

Rupali Gupta vs Smt. Kanti Tomar" on 1 September, 2022

Author: Alok Kumar Verma

Bench: Alok Kumar Verma

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

1ST SEPTEMBER, 2022

CIVIL REVISION NO.68 of 2022

Between:

Smt. Kanti Tomar.

...Revisionist

and

Smt. Rupali Gupta.

...Respondent

Counsel for the Revisionist : Mr. Siddhartha Singh.

Counsel for the Respondent/
Caveator : Mr. Piyush Garg.
Hon'ble Alok Kumar Verma,J.

This SCC Revision has been filed under Section 25 of the Provincial Small Cause Courts Act, 1887, against the judgment and decree dated 03.08.2022, passed by the Judge, Small Cause Court /Ist Additional District Judge, Haldwani, District Nainital in SCC Suit No.13 of 2019 "Smt. Rupali Gupta vs. Smt. Kanti Tomar", whereby, the learned trial court decreed the suit by passing an eviction decree against the revisionist-defendant in relation to the building-in-question and directed the revisionist to pay Rs.25,100/-, the arrears of rent, along with 3.5% simple interest and mesne profit @ of Rs.700/- per month till the possession of the building-in-question is handed over to the respondent-plaintiff.

2. In short, the facts of the case are as under:-

The respondent-plaintiff, landlord, sent a quit notice dated 28.06.2019 to the revisionist-defendant under Section 106 of the Transfer of Property Act, 1882 and terminated the revisionist's tenancy on expiry of thirty days from the receipt of the said quit notice and demanded arrears of rent @ of Rs.700/- per month and vacant possession of the tenanted building from the revisionist. The said notice was received by the revisionist on 01.07.2019. In spite of the receipt of quit notice, the revisionist

neither vacated the building-in-question nor paid the outstanding rent. This led to filing of the said summary suit.

3. Heard Mr. Siddhartha Singh, learned counsel for the revisionist and Mr. Piyush Garg, learned counsel for the respondent/Caveator.

4. In the present matter, it is not in-dispute that the revisionist-defendant had admitted her tenancy over the building-in-question in her written statement. Mr. Siddhartha Singh, the learned counsel for the revisionist submitted that in the year, 2016, a quit notice was sent by the respondent to the revisionist and after receiving the said quit notice, the revisionist had tendered the rent amount. The respondent had refused to receive the rent. Therefore, she had deposited the rent amount under Section 30(1) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (as applicable in the State of Uttarakhand) (hereinafter referred to as "the Act, 1972"). He further submitted that the rent of the building-in-question was Rs.150=00 per year and not Rs.700/- per month as claimed by the respondent-plaintiff, therefore, the burden lies on the respondent-plaintiff to prove the rate of rent, alleged to be payable by the revisionist-defendant to her. In support of the said submissions, the learned counsel for the revisionist has relied upon a judgment of the Hon'ble Allahabad High Court, passed in "Raffiuddin vs. Additional District Judge IInd Gorakhpur and Another, 2003 (53) ALR 218" and judgment of this High Court passed in "Shri Chaman Lal vs. Shri Raj Kumar Sachdeva 2006 (3) ARC 494". The learned counsel for the revisionist further submitted that in this matter, revision should be admitted and after admission of the revision, the matter should be heard finally.

5. On the other hand, Mr. Piyush Garg, the learned counsel for the respondent-plaintiff, opposed the said submissions of the revisionist and submitted that it is admitted fact that the revisionist -defendant was tenant of the respondent-plaintiff. He further submitted that the respondent had sent a quit notice dated 31.08.2017. After receiving the said first notice, the revisionist had tendered the rent @ of Rs.150 per year from 01.01.2016 for two years w.e.f. 01.01.2016. The learned counsel for the respondent further submitted that the subsequent notice was sent to the revisionist and after receiving the said subsequent notice, the revisionist neither tendered the rent amount nor deposited the said amount under Section 30(1) of the said Act, 1972 nor under Order 15 Rule 5 of the Code of Civil Procedure, 1908.

6. Mr. Piyush Garg, the learned counsel for the respondent has relied upon a judgment of this High Court in "Smt. Gulshan Panwar vs. Shri Labh Singh Bajwa"

decided on 14.03.2007, Wherein, the judgment passed by the Allahabad High Court in "Gokaran Singh vs. Ist Additional District and Sessions Judge, Hardoi 2000 (1) ARC page 653" is relied upon. In Gokaran Singh (Supra), it was held as under:-

"39. In view of the aforesaid discussions, three questions referred to the Full Bench, are answered as under:-

1. A notice of demand, by which rent is demanded at higher rate than the correct rate, cannot be said to be invalid or mala-fide. On receipt of such notice of demand, the tenant is not absolved from his duty to comply with the said notice. He can, however, tender arrears of rent at the admitted rate to the landlord.

2.If the landlord has been refusing to accept the rent at correct rate and has been claiming rent at higher rate, the tenant as a consequence of landlord's earlier refusal in past, deposit the rent in the Court under Section 30 and if thereafter landlord serves formal notice of demand again at the higher rate and expresses his willingness to accept the rent, the tenant after receipt of notice is under an obligation to tender the rent at least at the rate admitted to him to the landlord and has got no right to straightaway deposit the same under Section 30(1) of the Act.

3.Initial burden of proof with regard to the existence of arrears of rent lies upon the landlord. Once said burden is discharged, the tenant will have to prove the payment of rent. Where the landlord and tenant both produce evidence with regard to the existence of arrears and payment of rent, the question of burden to prove losses its importance."

7. During the arguments, Mr. Piyush Garg, the learned counsel for the respondent-plaintiff submitted that the respondent-plaintiff has waived her claim the rent @ of Rs.700/- per month, and, she is agree to accept the arrears of rent and mesne profit @ of Rs.150 per year, as mentioned by the revisionist-defendant.

8. Having heard the learned counsel for the parties, it reveals that the revisionist-plaintiff neither tendered the admitted rent by her, nor deposited the said rent. The present case is not a case wherein the learned trial court has considered any irrelevant factor or has ignored any relevant factor. Learned counsel for the revisionist could not show that the learned Trial Court did not apply its judicial mind while passing the impugned judgment. Therefore, the Revision is liable to be rejected. The same is rejected at the admission stage leaving the parties to bear their respective costs. However, the impugned judgment and decree is being modified and directed the revisionist to handover the possession of the building-in-question, arrears of rent and mesne profit @ of Rs.150 per year within thirty days from today.

_____ ALOK KUMAR VERMA, J.

Dt: 1st September, 2022 Neha