

## Moti Ram vs Smt. Hasina Begam on 23 December, 1952

**Equivalent citations: AIR1953ALL346, AIR 1953 ALLAHABAD 346**

ORDER

Brij Mohan Lall, J.

1. This is an application in revision by a tenant. An application for ejectment from an accommodation was presented against him under Section 7B, U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), by the landlord. He deposited the rent in Court under Sub-section (7) of the said section and filed an objection about the rate of rent. The landlord was called upon by the learned Munsif to pay the court-fee which he did. Thereafter, the proceedings were converted under Sub-section (8) into a suit. The learned Munsif held a trial and recorded a finding that the landlord's version about the rate of rent was correct. He gave him a decree for the amount claimed, i.e., RS. 227-8-0. It is against this decision that this petition of revision has been filed.

2. The contention put forward on behalf of the applicant (tenant) is that the moment the proceedings were converted into a suit the learned Munsif lost jurisdiction to try it. It is urged that the plaint should have been returned for presentation to the Court of Small Causes, which Court alone is ordinarily competent to try a suit for arrears of rent. This contention does not appear to be correct. A plain reading of Section 7 will indicate that a special jurisdiction has been conferred by this section on the Munsif to try a suit for rent in circumstances mentioned in the section. Sub-section (11) of Section 7B runs as follows :

"Whenever the Munsif finds that the application by the landlord or the objection by the tenant was frivolous or vexatious, he shall award special costs to the tenant or the landlord., as the case may be, up to the amount of the claim,"

It will appear from the very language of this sub-section that the Munsif has been given power to award special costs against the landlord as well as against the tenant if the former's application or the latter's objection is found to be frivolous or vexatious. There can be no finding that the application or the objection is frivolous or vexatious unless the learned Munsif records evidence and enters into the merits of the case. It is, therefore, obvious that Sub-section (11) makes it clear beyond doubt that the learned Munsif has jurisdiction to hear and decide a suit for arrears of rent in circumstances mentioned in Section 7 of the Act.

3. It is argued by the learned counsel for the applicant that Section 16, Provincial Small Cause Courts Act (9 of 1887), lays down in mandatory terms that a suit which is cognisable by the said Court shall

not be triable by any other Court. But this provision should be deemed to be repealed by Section 7.B, U. P. (Temporary) Control of Rent and Eviction Act, qua suits of this nature in the State of U. P. The U. P. Act was passed before the coming into force of the Constitution. The Governor General's assent was taken, and, therefore, by virtue of Section 107(2), Government of India Act, 1935, the provisions of the U. P. (Temporary) Control of Rent and Eviction Act override Section 16, Provincial Small Cause Courts Act. I am, therefore, of the opinion that the learned Munsif had jurisdiction to try the suit.

4. I do not wish to express any opinion at this stage as to whether or not the decision of the learned Munsif was appealable to the learned District Judge. If it was, no revision lay. But since the revision has no force it fails on merits. It is hereby dismissed.