

CASE NO.:
Appeal (civil) 3294-3295 of 2005

PETITIONER:
Ajai Agarwal & Ors.

RESPONDENT:
Har Govind Prasad Singhal & Ors.

DATE OF JUDGMENT: 08/11/2005

BENCH:
Ashok Bhan & Altamas Kabir

JUDGMENT:
J U D G M E N T

ALTAMAS KABIR, J.

The appellants are the legal heirs of the respondent-tenant and the respondents are the landlord-plaintiffs. One Jagdish Prasad, the father of the appellants in these two appeals was granted a tenancy of a shop room situated at Mohalla Bhoop Singh, Kasba Jaspur, District Nainital by the Respondents-plaintiffs at an agreed rent of Rs.600/- per year. Since the shop room was in a dilapidated condition, the tenant requested the landlord to get the shop renovated and to fix a shutter in the shop but the landlord did not agree to such a proposal and asked the tenant to get the shop repaired at his own costs and consequently increased the rent to Rs.1,200/- per year. It is the case of the tenant that at the relevant time the tenant fell ill and could neither repair the shop nor fix the shutter as agreed till the year 1989 but the landlord insisted on payment of the increased rent at the rate of Rs.1,200/- per year since 1986. According to the tenant, the increased rent was to be paid for the improvement in the shop room but since the repair work could not be done till 1989, the landlords agreed to receive rent at the rate of Rs.75/- per month instead of Rs.100/- per month. However, once the shop was renovated and the shutter was fixed, the tenant paid the rents at the enhanced rate of Rs.1,200/- per year.

On 21.5.1992, the landlord-respondents gave notice stating that the rent had not been paid from the month of October 1988 and demanded rent at the rate of Rs.200/- per month from 1.4.1989 and thereafter at the rate of Rs.400/- per month from 1.1.1990. The tenant duly replied to the said notice on 20.6.1992 denying that any such enhancement had been agreed to by him and also indicated that the rents had not been paid as the landlord had himself refused to accept the same. The tenants thereupon tendered the rent of Rs.4,950/- to the landlord by money order at the rate of Rs.100/- per month, including house tax, since October, 1988. The landlord, however, refused to accept the same. On 24.4.1996, the landlord-respondents filed a suit for recovery of arrears of rent amounting to Rs.14,500/- and for eviction of the tenant from the tenanted premises. The amount claimed by the landlord-respondents towards arrears of rent was calculated on the basis that that the monthly rents were in arrears at the rate of Rs.200/- per month from February, 1989 and at the rate of Rs.400/- per month from January 1990. The court of Small Causes (Senior Division), Nainital, decreed the suit upon accepting the case made out by the landlord-plaintiffs regarding the purported agreement for enhancement of the rents at the enhanced rate.

Aggrieved by the judgment and order of the trial court, the tenant filed a revision petition No.34/1996 which was also dismissed by the court of Special Judge (CBI)/Addl.District Judge, Nainital on 13.8.1999.

Aggrieved by the aforesaid judgments and orders, the present appellants who had succeeded to the tenancy as the legal heirs of the tenant filed a Civil Writ Petition No.36462/99 before the High Court of Allahabad which after the creation of the Uttaranchal High Court stood transferred to the High Court of Uttaranchal and renumbered as Writ Petition No. 4053(M/S)/2001.

Before the High Court it was sought to be urged on behalf of the appellants-tenant that in the absence of any written agreement the provisions of Section 16 (10) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as 'the Act') did not provide for enhancement of rent by an oral agreement. It was sought to be urged that the case as made out on behalf of the landlord-respondents regarding the alleged agreement to enhance the rents periodically was not borne out by the materials on record and both the trial court and the revisional court had erred in accepting the said story as made out by the landlord in the absence of any written evidence of such agreement alleged to have been arrived at between the parties.

It was sought to be urged that the courts below had erred in relying on the uncorroborated evidence of the landlord in arriving at a decision that such an agreement had been entered into and was subsisting between the parties.

A learned single Judge of the Uttaranchal High Court however, affirmed the findings of the courts below regarding the purported agreement between the parties for periodical enhancement of rent and concluded that the tenant was in arrears in payment of rent, having failed to pay the same at the enhanced rates. The learned Judge held that notwithstanding the deposit of Rs.4,950/- by the tenant, the tenant would not be entitled to the benefit of Section 20 (4) of the Act and accordingly dismissed the writ petition.

The writ petitioners thereafter filed a Review Petition No. 9082/2003 which was also dismissed by the learned single Judge of the Uttaranchal High Court by his order dated 4.12.2003.

These appeals arise out of two Special Leave Petitions filed by the appellants challenging both the final orders dated 5.9.2003 and 4.12.2003 passed by the learned single Judge of the Uttaranchal High Court dismissing the civil writ petition and the subsequent review petition.

On behalf of the appellants it was reiterated that initially it had been decided that the rent for the shop room would be Rs.600/- per year and that upon repairs being effected to the shop room and the fixing of a shutter the rent would be increased to Rs.100/- per month. It was reiterated that since the landlord had not effected the repairs or fixed the shutter in the shop room the tenant ultimately was compelled to undertake the work himself though the landlord claimed the enhanced rent at the rate of Rs.100/- per month after such repairs and renovation. However, since the tenant had been compelled to effect the repairs and fix the shutter himself and had to bear the expenses for the same, the landlord agreed to accept rents at the rate of Rs.75/- per month and thereafter at the rate of Rs.100/- per month. It was also urged that the tenant did not consent to any further increase in the rent and except for the oral statement of the landlord, there is no other evidence on record to prove that the tenant had consented to any further increase of the rents. It was urged that in the absence of such evidence the findings recorded by the courts below were based on assumption and were perverse.

It was submitted that in the absence of any documentary evidence as against the uncorroborated evidence of the landlord alone, all the courts below, including the High Court at Uttaranchal, had erred in coming to the finding that the parties had agreed to periodical enhancement of rent and that the tenant having failed to pay the rents at the enhanced rates was liable to be evicted from the tenanted shop room.

The submissions made on behalf of the appellants was strongly opposed on behalf of the landlord-respondents by Mr. Dinesh Dwivedi, learned senior advocate, who contended that all the courts below had concurrently come to the finding regarding the existence of an agreement between the parties for periodical enhancement of the rents, which ought not to be interfered with by this Court at the final stage of the proceedings. It was also sought to be urged that the presumptive rent indicated in Section 16 (10) of the Act contemplated fixation of such rent subject to any agreement in writing between the parties or to any subsequent determination of the standard rent after formal inquiry under Section 9. It was sought to be contended that the said provision would indicate that enhancement of rent could also be done without any agreement in writing between the parties.

It was then contended that since the appellants had failed to pay the rents at the enhanced rate as agreed upon between the parties, the courts below had rightly held the appellants to be in arrears in payment of the monthly rents and was not, therefore, entitled to the benefit of Section 20 (4) of the Act which reads as under:-

"20. Bar of suit for eviction of tenant except on specified grounds.

- (1) \005\005\005\005\005.
- (2) \005\005\005\005\005.
- (3) .\005\005\005\005..

(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 or deposits in Court 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 that 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.

Explanation.\027For the purposes of this sub-

section\027

(a) the expression 'first hearing' means the first date for any step or proceeding mentioned in the summons served on the defendant;

(b) the expression 'cost of the suit' includes one-half of the amount of counsel's fee taxable for a contested suit."

It was also contended that, in any event, the appellants had not even deposited the amount of Rs.4,950/- accepted by the tenant to be the amount in arrears of rent, within the time contemplated in Explanation (a) to sub-section (4) of Section 20 of the Act. It was urged that even if the story of periodical enhancement of rents was discarded, the appellants would still not be entitled to the protection under the aforesaid provision since the admitted deposit had also been made beyond the time prescribed.

In this regard, the decisions of this Court in the case of Rakesh Wadhawan & Ors. vs. Jagdamba Industrial Corporation & Ors., (2002) 5 SCC 440, Ashok Kumar & Ors. vs. Rishi Ram & Ors., (2002) 5 SCC 641, Mam Chand Pal vs. Shanti Agarwal (Smt.), (2002) 3 SCC 49 and Sudershan Devi & Anr. vs. Sushila Devi & Anr., (1999) 8 SCC 31 were referred to by the parties for the purpose of interpretation of the expression "first hearing of the suit" used in Section 20 (4) of the Act. On behalf of the landlord, it was also sought to be urged that, in any event, the landlord would be entitled to the benefit of Section 6 of the Act since admittedly improvements had been effected to the tenanted shop.

Mr. Dwivedi submitted that the appellants had not made out any case which called for interference by this Court with the findings and orders of the courts below and the civil appeals were liable to be dismissed.

On a careful consideration of the submissions made on behalf of the respective parties, what strikes us as unreasonable is the reliance placed by the courts below on the uncorroborated evidence of the landlord alone, in arriving at a conclusion that the parties had, in fact, agreed to periodical enhancement of the monthly rent for the shop room in question. There is no other evidence of the alleged agreement between the parties, much less written agreement. We are unable, therefore, to appreciate the submissions made on behalf of the landlord with regard to sub-section (10) of Section 16 which, in our view, has been correctly held by the High Court not to be applicable to the facts of the instant case. It is even doubtful whether the effect of Section 6 of the Act can be said to enure to the benefit of the landlords, since the improvements of the tenanted premises had been effected not by the landlord but by the tenant himself. For the sake of reference Section 6 of the Act is reproduced hereinbelow:-

"6. Effect of improvement on rent.\027

Notwithstanding anything contained in Section 4 or Section 5, but subject to the provisions of Section 8, where the landlord has, after the commencement of this Act, either with the consent of the tenant or in pursuance of any requirement of law, made any improvement in a building, he may by notice in writing to the tenant given within three months from the date of completion of the improvement, enhance

the monthly rent of the building by an amount not exceeding one per cent of the actual cost of such improvement, with effect from the said date, and thereupon the standard rent of that building shall stand enhanced accordingly."

In the absence of any proper evidence regarding the purported agreement for periodical enhancement of the rents, it becomes difficult to accept the story of such agreed enhancement as made out on behalf of the landlord or its application to the provisions of Section 20 (4) of the Act. Since there is no such evidence on record, except for the uncorroborated statement of the landlord, we have no other option but to accept the story of the appellants-tenant that the parties had agreed to the increase of the monthly rent upto a maximum of Rs.100/- per month and that too after the renovation had been effected to the shop room and a shutter had been fixed therein. If such be the case, the appellants would also be entitled to the protection of Section 20 (4), since the rents admitted to be in arrears at the rate of Rs.100/- per month had been duly deposited by the tenant within the time prescribed under such provision of the Act.

Although, we have arrived at the aforesaid conclusion, an element of doubt persists in regard to the effect of Section 6 of the Act in its application to the facts of the instant case where undoubtedly certain improvements had been made to the tenanted premises. Section 6, in fact, permits the landlord upon improvements made, to give a notice in writing to the tenant within three months from the date of the completion of the improvement regarding enhancement of the monthly rent by an amount not exceeding one per cent of the actual cost of such improvement. Undoubtedly, the landlord had served notice on the tenant regarding enhancement of the monthly rents and demanded payment thereof at the rate of Rs.200/- per month from 1.4.1989 when, in fact, the repairs had been effected. In our view, it was not unreasonable for the landlord to enhance the monthly rents to Rs.200/- per month for the shop in question since improvements had been made therein.

At this stage, it may be indicated that after the filing of the Special Leave Petitions, the appellants had been directed by Order dated 19.3.2004 to clear all the arrears in terms of the order of the High Court within a period of one month and thereafter to continue to pay the rent at the same rate month by month. It has been submitted on behalf of the appellants that in compliance with the said direction, the appellants had deposited the monthly rents in favour of the landlord at the rate of Rs.400/- per month, inclusive of house tax. Since we are accepting the monthly rent to be Rs.200/- per month, the appellants-tenant will henceforth from the month of November 2005 pay to the respondents-landlord the monthly rents for the shop room at Rs.200/- per month. The appellants-tenant will not lay any claim for re-imbusement of any excess amount that has been deposited on account of the monthly rents at the enhanced rate of Rs.400/- per month. The acceptance of the monthly rent to be Rs.200/- per month is subject to future enhancement in accordance with law.

The appeals are allowed, the impugned judgments of the High Court are set aside and the suit filed by the respondents-landlord is dismissed. There will be no order as to costs.

JUDIS