Smt. Vijay Laxmi Gangal vs Mahendra Pratap Grag on 8 May, 1985

Equivalent citations: 1986 AIR 753, 1985 SCR SUPL. (1) 583, AIR 1986 SUPREME COURT 753, 1986 ALL. L. J. 393, (1985) 11 ALL LR 569, 1985 SCFBRC 331, 1985 2 ALL LR 569, 1986 UJ (SC) 468, (1985) 2 ALL RENTCAS 298, (1985) 2 RENCJ 236, (1985) 2 RENCR 389, 1985 (3) SCC 364, 1985 ALL CJ 483(2), (1986) ALL WC 517

Author: A. Varadarajan

Bench: A. Varadarajan, Syed Murtaza Fazalali, Misra Rangnath

PETITIONER:
SMT. VIJAY LAXMI GANGAL

Vs.

RESPONDENT:
MAHENDRA PRATAP GRAG

DATE OF JUDGMENT08/05/1985

BENCH:
VARADARAJAN, A. (J)
BENCH:
VARADARAJAN, A. (J)
FAZALALI, SYED MURTAZA
MISRA RANGNATH

CITATION:
1986 AIR 753 1985 SCR Supl. (1) 583
1985 SCC (3) 364 1985 SCALE (1)1116

ACT:
The Uttar Pradesh Buildings (Regulation of Letting, Rent and Eviction) Act. 1972.
Section 20(4) Suit for eviction of tenant for arrears of rent-Quantum of rent in dispute-Failure of tenant to prove his case-Deposit by tenant of rent at rate claimed by landlord-Such 'deposit' whether an unconditional tender-Discretionary relief-Tenant whether entitled to claim.

HEADNOTE:
The appellant-landlady filed a suit for recovering

possession from the respondent-tenant on the allegation that the demised property was situated beyond the municipal limits of the town, and was exempt from the provisions of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction), Act 1972, that it was let out to the respondent on a rent of Rs. 360 per mensem, that the tenancy had come to an end by efflux of the time fixed in the rent note, and that as the respondent was in arrears of rent to the extent of Rs. 3,960 she was entitled to recover possession of the premises with the arrears of rent. The respondent oppose the suit contending that the property was situated within three kilometres of the municipal limits of the town and was, therefore, governed by the provisions of the Act, denied that the rent was Rs. 360 per mensem and contended that it was only Rs. 125 per mensem, denied that he had executed the rent note, and the tenancy had come to an end by efflux of time, that the amounts claimed as arrears of rent and mesne profits were wrong and excessive, that the notice to quit was invalid in law and that the suit was barred by the provisions of s. 20 of the Act. The Additional District Judge who tried the suit exercising jurisdiction as a Judge of Small Causes Court, found that the property was situate within three kilometres of the municipal limits and was governed by the provisions of the Act, that the tenancy for the period of 11 months under the rent note had come to an end by efflux of time, and the parties were governed by it, and that the suit was governed by the provisions of s. 20 of the Act. On the question whether the respondent was liable for eviction it was held that though the respondent had deposited the full amount of rent as claimed at Rs. 360 per mensem together with damages for use and occupation, interest and costs as required by s. 20(4) of the Act amounting to Rs. 7,490 a day after the first hearing date fixed for the suit, as the respondent had contended in the written statement that the rent was Rs. 125 per mensem the deposit of Rs. 7,490 towards arrears, interest and costs was not unconditional and therefore invalid

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and s. 20(4) of the Act did not help the respondent. The suit was accordingly decreed for eviction with arrears of rent and mesne profits.

The respondent filed a revision petition and a Division Bench of the High Court noticed that one of the conditions of s. 20(4) of the Act was that the tenant should unconditionally pay or deposit the entire amount due together with interest and costs, and that s. 20(6) says that any amount deposited under s. 20(4) shall be paid to the landlord without prejudice to the pleadings of the parties, and that in the instant case the deposit would not be a conditional deposit merely because the respondent had contended in the written statement that the rent was Rs. 125 per mensem and not Rs. 360 per mensem as alleged in the

plaint. The civil revision petition was allowed and the suit was dismissed with costs.

Dismissing the appeal,

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HELD: 1. The suit in the instant case, is not based on any of the grounds mentioned in s. 20(2) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 and though the respondent is alleged to have been in arrears of rent to the extent of Rs. 3,960 there is no allegation in the plaint that he is in arrears of rent for not less than four months and had failed to pay the same to the appellant within one month from the date of service upon him of a notice of demand, which is the ground mentioned in clause (a) of s. 20(2) of the Act. [588 G-H]

2. No interference with the decision of the High Court is called for. The District Judge should have normally dismissed the suit for want of jurisdiction in view of s. 20(1) of the Act on his finding that the Act is applicable to the premises. It is not known why he did not do so, but on the other hand proceeded to hold that the deposit by the respondent is not unconditional as required by s. 20(4) of the Act and ordered his eviction on that basis. [589 A-B]

3. It is not possible to construe s. 20(4) in the manner done by the District Judge as that would amount to foreclosure of any defence regarding the quantum of rent even in cases where the amount alleged by the landlord is more than the actual rent agreed to between the parties. [589 C]

In the instant case, it had been found by the District Judge that the arrears of rent at the rate claimed in the plaint together with interest and cost had been deposited within the time mentioned in s. 20(4) of the Act. Merely because the tenant had failed to prove his case that the rent was only Rs. 125 per mensem and not Rs. 360 per mensem, the discretionary relief could not be denied to him. [590 E; 591]

Mangal Sen v. Kanchhid Mal, [1982] I SCR 331 at 336 distinguished.

4. The Act is a social piece of legislation which leans in favour of tenants. It is not possible to lay down any broad and general proposition that

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the discretionary relief should be denied to the tenant in all cases where he fails to prove his case regarding the quantum of rent even though he had deposited the rent at the rate claimed by the landlord in the plaint together with interest and costs within the time as required by section 20(4) of the Act. [590 H; 591 B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10085 of 1983.

From the Judgment and Order dated 15.9.1982 of the Allahabad High Court in Civil Revision No. 332 of 1981.

S.N. Kacker and R.B. Mahlotra for the Appellant. Aruneshwar Gupta and B.B. Sharma for the Respondent. The Judgment of the Court was delivered by VARADARAJAN, J. The short point arising for consideration in this appeal by special leave filed against the decision of a Division Bench of the Allahabad High Court in Civil Revision No. 332 of 1981 turns upon the interpretation of s. 20 (4) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act 13 of 1972 (hereinafter referred to as 'the Act'). The appellant-land-lady filed the suit on 6.8.1973 for recovering possession from the respondent-tenant of a portion of premises situate at Bhau Ka Nagla, Agra Road, Mauza Dholpura on the allegation that it had been let to the respondent on a rent of Rs. 360 per mensem and that the tenancy has come to an end by efflux of time fixed in the rent note on the expiry of 30.6.1973. She alleged in the plaint that the demised property is situate beyond the municipal limits of Ferozabad and is intended for use as a factory and is exempt from the provision of the Act and that the respondent is in arrears of rent to the extent of Rs. 3,960 for the period from 1.8.1972 to 30.6.1973 and she is entitled to recover possession of the premises together with arrears of rent of Rs. 3,960 at Rs. 360 per mensem for the said period and mesne profits at Rs. 720 for the subsequent period from 1.7.1973 at Rs. 20 per day.

The respondent opposed the suit contending that the property is situate within three kilometres of Ferozabad municipal limits and was not a factory when it was let out and that it is governed by the provisions of the Act. He denied that the rent is Rs. 360 per mensem and contented that it is only Rs. 125 per mensem and that the tenancy includes a vacant land shaded green and yellow in the plan filed with the plaint which according to the plaint does not form part of the lease. He denied that he had executed the rent note mentioned in the plaint and that the vacant land shaded green and yellow in the plaint plan had not been leased to him. He further denied that the tenancy has come to an end by efflux of time and contended that the amounts claimed as arrears of rent and mesne profits are wrong and excessive and that the notice to quit is invalid in law as it excludes the vacant land shaded green and yellow in the plaint plan which also is the subject matter of the lease. Finally he contended that the suit is barred by the provisions of s.20 of the Act sub- section (1) whereof says that 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.

The learned Fourth Additional District Judge, Agra who tried the suit exercising his Jurisdiction as a Judge of Small Causes Court found on 19.7.1975 that he had jurisdiction while recording findings on the point of jurisdiction tried as preliminary issue, and he held that though admittedly even the vacant land marked green and yellow in the plaint plan had been originally leased upto 27.7.1972 thereafter only the red marked portion had been leased on a rent of Rs. 360 per mensem under the rent note (paper No. 18A) the execution whereof has been denied by the respondent, excluding the green and yellow marked portion. On the basis of that unregistered rent note, (paper No. 18A) he found that the rent is Rs. 360 per mensem, rejecting the respondent's case that the old rent of Rs.

125 per mensem continued even after the dissolution of the partnership to which the premises had been leased earlier.

The respondent admitted that though the property is situate outside the Ferozabad municipal limits it is situate within three kilo metres from those limits and is therefore governed by the provisions of the Act while the appellant denied that it is situate within three kilo metres. The learned District Judge found on the evidence that the property is situate within two kilo metres of the municipal limits and falls within the exception and is governed by the provisions of the Act. He found that the tenancy for the period of 11 months under the rent note (paper No. 18A) had come to an end by efflux of time and the parties are governed by it and that the suit is, however, governed by the provisions of s.20 of the Act.

However, the learned District Judge considered the question whether the respondent is liable for eviction in this suit and found that the appellant had served notice of demand (paper No. 35C) on the respondent and he failed to pay the rent claimed by the appellant and he is as such liable to be evicted under s.20 of the Act. But the respondent had deposited the full amount of rent as claimed at Rs. 360 per mensem together with damages for use and occupation, interest and costs as required by s.20 (4) of the Act on 31.10.1973, a day after the first hearing date 30.10.1973. The learned District Judge found that the sum of Rs. 7,490 was tendered in court on 30.10.1973 and passed by the court on that day and deposited into the bank on 31.10.1973 and that the tender made on 30.10.1973 was valid and the payment must be deemed to have been made on 30.10.1973 itself. But he accepted the argument advanced on behalf of the appellant that because the respondent had contended in the written statement that the rent is Rs. 125 per mensem and it was rejected by the court and it was found that the rent is Rs. 360 per mensem the deposit of Rs. 7,490 towards arrears of rent calculated at Rs. 360 per mensem together with interest and costs was not unconditional and therefore invalid and s.20 (4) of the Act does not help the respondent. In that view the learned District Judge decreed the suit for eviction with arrears of rent and mesne profits at Rs. 360 per mensem from 1.8.1972 and ordered credit being given for the amount deposited by the respondent towards the amount payable under the decree and granted four months time for the respondent to vacate the premises.

In C.R.P. No. 332 of 1981 filed by the respondent against the Judgment of the trial court a Division Bench of the High Court noticed that one of the conditions of s.20(4) of the Act is that the tenant should unconditionally pay or deposit the entire amount due together with interest and costs and that s.20 (6) says that any amount deposited under s.20(4) shall be paid to the landlord without prejudice to the pleadings of the parties and subject to the ultimate decision in the suit, and they have observed that the submission made before them on behalf of the appellant that the deposit to be unconditional must be on acknowledgement of the liability for rent as claimed by the landlord if accepted would render the provisions in s.20(6) of the Act nugatory. They have observed that if the tenant makes a deposit with a condition that it shall not be paid to the landlord until the suit is decided it would be a conditional deposit. They have found that in the present case the deposit was not conditional merely because while depositing the amount inclusive of rent at the rate of Rs. 360 per mensem as claimed in the plaint the respondent had contended in the written statement that the rent is Rs. 125 per mensem and not Rs. 360 per mensem and that pleading in the written statement

that the rent is Rs. 125 per mensem and not Rs. 360 per mensem does not make the deposit conditional. In that view the learned Judges allowed the civil revision petition and dismissed the suit with costs in both the courts.

The findings dated 19.7.1975 recorded by the learned District Judge on the preliminary issue holding that he had jurisdiction to entertain the suit is not available in the records produced in this Court. Therefore, it is not known for what reason the learned District Judge held that he had jurisdiction to entertain the suit. The appellant came forward with the suit for recovering possession of the premises together with arrears of rent and mesne profits on the allegation that the tenancy under the rent note (paper No. 18A) was for a period of only 11 months and that it had come to an end by efflux of time and the premises was intended for use as a factory and the Act is not applicable thereto. On the other hand, the respondent's defence was that the property was situate within three kilo metres of Ferozabad municipal limits and is governed by the provisions of the Act and that the civil suit for recovery of possession of the property is not maintainable. The learned District Judge accepted the respondent's contention on the question of applicability of the provisions of the Act to the premises in question on the ground that it is located within two kilo metres of Ferozabad municipal limits. S. 20(1) of the Act lays down that save as provided in sub- section (2), no suit shall be instituted for eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiry of a notice to quite or in any other manner. The present suit is not based on any of the grounds mentioned in s.20 (2) of the Act and though the respondent is alleged to have been in arrears of rent to the extent of Rs. 3, 960/- there is no allegation in the plaint that he is in arrears of rent for not less than four months and had failed to pay the same to the appellant within one month from the date of service upon him of a notice of demand, which is the ground mentioned in clause (a) of s.20(2) of the Act. In these circumstances, the learned District Judge should have normally dismissed the suit for want of jurisdiction in view of s.20(1) of the Act on his finding that the Act is applicable to the premises. It is not known why he did not do so, but on the other hand proceeded to hold that the deposit by the respondent is not unconditional as required by s.20(4) of the Act and ordered his eviction on that basis.

We entirely agree with the learned Judges of the High Court that the deposit of the amount on the first hearing date, made up of rent at the rate of Rs. 360 per mensem as claimed in the plaint and interest and costs could not be said to be not unconditional merely because the respondent had contended in the written statement that the rent was only Rs. 125 per mensem and he did not succeed in proving it at the trial. It is not possible to construe s.20(4) in the manner done by the learned District Judge as that would amount to foreclosure of any defence regarding the quantum of rent even in cases where the amount alleged by the landlord is more than the real rent agreed between the parties.

In this connection Mr. Kacker, learned Counsel appearing for appellant relied strongly upon the following observation made by Balakrishna Eradi, J, speaking for himself and Pathak and Venkataramiah, JJ. in Mangal Sen v. Kanchhid Mal :

> "The provisions of sub-section (4) will be attracted only if the tenant has, at the first hearing of the suit, unconditionally paid or tendered to the landlord the entire

> amount of rent and damages for use and occupation of the building due from him 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 him under sub-section (1) of section 30. There is absolutely no material available on the record to show that the alleged deposit of Rs. 1,980 was made by the tenant on the first date of hearing itself and, what is more important, that the said deposit was made by way of an unconditional tender for payment to the landlord. The deposit in question is said to have been made by the appellant on January 25, 1974. It was only subsequent thereto that the appellant filed his written statement in the suit. It is noteworthy that one of the principal contentions raised by the appellant-defendant in the written statement was that since he had stood surety for the landlord for arrears of sales-tax, there was no default by him in the payment or rent. In the face of the said plea taken in the written statement, disputing, the existence of any arrears of rent and denying that there had been a default, it is clear that the deposit, even it was made on the date of the first hearing, was not an unconditional tender of the amount for payment to the landlord. Further, there is also nothing on record to show that what was deposited was the correct amount calculated in accordance with the provisions of Section 20(4). In these circumstances, we hold that the appellant has failed to establish that he has complied with the conditions specified in sub- section (4) of Section 20 and hence he is not entitled to be relieved against his liability for eviction on the ground set out in clause (a) of sub-section (2) of the said Section."

The above principle cannot apply to the facts of the present case, for in that case it was not clear whether the deposit of the correct amount was made within the time fixed in s.20(4) of the Act whereas in the present case it has been found by the learned District Judge that the arrears of rent at the rate claimed in the plaint together with interest and costs had been deposited within the time mentioned in s. 20 (4) of the Act.

Mr. Kacker next drew our attention to the language used in s.20(4) and s.39 of the Act and submitted that whereas the provisions of s.39 are mandatory the Rent Controller has a discretion in s.20(4) in lieu of passing a decree for eviction on the ground of failure to deposit the arrears, interest and costs within the period mentioned in s.20(4) to pass an order relieving the tenant against his liability for eviction on that ground and that the High Court exercising revisional jurisdiction under s. 115 C.P.C. should not have interfered with the discretion exercised by the learned District Judge in ordering eviction and set aside that order especially in view of the fact that the respondent had failed to prove that the rent was only Rs. 125 per mensem and not Rs. 360 per mensem. We do not agree. The Act is a social piece of legislation which leans in favour of tenants. Merely because the tenant had failed to prove his case that the rent was only Rs. 125 per mensem and not Rs. 360 per mensem, the discretionary relief could not be denied to him even though he had deposited the arrears of rent at the rate claimed by the landlord in the plaint together with interest and costs within the time mentioned in s.20(4) of the Act. It is not possible to lay down any broad and general proposition that the discretionary relief should be denied to the tenant in all cases where he fails to prove his case regarding the quantum rent even though he had deposited the rent at the rate claimed by the

landlord in the plaint together with interest and costs within the time as required by s.20(4) of the Act.

For the reasons mentioned above we are of the opinion that no interference with the decision of the High Court is called for in this case. The appeal fails and is dismissed with costs.

N.V.K. Appeal dismissed.