

Kameshwar Singh Srivastava vs Iv Addl. Dist. Judge Lucknow & Ors on 14 November, 1986

Equivalent citations: 1987 AIR 138, 1987 SCR (1) 224, AIR 1987 SUPREME COURT 138, 1986 (4) SCC 661, 1987 UJ(SC) 1 268, (1987) 1 CURCC 192, (1986) 4 SUPREME 236, (1986) 12 ALL LR 688, (1987) 1 APLJ 5, 1987 MPRCJ 94, (1987) 1 RENCER 231, (1987) 1 RENTLR 627, (1987) 1 SCJ 84, (1986) JT 842 (SC)

Author: K.N. Singh

Bench: K.N. Singh, Sabyasachi Mukharji

PETITIONER:
KAMESHWAR SINGH SRIVASTAVA

Vs.

RESPONDENT:
IV ADDL. DIST. JUDGE LUCKNOW & ORS.

DATE OF JUDGMENT 14/11/1986

BENCH:
SINGH, K.N. (J)
BENCH:
SINGH, K.N. (J)
MUKHARJI, SABYASACHI (J)

CITATION:
1987 AIR 138 1987 SCR (1) 224
1986 SCC (4) 661 JT 1986 842
1986 SCALE (2) 797
CITATOR INFO :
D 1988 SC 452 (11)

ACT:
U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972--Sections 20 & 30--Bonafide dispute as regards landlord's right to receive rent--Landlord refusing to accept rent without justification- Tenant entitled to initiate proceedings to deposit rent in Court.

HEADNOTE:
On the death of the owner, landlord of the tenanted

premises, his heirs respondents, Nos. 3 to 12 became the owners. The appellant-tenant tendered rent to respondent No. 3 but he did not accept the same. The appellant made application before the Munsif under s. 30(1) of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972, who permitted deposit of the rent and since then the appellant had been depositing rent in the Munsif's Court. The respondent-landlords served a notice on the appellant calling upon him to vacate the premises, hand over possession and pay the arrears of rents from 18.10.1979 to 17.9.1982. In his reply the appellant stated that he was ready and willing to pay the rent, and if respondent No. 3 was willing to accept the rent he may inform him within reasonable time so that he may pay the same to him otherwise he would deposit the rent in the Munsif's Court. The respondent-landlords did not give any reply to the appellant instead they filed suit for his eviction. Meanwhile the appellant deposited the entire amount of arrears in Munsif's Court.

The Judge, Small Causes Court, decreed the suit holding that the appellant had committed default for a period of four months from the date of suit. The revision filed by the appellant was dismissed by the District Judge. The High Court dismissed the petition of the appellant under Article 226 holding that the appellant had failed to tender arrears of rent within one month from the date of service of notice on him and, therefore, he was liable to ejectment.

In appeal to this Court on behalf of the appellant-tenant it was urged, that the courts below failed to appreciate, that the appellant had all along been ready and willing to pay the rent to the landlords and in the reply to the notice he had offered to pay rent on hearing from respondent No. 3 but since the appellant did not receive any reply, he

225

deposited the rent in Munsif's Court under s.30 and, therefore, he was not liable to ejectment. On behalf of the respondent-landlords it was urged that all the three Courts have recorded findings holding the appellant in arrears of rent for a period of more than four months on the date of the suit, therefore, the impugned orders do not suffer from any illegality warranting interference by this Court.

Allowing the appeal of the appellant-tenant,

HELD: 1. The High Court as well as the Courts below have taken a too technical view in holding the appellant guilty of wilful default in payment of rent. [230B]

2. The High Court as well as the Courts below have committed error in holding that the appellant had failed to pay arrears of rent for a period of more than four months and on that ground he was liable to ejectment from the premises in dispute. [231B]

3. On landlord's serving notice of demand on a tenant who may be in arrears of rent for a period of more than four

months, and on the tenant's failure to tender the rent to the landlord within one month from the service of the notice, the tenant is liable to eviction, but in the instant case, having regard to the special facts and circumstances available on the record it cannot be said that the appellant failed to tender the rent to the landlords or that he was in arrear for a period of more than four months. He was all along already to pay and since the landlord did not give any reply to his notice, he was justified in depositing the arrears in the Munsif's Court. Since the deposit was made it must be deemed that the appellant had tendered rent to the landlords as contemplated by s. 13(6) of the Act. [230H-231B]

4. The question whether the tenant is justified in depositing the rent in Court and whether the deeming provision of s. 30(6) would be applicable to relieve him from the liability of eviction would depend upon facts of each case. The appellant, in the instant case, had relieved himself from the liability of eviction and he was not in arrears of rent for a period of more than four months. [231F-G]

5. The scheme, structure and the policy discernible from the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 unmistakably aim at regulating the conditions of tenancy, rent and preventing eviction of tenants. The legislature has taken care to make special provisions protecting the interest of tenants

226

from eviction while placing obligation on him to pay rent. The right of a tenant not to be evicted and the prohibition against a landlord from seeking eviction except upon specified grounds are well protected by the provisions of the Act, and the tenant is afforded an opportunity to pay arrears of rent even after filing of the suit and, in some cases even after a decree of eviction is passed. [229G-230A]

6. The special provisions as contained in ss. 30(4), 30, 39 and 40 indicate the legislative policy to safeguard the interest of a tenant, who deposits rent in accordance with those provisions. The Court must strive to so interpret the statute as to protect and advance the object and purpose of the enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy. The Courts must, therefore, keep the legislative policy in mind in applying the provisions of the Act to the facts of the case. [230B]

7. Primarily a tenant is under a legal obligation to pay rent to the landlord as and when due and if he fails to pay the same on demand from the landlord and if he is in arrears for a period of more than four months he would be liable to ejection. Where there is a bonafide dispute regarding the landlord's right to receive rent on account of their being several claimants or if the landlord refuses to accept the rent without there being any justification for the same, the tenant would be justified to take proceeding under s. 30 of

the Act and deposit the rent in Court. Thereupon he would be deemed to have paid the rent to landlord, consequently, he would be relieved of liability of eviction. It does not, however, follow that the tenant is entitled to disregard the landlord or ignore his demand for payment of rent to him and deposit the same in Court. There should be justification for depositing rent in court, in the absence of any justification, tenant would be liable to eviction. [231C-E]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 203 of 1986 'From the Judgment and Order dated 16.7.1985 of the Allahabad High Court in W.P. No. 995 of 1985.

Manoj Swaroop and Ms. Lalita Kohli for the Appellant. A.K. Gupta, Brij Bhushan Sharma and S.K. Dhingra for the Respondents.

227 The Judgment of the Court was delivered by SINGH, J. This appeal by special leave is directed against the Judgment and Order of the High Court of Allaha- bad (Lucknow Bench) dated 16.7.85 dismissing the appellant's petition filed under Article 226 of the Constitution chal- lenging orders for his eviction from the premises in dis- pute.

Briefly the facts giving rise to this appeal are, that the appellant was a tenant on a monthly rent of Rs.100 of house No. 293/246 situated in old Haider Ganj of which N.N. Meithy was the owner and landlord. On Meithy's death his heirs respondents nos. 3 to 12 became the owners of the house. It appears that the appellant tendered rent to Prab- hat Kumar respondent no. 3 but he did not accept the same. The appellant made application before the Munsif under section 30(1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act). The Munsif permitted the appellant to depos- it rent and since then the appellant has been depositing rent in the Munsif's court. The respondent-landlords served a notice dated 4.8.82 on the appellant on 9.8.82 through their counsel calling upon him to vacate the premises and hand over possession to them and to pay the arrears with effect from 18.10.1979 to 17.9.1982. The appellant through his Advocate gave a reply to the notice on 6.9.82 stating therein that he was ready and willing to pay the rent, and if Prabhat Kumar Meithy, respondent no. 3 was willing to accept the rent he may inform the appellant within reasona- ble time so that he may pay the same to him otherwise he would deposit the rent in the Miscellaneous Case No. 57/78 in the Munsif's court. The respondentlandlords did not give any reply to the appellant instead they filed suit for eviction. Meanwhile the appellant deposited the entire amount of arrears in Munsif's court on 6.10.1982. The appel- lant contested the eviction proceedings before the Judge, Small Causes Court on the ground that he was always ready and willing to pay rent and on landlords' refusal he had deposited rent in the court under section 30(1) of the Act therefore he was not liable to ejectment- The Judge, Small Causes Court decreed the suit on the findings that the appellant had committed default for a period of four months from the date of suit. The appellant preferred revision before the District Judge which was dismissed on 22.2.85. Thereafter the appellant approached the High Court under Article

226 of the Constitution of India seeking relief for quashing the order of the Trial Court as well as Revisional court. A learned single judge of the High Court by his order dt. 16.7.1985 dismissed the petition on the finding that the appellant had failed to tender the arrears of rent to the landlord within one month from the date of service of notice on him therefore he was liable to ejectment and the findings recorded by the subordinate court did not suffer from any legal infirmity. Learned counsel for the appellant urged that the High Court and the courts below failed to appreciate that the appellant had all along been ready and willing to pay the rent to the landlords and in his reply to the notice dated 6.9.82 he had offered to pay the rent on hearing from Prabhakar Kumar Meithy, respondent no. 3. But since the appellant did not receive any reply he deposited the rent in Munsif's court in proceedings taken under section 30 of the Act, therefore he was not liable to ejectment. On behalf of the respondent-landlords it was urged that all the three courts have recorded findings holding the appellant in arrears of rent for a period of more than four months on the date the suit was instituted, therefore the impugned Orders do not suffer from any illegality warranting interference by this Court. Having given our anxious consideration to the submissions made by the counsel for the parties and having perused the material on record, and after considering the relevant provisions of the Act we are of the opinion that the High Court as well as the courts below have taken a too technical view in holding the appellant guilty of wilful default in payment of rent.

The U.P. Urban Buildings (Regulations of Letting, Rent & Eviction) Act, 1972 was enacted as the preamble indicates to provide, in the interest of the general public, for the regulation of letting and rent, and the eviction of tenants from, certain classes of buildings situate in urban areas, and for matters connected therewith. Section 4 imposes prohibition on a landlord to take or receive for admitting a tenant to any building any premium or additional payment over and above the rent payable by him. Sections 8 and 9 provided for determination of standard rent in the absence of any agreement between the tenant and the landlord. Section 11 curtails right of a landlord to induct any tenant in a building in pursuance of an allotment order issued under sec. 16. Section 16 provides for allotment of building which may have fallen vacant or is about to fall vacant, or a part thereof to the landlord if he bonafide requires the same. Section 20(1) prohibits institution of a suit by landlord for eviction of a tenant except on the grounds specified under sub-sec. (2). Section 20(2)(a) permits filing of a suit by a landlord for the eviction of a tenant, after determination of his tenancy if the tenant is in arrear of rent for a period of not less than four months, and he has failed to pay the same to the landlord within one month from the date of service upon him a notice of demand. When the tenant fails to pay arrears of rent within one month from the date of service of notice of demand the landlord is entitled to obtain decree of eviction but the legislature has provided another opportunity to the tenant to relieve himself from the liability of eviction. Section 20(4) safeguards tenants from eviction if on the first date of hearing of the suit he unconditionally pays, or tenders to the landlord or deposits the entire amount of rent and damages for use and occupation of the building together with interest thereon @ 9% and the landlords' costs of the suit in respect thereof, after deducting therefrom any amount deposited by him under sub-sec. (1) of sec. 30. If that is done the Court is bound to pass orders relieving the tenant from liability of eviction. Legislative policy to protect the tenant from eviction is further evidenced from sec. 39 and

40. Section 39 protects a tenant from eviction, it lays down that if a suit for eviction on the ground of default in payment of arrears of rent was pending on the date of commencement of the Act no

decree for eviction shall be passed if the tenant deposited arrears of rent within one month from the date of commencement of the Act. Section 40 also protects tenants from eviction in similar circumstances even at the stage of the pendency of appeal or revision. Section 30 of the Act lays down that if a dispute or difference arises as to the entitlement of landlord to receive rent, the tenant may deposit rent in the prescribed manner and continue to do so in the Munsif's court, until the landlord signifies in writing his readiness and willingness to accept the rent and if the landlord does not accept the rent it is open to the tenant to deposit the rent in Munsif's court. Once deposit is made under sub-sec. (1) the court shall cause notice of the deposit to be served on the landlord and the amount so deposited may be withdrawn by him on an application made by him to the court. Section 30(6) declares that if deposit is made under sub-sec. (1) or under sub-sec. (3) of the Act in Munsif's court it shall be deemed that the tenant has paid the rent to the landlord. The deeming provision stipulates that if the tenant is permitted to deposit rent in court, it will amount to payment of rent to the landlord and no decree for eviction of tenant can legally be passed on the ground of arrears of rent.

The Scheme and structure and the policy discernible from the provisions of the Act, as discussed, unmistakably aim at regulating the conditions of tenancy, rent and preventing eviction of tenants. The legislature has taken care to make special provisions protecting the interest of tenants from eviction while placing obligation on him to pay rent. The right of a tenant not to be evicted and the prohibition against a landlord from seeking eviction except upon specified grounds are well protected by the provisions of the Act and the tenant is afforded opportunity to pay arrears of rent even after filing of the suit, and, in some cases even after a decree of eviction is passed. The special provisions as contained in secs. 30(4), 30, 39 and 40 indicate the legislative policy to safeguard the interest of a tenant, who he deposits his rent in accordance with those provisions. The court must strive to so interpret the statute as to protect and advance the object and purpose of the enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy. The courts must therefore keep the legislative policy in mind in applying the provisions of the act to facts of each case.

In the instant case on the death of N.N. Meithy the original landlord, eight different persons respondents nos. 3 to 12 succeeded to him. The appellant was in doubt as to which of them was entitled to receive rent, he made an attempt to tender rent to Prabhat Kumar, respondent no. 3 but he refused to accept the same, thereupon the appellant made an application under sec. 30(1) in the Munsif's court and on the permission being granted to him he continued to deposit rent in that court. It is true that on service of the landlord's notice of demand on 8.9.82 the appellant did not tender the amount to the respondents, instead he gave a reply on 6.9.82 stating therein that he was willing to pay the rent to the landlord, Prabhat Kumar, respondent no. 3 if he expressed his willingness in writing to accept the same. The appellant's insistence in requesting Prabhat Kumar to signify his willingness in writing appears to be founded on the provision of sec. 30(1) of the Act. It is noteworthy that in his notice dt. 6.9.82 the appellant had clearly stated that he was ready and willing to pay the rent to Prabhat Kumar if he signified his willingness in writing to accept the rent within a reasonable time otherwise he would deposit the same in the Munsif's court in Misc. Case no. 57 of 1978. Admittedly the appellant's notice dt. 6.9.82 was served on the respondent-landlords but no reply was sent to the appellant, instead they filed suit for his eviction. Since no reply was

received by the appellant from the land- lords he ,deposited the arrears of rent in the Munsif's court in Misc. Case No. 57/78. In the face of these facts and circumstances it would be unjust to hold the appellant in arrears of rent, rendering him liable to eviction. It is true that on landlord's serving notice of demand on a tenant who may be in arrears of rent for a period of more than four months and on the tenant's failure to tender the rent to the landlord within one month from the service of the notice the tenant is liable to eviction, but in the instant case having regard to the special facts and circumstances available on the record we do not find that the appellant failed to tender the rent to the landlords or that he was in arrear for a period of more than four months. He was all along ready to pay and since the landlords did not give any reply to his notice dt. 6.9.82 he was justified in depositing the arrear in the Munsif's court. Since the deposit was made it must be deemed that the appellant had tendered rent to the landlords as contemplated by sec. 13(6) of the Act. In this view the High Court as well as the courts below committed error in holding that the appellant had failed to pay arrears of rent for a period of more than four months and on that ground he was liable to ejectment from the premises in dispute. We should not be understood to have laid down that the tenant should deposit rent in court instead of paying the same to the landlord. Primarily a tenant is under a legal obligation to pay rent to the landlord as and when due and if he fails to pay the same on demand from the landlord and if he is in arrears for a period of more than four months he would be liable to ejectment. Where there is a bonafide dispute regarding the landlord's right to receive rent on account of there being several claimants or if the landlord refuses to accept the rent without there being any justifi- cation for the same, the tenant would be entitled to take proceeding under sec. 30 of the Act and deposit the rent in court thereupon he would be deemed to have paid the rent to the landlord, consequently he would be relieved of his liability of eviction. It does not however follow that the tenant is entitled to disregard the landlord or ignore his demand for payment of rent to him. The provisions of the Act safeguard tenant's interest but it must be kept in mind that the landlord's right to receive rent and in the event of the tenant's being in arrears of rent for a period of more than four months, his right to ,evict the tenant is preserved. If the tenant makes the deposit in court without there being any justification for the same or if he refuses to pay the rent even on the service of notice of demand by the land- lord, he would be liable to eviction. However the question whether the tenant is justified in depositing the rent in court and whether deeming provision of section 30(6) would be available, him to relieve him from the liability of eviction would depend upon facts of each case. As noted earlier on the special facts of the instant case we have no doubt in our mind that the appellant had relieved himself from the liability of eviction and he was not in arrears of rent for a period of more than four months.

We accordingly allow the appeal, set aside the orders of the High Court and the subordinate courts and dismiss the respondent-landlords' suit. In the circumstances of the case there will be no order as to costs.

A.P.J.
allowed.

Appeal