

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO.5981 OF 2014****SHANTI PRASAD (D) THR. LRs****... Appellant****VERSUS****THAKUR DASS (D) THR. LRs & OTHERS****... Respondents****ORDER**

Matter is called out.

Learned counsel for the appellant is present but none is present for the respondents.

There are 11 respondents in this appeal. As per office report, respondent nos.1(i) to (vi), 3 and 5 are served but no one has entered appearance on their behalf. Respondent nos. 2 and 4 have refused to accept notice. Notice upon respondent no.6 was served as per Certificate of Service received from the High Court. Respondent nos.7 to 11 have refused to accept the notice and, therefore, notices have been affixed at their residence.

In view of the above, service of notice on the respondents is held sufficient.

We have heard learned counsel for the appellant and have perused the record.

The appellant is a tenant. A suit for recovery of arrears of rent and eviction was instituted against the appellant after determining the tenancy *inter alia* on the ground of default in payment of rent and making of material alteration in the tenanted accommodation. After exchange of pleadings, the trial court framed as many as eight issues. On Issue No.4 i.e. whether the tenant/defendant has made material alterations in the accommodation in dispute, the trial court returned a finding in favour of the tenant. However, as rest of the issues were decided against the tenant (appellant herein), the trial court decreed the plaintiff's suit for recovery of arrears of rent, mesne profit and ejectment.

Against the judgment and decree of the trial court dated 03.10.1981, Civil Revision No.467 of 1981 was filed before the High Court of Judicature at Allahabad which came to be dismissed by the impugned judgment and order dated 11.05.2010.

Assailing the decree of ejectment, the learned counsel for the appellant has raised a short point – whether in view of deposit of Rs.8910/- made by the defendant/appellant towards arrears of rent, interest and costs of the suit, vide application dated 21st October 1978 (Annexure P2), the appellant/tenant was entitled to protection against eviction in light of the provisions of sub-section (4) of Section 20 of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 [U.P. Act No.13 of 1972] (for short “U.P. Act”)?

It is urged that there is no dispute that the requisite amount was deposited before the first date of hearing, as would be clear from the observations of the trial court in paragraph 12 of its judgment dated 03.10.1981. However, the benefit of sub-section (4) of Section 20 has been denied only on the ground that the appellant claimed the rate of rent as Rs.45 per month whereas it was found to be Rs.150 per month. It is submitted that the trial court and the revisional court have wrongly taken the view that the above discrepancy would render the deposit conditional thereby disentitling the defendant to the discretionary relief under sub-section (4) of Section 20.

We have considered the submissions of the learned counsel for the appellant and perused the record. We find that the trial court framed Issue No.6 as regards entitlement of the defendant/appellant to the benefit of sub-section (4) of Section 20. While returning a finding on Issue No.6, though the trial court accepted that an amount of Rs.8910/- towards arrears of rent, interest and costs of the suit was deposited by the defendant/tenant before filing the written statement but held the said deposit not unconditional as in the written statement, the defendant pleaded the rate of rent as Rs.45/- per month, which, ultimately, was found to be Rs.150/- per month. What is important is that the trial court recorded no finding that the amount deposited was short of the requisite amount or that it was not by or before the first date of hearing in the suit.

In ***Vijay Laxmi Gangal v. Mahendra Pratap Garg***¹, a three-Judge Bench of this Court while conferring the benefit of the provisions of sub-section (4) of Section 20 of the U.P. Act held as follows:

“The Act is a social piece of legislation which leans in favour of tenants. Merely because the tenant had failed to prove his case that the rent was only Rs 125 per mensem and not Rs 360 per mensem, the discretionary relief could not be denied to him even though he had deposited the arrears of rent at the rate claimed by the landlord in the plaint together with interest and costs

1 (1985) 3 SCC 364 : AIR 1986 SC 753

within the time mentioned in Section 20(4) of the Act. It is not possible to lay down any broad and general proposition that the discretionary relief should be denied to the tenant in all cases where he fails to prove his case regarding the quantum of rent even though he had deposited the rent at the rate claimed by the landlord in the plaint together with interest and costs within the time as required by Section 20(4) of the Act.”

In light of the law expounded by this Court in ***Vijay Laxmi Gangal (supra)***, while keeping in mind that there is no dispute that on or before the first date of hearing the appellant had deposited the arrears of rent as demanded together with interest and costs of the suit, we are of the view that the appellant/tenant was entitled to the benefit of the provision of sub-section (4) of Section 20 of the U.P. Act and the courts below were not justified in denying its benefit to the appellant/tenant only on the ground that the plea taken by him with regard to the rate of rent was found incorrect. Consequently, the decision of the courts below on Issue No.6 is reversed. It is held that the appellant is entitled to the benefit of Section 20(4) of the U.P. Act.

For the reasons aforesaid, the impugned order of the High Court to the extent it affirms the decree of eviction is set-aside. The order of the trial court to the extent it directs for eviction of the appellant is set-aside. As no challenge to the remaining part of the decree has been made before us, the remaining part of the decree is maintained.

The appeal is allowed to the extent indicated above. There is no order as to costs. Interim order, if any, stands discharged.

.....J.
(Manoj Misra)

.....J.
(Aravind Kumar)

New Delhi;
March 01, 2023