that an application under Order XV Rule 5 of C.P.C. was filed by the revisionist, wherein, it was alleged that the revisionist deposited rent upto September, 2018. The cheque for deposit of rent from October, 2018 to December, 2018 was dishonoured. Although, the tender for January, 2018 to February, 2018 was filed, however, no order was passed on the same. The premises remained closed from June, 2020 to November, 2020. The revisionist had also taken ill in July, 2020 and therefore, no rent was deposited for 25 months from October, 2018 to December, 2020.

20. It is further argued by the Counsel for the opposite party that the revisionist himself had admitted that he had not deposited the rent since October, 2018 and as such, the defence was rightly struck off. It is further argued that the trial court had rightly rejected the contention of the tenant as it was recorded that no evidence had been furnished showing the dishonour of the cheque claimed to be deposited from October, 2018 to December, 2018. It is further argued that in the application dated 06.02.2019, no relief was sought for deposit of the rent in January and February, 2019. It is further argued that the application under Order XV Rule 5 of C.P.C. could be filed only within a week and the said application was filed after a lapse of 15 months. It is further argued that as no one appeared on behalf of the revisionist to cross-examine the opposite party-plaintiff, the opportunity was rightly closed and the revisionist was granted time upto 05.10.2021 to submit the argument and thereafter the date 07.10.2021 was fixed for delivery of judgment.

21. It is further argued by the Counsel for the opposite party that the strike call given by the Central Bar Association was on 06.10.2021 and 07.10.2021, however, nothing prevented the revisionist for submitting the argument on 05.10.2021. It is further argued that along with an application under Order IX Rule 13, it is mandatory to deposit the rent under Section 17 of the PSCC Act which has admittedly not been complied with and thus the same was rightly rejected. He thus submits that the revisionist had admitted the relationship of landlady and tenant; the service of notice was also admitted in para 5 of the written statement; the quantum of rent @ Rs.12,000/- per month and its enhancement @ 10% on every year is also admitted in para 14 of the written statement and the construction carried out in the property was also admitted in para 20 of the written statement. The

agreement itself shows the construction of room and thus any argument to the contrary is liable to be rejected. As regards the alleged investment made by the revisionist, it is argued that it is not understandable as to how the amount was spent after the suit was filed and in any case, no benefit can accrue on that count as there was no written permission from the landlady.

22. As regards the scope of revision, the Counsel for the opposite party relied upon the judgment in the case of Triolk Singh Chauhan vs Ram Lal (Dead) through Legal Representatives and others; (2018) 2 SCC 566. As regards the maintainability of the suit, it is stated that in terms of the mandate of sub-Section (2) of Section 15 and Article 4 of Second Schedule, a suit for eviction is maintainable. It is also argued that in terms of Clause (p) of Section 108-B of the Transfer of Property Act, 1882, the suit was liable to be decreed and was rightly decreed. Reliance is also placed upon the judgment in the case of M/s Kedar Nath Baij Nath and others vs Shri Ram Chandraji, Shri Jankiji, Shri Laxmanji, Virajman Mandir and others; 1991 (1) ARC 420. As regards striking of defence is in violation of provisions of Order XV Rule 5 of C.P.C., reliance is placed upon the judgment in the case of Ashal Rani Gupta (Supra). In view thereof, the Counsel for the opposite party argues that the revisions are liable to be dismissed.

23. In view of the arguments as raised and recorded above, the first issue to be decided as to whether, the JSC Court has the jurisdiction to decide the case, as argued by the Counsel for the revisionist. Section 25 of the BAACC Act, 1887, as recorded above in para 13 of the judgment, in addition to prescribing the jurisdiction of the court of small cause, as conferred upon the State Government, the power to issue notification enabling and conferring upon any District Judge or Additional District Judge, the jurisdiction of a Small Cause Courts. In terms of the said powers conferred by virtue of Section 25 is being reproduced again, which is as under:

"25. (1) The High Court may by notification in the Official Gazette, confer within such local limits as it thinks fit, upon any Civil Judge or Munsif, the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Court Act, 1887 for the trial of suits cognizable by such Courts, up to such value not exceeding five thousand rupees as it thinks fit, and may withdraw any jurisdiction so conferred:

Provided that in relation to suits of the nature referred to in the proviso to sub-section (2) of Section 15 of the said Act, the reference in this sub-section to five thousand rupees shall be construed as reference to twenty five thousand rupees.

(2) The High Court may by notification in the official Gazette, confer upon any District Judge or Additional District Judge the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, for the trial of all suits (irrespective of their value), by the lessor for the eviction of a lessee from a building after the determination of his lease, or for the recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease or of compensation for the use and occupation thereof after such determination of lease, and may withdraw any jurisdiction so conferred.

Explanation.--For the purposes of this sub-section, the expression 'building' has the same meaning as in Art. (4) in the Second Schedule to the said Act.

(3) [* * *] (4) Where the jurisdiction of a Judge of a Court of Small Causes is conferred upon any District Judge or Additional District Judge by notification under this section, then notwithstanding anything contained in Section 15 of the Provincial Small Cause Courts Act, 1887, all suits referred to in sub-section (2) shall be cognizable by Court of Small Causes."

24. In terms of the power conferred by virtue of Section 25(2) as quoted above, the High Court issued Notification No.525 dated 25.10.1972 published in the U.P. Gazette dated 11.11.1972 page 3758, which is as under:

"Notification under Section of Bengal, Agra and Assam Civil Courts Act, 1887--October 25, 1972, No. 525- In exercise of the powers conferred by sub-section (2) of Section 25, of the Bengal, Agra and Assam Civil Courts' Act, 1887 (Act XII of 1887), as amended by the Uttar Pradesh Civil Laws (Amendment) Act, 1972 (U.P. Act No. 37 of 1972), delegated by the State Government under sub-section (3) of the said Section 25 to the High Court, the High Court is pleased to confer upon all the District Judges and Additional District Judges, the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Causes Courts Act, 1887 (Act IX of 1887) for the trial of all suits (irrespective of their value) of the nature referred to in the said sub-section (2)."

25. In terms of the said notification, it is clear that the District Judges and the Additional District Judges are empowered and have the jurisdiction of a Judge Small Cause Courts Act irrespective of their valuation. The other submissions in the contest of the expression 'building' used under Section 15 of the PSCC Act, the explanation to Section 15(2) itself makes it clear that the expression 'building' means a residential or a non-residential root structures and includes any land appurtenant to such building. Admittedly, the building which was given on rent included a roofed structure. The extent of roof structure in relation to the appurtenant land has no relevance as was proposed to be argued by the Counsel for the revisionist in interpreting whether the accommodation would fall in Article 4 of the Second Scheduled. The issue with regard to the jurisdiction vested in a JSC Court in terms of Section 15(2) read with Section 25 of the BAAC Act came up for interpretation before the Hon'ble Supreme Court in the case of Om Prakash Agarwal since deceased through legal representatives and others vs Vishan Dayal Rajpoot and another; (2019) 14 SCC 526, wherein, the Hon'ble Supreme Court held as under:

"41. Whether the Additional District Judge, in the facts of the present case, had jurisdiction to take cognizance of small causes suits having valuation upto Rs. 1 lakh and could still have proceeded to decide the suit, whose valuation was less than Rs.1 lakh? We may also notice provision of Section 15 of the Code of Civil Procedure, which provides that suits shall be instituted in the Court of the lowest grade competent to try it. Section 15 of Code of Civil Procedure is as follows:

"15. Courts in which suits to be instituted. - Every suit shall be instituted in the Court of the lowest grade competent to try it."

42. The purpose of Section 15 is obvious that even though more than one court has jurisdiction to try the suit, it should be instituted in the Court of lowest grade. For example, a small cause case can be instituted in Court of Small Causes presided by Civil Judge having valuation of up to Rs. 1 lakh as on date and small cause suit having valuation of more than Rs.1 lakh can be instituted in the Court of District Judge or Additional District Judge. As per Section 15 of the Code of Civil Procedure, suit of less than Rs.1 lakh valuation has to be instituted in Small Cause Court presided by Civil Judge. Although, District Judge or Additional District Judge has unlimited pecuniary jurisdiction but under the legislative scheme, the suit is not to be taken cognizance by the District Judge or Additional District Judge, which has valuation up to Rs.1 lakh. Even though if Section 15 C.P.C. is a provision, which regulates the institution of suits and does not affect the jurisdiction of Courts, reading the provision of Section 15 along with relevant provisions of the Provincial Small Cause Courts Act, 1887 and the Bengal, Agra, Assam Civil Courts Act, 1887, the legislative Scheme is clear that small causes cases should be taken cognizance by Small Cause Courts presided by Civil Judge up to the valuation of Rs.1 lakh and cases having valuation of more than Rs.1 lakh by District Judge or Additional District Judge, who have been invested with the power of Small Cause Courts. Unless the above legislative intent and Scheme is followed, there shall be confusion and inconsistency. The legislative provisions have to be interpreted in a manner, which may advance the object and purpose of the Act. When clear dichotomy regarding taking cognizance of small causes suits presided by Civil Judge and by District Judge or Additional District Judge have been provided for, the said dichotomy and separation to take cognizance of cases has to be followed to further the object and purpose of legislation.

43. In *Pankaj Hotel vs Bal Mukund*, 2017 SCC OnLine All 2855, the Court took the view that since the Court of District Judge or Additional District Judge, which have been invested with the power of small causes Court had unlimited pecuniary jurisdiction, they can validly adjudicate small causes suits having valuation of less than Rs.1 lakh even after amendment by Uttar Pradesh Civil Laws (Amendment) Act, 2015, we do not approve the above view. When the Court of District Judge or Additional District Judge could no longer take cognizance of small cause suits of having less than Rs.1 lakh valuation, it was no longer in the competence of Small Cause Court presided by District Judge or Additional District Judge to proceed to decide the suit of having valuation of less than Rs.1 lakh. Proper course was to transfer the cases before a competent court to decide the suits. It is a different matter that the Court of District Judge or Additional District Judge when proceeded to decide the small cause suits after 07.12.2015 of valuation of less than Rs.1 lakh and neither any objection was raised by either of the parties nor attention of the Court was drawn towards the amendment, Section 21 C.P.C. is there to deal with such eventuality, which provision we shall hereinafter deal separately."

26. In the light of interpretation recorded above and following the judgment in the case of *Om Prakash Agarwal* (Supra), the first point is decided against the revisionist and in favour of the landlady.

27. The second issue with regard to the striking off the defence, which according to the revisionist was wrongly struck off, the same merits rejection as in terms of the mandate of Order XV Rule 5 of C.P.C., it is incumbent that the offer to deposit should be made within the time as specified. The provisions of Order XV Rule 5 of C.P.C. is quoted below:

"5. Striking off defence on failure to deposit admitted rent, etc.-(1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per centum per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may, subject to the provisions of sub-rule (2), strike off his defence.

Explanation 1.- The expression "first hearing" means the date for filing written statement or for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.

Explanation 2.- The expression "entire amount admitted by him to be due" means the entire gross amount, whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account and the amount, if any, deposited in any Court under section 30 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

Explanation 3.- (1) The expression "monthly amount due" means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account.

(2) Before making an order for striking off defence, the Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days, of the first hearing or, of the expiry of the week referred to in sub-section (1), as the case may be.

(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff:

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited:

Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same."

28. It is clear from the pleadings or record that no representation was made within the time prescribed under Order XV Rule 5 (Rule 2) of C.P.C., In view thereof, no error could be found in the order of the JSC Court, striking off the defence of the revisionist.

29. The third point as argued with regard to the fact that the opportunity of cross-examination was not given and the arguments were not heard, which led to passing of the ex-parte order, the same also merits rejection, inasmuch as, on 04.10.2021 itself, the defendant was not present and the ex-parte arguments were heard and the next date was fixed as 05.10.2021 for the argument of the defendant, on which date again, no one was present, as such, the date was fixed on 07.10.2021 for delivery of judgment. The stand taken by the revisionist that on 05.10.2021, the Central Bar Association has passed a resolution that no adverse orders can be passed and a decision was taken for abstaining works on 06.10.2021 and 07.10.2021, even if, the said resolutions are accepted to be binding, for the sake of argument, nothing precluded to the revisionist from filing of any written argument or arguing the same on 05.10.2021. The resolution was that no adverse orders be passed, cannot be said to be that the resolution precluded the revisionist from arguing the matter.

30. The next submission with regard to recall of the ex-parte judgment passed on 07.10.2021, the application filed by the revisionist seeking recall of the said ex-parte judgment, did not comply with the mandatory requirements as prescribed under Section 17 of the PSCC Act, as such, no error can be found with the said order also

31. On the basis of the pleadings exchanged, it clear that the revisionist has harassed the poor landlady by taking recourse to frivolous stands. The revisionist had raised constructions without there being any permission from the landlady. The revisionist has failed to pay the rent as and when the same fell due and the rent has been paid although not in full, only in pursuance to the directions given by this Court. Clearly the revisionist has incurred the disqualification and even otherwise, lease period has come to an end and admittedly there being no extension, the suit was rightly decreed. Taking into account the said conduct of the revisionist, I have no hesitation in imposing a cost of Rs.1,00,000/- (rupees one lac) for lingering the proceedings and incurring liability by raising constructions. Both the revisions lack merit and are hereby dismissed.

32. The JSC Court is directed to execute the decree within a period of one month and sent a report to this Court.

33. In case, the cost of Rs.1,00,000/- (rupees one lac) is not paid by the revisionist to the respondent, landlady within a month from today, the same shall be recovered by the District Magistrate, Lucknow as arrears of rent revenue and shall be paid to the respondent.

Order Date:31.01.2025

akverma

(Pankaj Bhatia,J.)