Supreme Court of India
Ved Prakash Wadhwa vs Vishwa Mohan on 26 March, 1980
Equivalent citations: AIR 1982 SC 816, (1981) 3 SCC 667, 1980 (12) UJ 725 SC
Author: V K Iyer
Bench: O C Reddy, V K Iyer
JUDGMENT V.R. Krishna Iyer, J.

1. The short point raised in this appeal turns on the question as to when the first hearing of the suit arrives in the course of a case. Section 20(4) of U.P. Urban Building (Regulation of Letting, Rent & Eviction) Act, 1972 runs thus:

20(4). 'In any suit for eviction on the ground mentioned in Clause (a) of Sub-section (2), if at the first hearing of the suit the tenant unconditionally pays or tenders to the landlord the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent) 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 the tenant under Sub-section (1) of Section 30, the Court may, in lieu of passing a decree for eviction on the ground, pass an order relieving the tenant against his liability for eviction on that ground :

Provided that nothing in this sub section, shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area.

2. In this case the tenant was sought to be evicted on the ground of arrears of rent and under the provision above quoted. If he tendered the rent at the rent at the first hearing of suit, the decree for eviction could not be granted on the ground of default in payment of rent. The learned District Judge, however, ordered eviction on the ground that although the money was tendered before the first hearing, the actual deposit in the Treasury was made later, which was a few days beyond the date of first hearing. There were two other minor contentions tunning on Advocates fee having been calculated at half the sum due and also about interest. The Court took the view that the deposit was made beyond time and directed eviction in allowance of the revision against the decree of the trial Court which had dismissed the suit for eviction. The High Court dismissed the revision against the District Court's order. The appellant has arrived in this Court by special leave.

3. We are not disposed to investigate the facts in detail. The question of law raised before us may perhaps be pronounced upon as it is of general importance. Section 20(4) of the Act which we have exerpted above fixes the crucial date for deposit of rent as "at the first hearing of the suit." What is "the first hearing of the Suit"? Certain decisions have been cited before us of the Allahabad High Court which indicate that "the first hearing of the suit" is when, after the framing of issues, the suit is posted for trial, that is, production of evidence. In the matters of State statutes where procedure has to be pronounced upon, the practice of the Court is the best guide to interpretation and the Allahabad High Court having pronounced upon the question we think we ordinarily accept such interpretation unless there is something revoltingly wrong about the construction. We see none here

and, therefore, adopt as correct the decision of the High Court regarding the meaning of the expression "at the first hearing of the suit". We may however add that the expression "at the first hearing of the suit" is also to be found in Order X Rule 1, Order XIV Rule 1(5) and Order XV Rule 1 of the CPC These provisions indicate' that "the first hearing of the suit" can never be earlier than the date fixed for the preliminary examination of the parties (Order X Rule 1) and the settlement of issues (Order XIV Rule 1(5)).

4. If this be the true meaning of the expression there is no doubt that the appellant made the necessary deposit into the Treasury well within time because issues were framed only on 24-10-1975 while the actual deposit has been made as early as on 18 9-74. A rather trifling question has been mooted before us that the date of deposit cannot be takes to be the date on which the challan was passed by the Court but only the actual date on which the money was put into the treasury. Here again we cannot quibble over expressions but must be guided by the practice prevailing in the Courts in the States. Two decisions to which our attention was so drawn were 1977(3) Allahabad Law Reports Summary of Cases p. 79 Bankey Bahari v. Gopal Dass and 1977 (U.P.) R.C.C. 227 Daya Ram v. Virender Kumar Goel, They lay down the law that when money is tendered before the Court, the challan is passed by the ministerial officer and thereupon, the money is deposited in the treasury with the challan, such deposit relates back to the date on which the tender was made or the challan presented. Taking this view as correct and we are inclined to that view, the appellant has deposited the arrears of rent well within time. The question must, therefore, be decided against the respondent on both the points. We must add here that we are not concerned in this case with the amendment by way of explanation to Section 20(4), as the present litigation was antecedent to the amendment.

5. The other minor questions which we have adverted to earlier do not require adjudication by us partly because they have become obsolescent by subsequent amendments and largely because on our suggestion both sides have come to an agreement which is just and fair in the given circumstances. The landlord will receive with effect from 1 2-1977 a sum of Rs. 250/ by way of rent per month. The entire arrears up to that date will be calculated on the original basis of Rs. 68/- per month and thereafter, at the rate of Rs. 250/- per month. The whole sum will be deposited within one month from today, failing to do which, there will be a decree for eviction. There is some apprehension of obstruction on the part of the landlord because access to one room which is in his occupation on the first floor has to be through the premises let out to the tenant appellant. The latter in his affidavit has agreed that he will cause no such obstruction and will afford the necessary facility for entry and exit and, if necessary, repairs. We record this undertaking which will be sufficient for the present purpose.

6. We direct the appellant in the circumstances of the case to pay & sum of Rs. 2,000/- by way of costs to the respondent. Shri R.K. Garg appearing for the respondent states that a sum of Rs. 1000/- be made over to the Legal Aid Society (Supreme Court) out of this sum. The appeal is disposed of accordingly.