

Maresh Chand vs Brij Mohan on 22 November, 1950

Equivalent citations: AIR1953ALL612, AIR 1953 ALLAHABAD 612

ORDER

Brij Mohan Lall, J.

1. This is an application in revision by a plaintiff whose suit for arrears of rent in respect of a shop has been dismissed by the learned Judge, Small Cause Court of Meerut
2. The shop in question was constructed after June 1946. It was let out to the opposite party by the applicant on a monthly rent of Rs. 200/-. On 1-4-1949 the parties entered into an agreement by which the rent was reduced, with the consent of the parties, to Rs. 150/- per mensem, in addition to house tax. It was paid before the tenth day of the succeeding month, a rebate of Rs. 25/- per mensem would be granted to the opposite party.
3. Sometime in January 1950 the opposite party got reasonable annual rent fixed by the District Magistrate under Section 3-A, U. P. Temporary Control of Rent and Eviction Act (3 of 1947). The District Magistrate fixed the reasonable annual rent at Rs. 80/- per mensem.
4. The applicant instituted this suit for the recovery of Rs. 82/8/- as one month's rent. His case is that the rent amounted to Rs. 162/8/-. as agreed, and the house tax amounted to Rs. 12/8/-. This brought the total to Rs. 162/8/-. A sum of Rs. 30/- had been paid by the opposite party in cash and a sum of Rs. 50/- had been appropriated by the applicant towards rent out of a certain fund which had been placed fay the opposite party at the applicant's disposal and out of which appropriation towards rent could be made at the rate of Rs. 50/- per mensem.
5. The defence was that since the District Magistrate had fixed the reasonable annual rent at Rs. 80/- per mensem and since a sum of Rs. 30/- had been paid in cash and the balance of Rs. 50/- had been appropriated towards rent out of the aforesaid fund, nothing more was recoverable from the defendant. The whole dispute therefore narrowed down to the question whether the rent which could be recovered by the plaintiff-applicant was Rs. 150/- plus Rs. 12/8/- as house tax or Rs. 80/- as fixed by the District Magistrate.
6. The learned Judge Small Cause Court, was of the opinion that since the rent had been fixed by the District Magistrate under section 3-A of the Act, nothing more could be recovered by the plaintiff-applicant. It is contended before me by the learned counsel for the applicant that, this view is erroneous. I have heard both parties, and I am of the opinion that the contention put forward by the learned counsel for the applicant is well-founded.

7. Section 5(1) of the Act lays down that:

"Except as hereinafter provided in this section, the rent payable for any accommodation, to which this Act applies, shall be such as may be agreed upon between the landlord and the tenant".

Thereafter it is provided that, if the tenant feels that the agreed rent is in excess of the annual reasonable rent, he may institute a suit for fixation of rent in the court of the Munsif or the Civil Judge, according to the valuation of the claims. It was, therefore, open to the opposite party to avail of this provision of law and to institute a suit in appropriate court to get the agreed rent, which was much in excess of the annual reasonable rent, reduced. After the rent had been reduced by court, the rent fixed by the court would have been the rent payable by the tenant to the landlord under Section 5(5) of the Act. But so long as that step was not taken, the agreed rent was the rent payable by the tenant. The mere circumstance that the annual reasonable rent had been assessed by the District Magistrate at a figure lower than the agreed rent was not by itself sufficient to entitle the defendant to pay the annual reasonable rent in place of the agreed rent.

8. The opposite party has not yet taken the step provided by Section 5(4) of the Act and has not instituted a suit of the kind contemplated by that sub-section. He cannot, therefore, contend that it is the annual reasonable rent which is payable by him in place of the agreed rent.

9. The amount of house tax has not been determined by the lower court and the suit has to be remanded.

10. The revision is allowed. The decree of the Judge, Small Cause Court, is set aside. The case is remanded to the learned Judge, Small Cause Court, to readmit it to its original number, to determine the amount of house tax and thereafter to dispose of the suit according to law. The applicant shall get his costs of this Court. Costs of the trial court shall be in the discretion of the learned Judge, Small Cause Court.