

PETITIONER:
STATE BANK OF INDIA

Vs.

RESPONDENT:
KM. CHANDRA GOVINDJI

DATE OF JUDGMENT: 08/11/2000

BENCH:
D.P.Mohapatro, S,Rajendra Babu

JUDGMENT:

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RAJENDRA BABU, J. :

Leave granted.

The respondent is owner of a premises at Kasia Road, Deoria which was tenanted to the appellant-Bank. The land in which the said premises is situated measures approximately 12,000 square feet and the built area under the occupation of the appellant-Bank as a tenant is approximately 2,933 square feet at a rent of Rs. 300/- per month. In the said building the appellant-Bank had located its branch for several decades. Subsequently the rent was sought to be enhanced at Rs. 1,350/- per month from 01.10.1984 to 30.09.1989 with a further renewal on increase of rent @ 25% on the rent of Rs. 1,350/-. However, this proposal of the respondent was not accepted by the appellant. The respondent apart from filing a civil suit for eviction of the appellant also filed an application for enhancement of rent under Section 21(8) Proviso I thereto of U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972. The respondent relied upon a valuation report given by Shri J.P. Aggarwal dated 11.12.1985 assessing the market value of the building at Rs. 16,50,000/-. On the basis of this report the respondent claimed a rent of Rs. 13,750/- per month from 01.01.1986.

The appellant-Bank resisted the said claim by contending that the premises in question was 70 years old and was in dilapidated condition and its depreciated value would not exceed Rs. 1 lakh. The respondent filed her own affidavit and that of Shri J.P. Aggarwal, the Valuer, in support of her case. On 29.10.1992 the appellant-Bank sought for an adjournment by filing an application on the ground that the Advocate had to go out of station for medical treatment and consequently the matter was adjourned on payment of costs. Next date fixed for hearing was 11.11.1992, when the Rent Controller did not hold the sittings and the matter was adjourned to 13.11.1992. On that date certain documents were produced alongwith photostat of the Valuers report dated 11.7.1988 showing the value of the building at Rs. 1,76,000/- and the matter was adjourned for further hearing to 24.11.1992. On 24.11.1992 Advocate for the appellant filed an application stating that on account of compelling personal reasons he had to go out

of station and sought for an adjournment. However, the adjournment was not granted on that application and the same was dismissed 24.11.1992. However, the matter was set down for orders on 30.11.1992. In the meanwhile, on 28.11.1992 the appellant-Bank filed an application seeking to recall the order made on 24.11.1992 on the ground that the Advocate having taken ill had gone to Gorakhpur for medical examination on 24.11.1992. However, this application was not taken note of by the Rent Controller. On 30.11.1992 the appellant-Bank filed application before the Rent Controller which was kept on file and the matter was set down for arguments on 1.12.1992. The applications filed earlier were not heard. By its order made on 21.1.1993 the Rent Controller allowed the application filed by the respondent and fixed the rent at Rs. 13,750/- per month. Against the said order an application was preferred to the District Judge who dismissed the same and affirmed the order of the Rent Controller. The matter was carried to the High Court. The High Court also dismissed the civil miscellaneous writ petition filed by the appellant-Bank. Hence this appeal.

Shri Harish Salve, the learned Solicitor General appearing for the appellant-Bank, submitted that in the facts and circumstances of this case there is hardly any justification for the Rent Controller to have refused to adjourn the case on 24.11.1992 which was explained to be one beyond the control of the appellants Advocate as he had fallen ill and had to go to Gorakhpur for medical examination on 24.11.1992.

Shri Yogeshwar Prasad, the learned Senior Advocate appearing for the respondent, submitted that the Rent Controller, the learned District Judge and the High Court having examined the matter and having found that the appellant-Bank had not availed of the reasonable opportunity provided from stage to stage and having not adduced evidence, it was not permissible now to contend that they did not have reasonable opportunity to put forward their case.

The High Court in the course of its order noticed that the application for adjournment on 24.11.1992 having been dismissed, fate of another application filed on 30.11.1992, need not be examined. It further noticed that the authority had given a clear finding that repeated opportunities had been given to the appellant but it had not availed of the same to adduce any evidence. In view of this, the contention to the contrary has no merit.

In ascertaining whether a party had reasonable opportunity to put forward his case or not, one should not ordinarily go beyond the date on which adjournment is sought for. The earlier adjournments, if any, granted would certainly be for reasonable grounds and that aspect need not be once again examined if on the date on which adjournment is sought for the party concerned has a reasonable ground. The mere fact that in the past adjournments had been sought for would not be of any materiality. If the adjournment had been sought for on flimsy grounds the same would have been rejected. Therefore, in our view, the High Court as well as the learned District Judge and the Rent Controller have all missed the essence of the matter. In that view of the matter, we set aside the order made by the Rent Controller as affirmed by the District Judge and the High Court and remit the matter to the Rent Controller for a fresh

consideration from the stage when the matter was set down on 24.11.1992 and after notice to the parties proceed to dispose of the matter as expeditiously as possible.

The appeal is allowed, but in the circumstances of the case there shall be no orders as to costs.

JUDIS