

CASE NO.:
Appeal (civil) 3642 of 2002

PETITIONER:
ASHOK KUMAR & ORS.

Vs.

RESPONDENT:
RISHI RAM & ORS.

DATE OF JUDGMENT: 08/07/2002

BENCH:
Syed Shah Mohammed Quadri, S.N. Variava.

JUDGMENT:

SYED SHAH MOHAMMED QUADRI, J.

Leave is granted.

This appeal is from the judgment and order of the High Court of Judicature at Allahabad in CMWP No.10594 of 1985 made on August 3, 2001.

A summary of facts leading to filing of this appeal may be noted to appreciate the controversy in this appeal. The dispute arises under the U.P.Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short 'the U.P.Act'). The appellants and the 3rd respondent are legal representatives of the tenant late Jai Prakash who died after institution of the suit (hereinafter referred to as the 'tenant') and Respondents 1 and 2 are the landlords (hereinafter referred to as the 'landlords') of Shop No.279, Main Bazar, Ward No.9, Murad Nagar consisting of four chambers out of which two were covered with roof and two at the back without roof and saiban (for short, 'the suit building'). They purchased it from late Gopi Chand, the previous landlord. The suit building was let out to the said Jai Prakash on a monthly rent of Rs.37.50. Alleging that the rent for the months of May, June and July, 1976 was not paid, the landlords sent a notice of demand for arrears of rent on March 30, 1977. In 1979, they filed the suit, out of which this appeal arises, against the said Jai Prakash for recovery of arrears of rent and damages for the period from May 27, 1976 to February 22, 1978 and his ejection from the suit building in the Small Cause Court, Ghaziabad. After service of summons the suit was adjourned to May 20, 1980 for final disposal. On that day the tenant sought time for filing written statement so the suit was adjourned to July 25, 1980 when time was, however, extended for filing written statement and the suit was posted for final disposal on October 10, 1980. The hearing of the suit was not taken up on that date as the Presiding Officer was on judicial training but the tenant deposited the entire amount in demand. Eventually, the suit was again adjourned to December 5, 1980. The tenant contested the suit alleging that the landlords refused to receive the rent and pleaded that as he had deposited the arrears of rent at the first hearing of the suit, in view of the provisions of Section 20(4) of the U.P.Act, the suit has to be dismissed.

The learned Trial Judge took the view that the first date of hearing of the suit was May 20, 1980 when the tenant did not deposit the arrears of rent, he, therefore, decreed the suit on January 6, 1984.

The tenant carried the matter in revision before the learned IV Additional District Judge, Ghaziabad. Affirming the order of the learned Trial Judge the revision was ultimately dismissed on May 20, 1985. The tenant then challenged the validity of the said order of the learned IV Additional District Judge in the aforementioned writ petition in the High Court of Judicature at Allahabad, which was also dismissed on August 3, 2001, upholding the order impugned therein. Against that order of the High Court the tenant is in appeal before us. In the light of the rival contentions of the learned counsel for the parties the ticklish question that arises for consideration is : whether the tenant paid the rent at the first hearing of the suit within the meaning of sub-section (4) of Section 20 of the U.P.Act.

It may be mentioned that Section 20 of the U.P.Act bars a suit for eviction of a tenant except on the grounds specified in sub-section (2) thereof. The first ground, mentioned in clause (a) of sub-section (2), is that a tenant is in arrears of rent for not less than four months and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand. The rigour of this permissible ground for eviction of tenant is substantially whittled down by sub-section (4) of Section 20 which is in the following terms :

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

(1) to (3) *** **

(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 -- For the purposes of this sub-section --

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

(b) *** **

A perusal of the sub-section, quoted above, discloses that in any suit for eviction on the ground mentioned in clause (a) of sub-section (2) of Section 20 if 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 at the first hearing of the suit (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 is empowered to pass an order relieving the tenant against his liability for eviction on the aforementioned ground in lieu of passing a decree for eviction. The expression "first hearing" is defined in clause (a) of the Explanation appended to the said sub-section to mean the first date for any step or proceeding mentioned in the summons served on the defendant. The question that needs to be resolved here is : what is the import of clause (a) of the Explanation defining the expression "first hearing"? Inasmuch as the definition in clause (a) refers to any step or proceeding mentioned in the summons served on the defendants, it would be useful to refer to the provisions of Order V of Code of Civil Procedure insofar as they are relevant for our purpose.

Rule 1 of Order V speaks of issue of summons. When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day specified therein. Rule 2 thereof enjoins that the summons shall be accompanied by a copy of the plaint or, if so permitted, by a concise statement. Rule 5 of Order V says that the Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit which shall be noted in the summons. However, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit. It may be apt to notice here that sub-section (3) of Section 20 of the Act was deleted in U.P.Civil Laws Amendment Act, 1972 with effect from September 20, 1972 and Rule 5 was inserted in Order XV of the Civil Procedure Code which deals with disposal of the suit at the first hearing. Explanation 1 to Rule 5 of Order XV defines the expression "first hearing" to mean the date for filing written statement or for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned. But the said expression, as noticed above, is defined in clause (a) of Explanation to sub-section (4) of Section 20. Section 38 of the U.P.Act says that the provisions of the said Act shall have effect notwithstanding anything inconsistent therewith contained in the Transfer of Property Act or in the Code of Civil Procedure, therefore, the definition contained in clause (a) of Explanation to sub-section (4) of Section 20 of the Act will prevail over the definition contained in Rule 5 of Order XV of the Code of Civil Procedure as applicable to the State of U.P. It is too evident to miss that in contra-distinction to the "filing of written statement" mentioned in the definition of the said expression contained in Rule 5 of Order XV, the language employed in clause (a) of the Explanation to Section 20(4) of the U.P.Act, refers to 'the first date for any step or proceeding mentioned in the summons served on the defendant'. In our view those words mean the first date when the court proposes to apply its mind to identify the controversy in the suit and that stage arises after the defendant is afforded an opportunity to file his written statement. The controversy is no longer res integra. The aforementioned provisions fell for consideration of a three-Judge Bench of this Court in Siraj Ahmad Siddiqui vs. Prem Nath Kapoor [1993 (4) SCC 406]. The Bench laid down as follows :

"The date of first hearing of a suit under the Code is ordinarily understood to be the date on which the court proposes to apply its mind to the contentions in the pleadings of the parties to the suit and in the documents filed by them for the purpose of framing the issues to be decided in the suit. Does the definition of the expression "first hearing" for the purposes of Section 20(4) mean something different? The step or proceeding mentioned in the summons referred to in the definition should, we think, be construed to be a step or proceeding to be taken by the court for it is, after all, a "hearing" that is the subject-matter of the definition, unless there be something compelling in the said Act to indicate otherwise;

and we do not find in the said Act any such compelling provision. Further, it is not possible to construe the expression "first date for any step or proceeding" to mean the step of filing the written statement, though the date for that purpose may be mentioned in the summons, for the reason that, as set out earlier, it is permissible under the Code for the defendant to file a written statement even thereafter but prior to the first hearing when the court takes up the case, since there is nothing in the said Act which conflicts with the provisions of the Code in this behalf. We are of the view, therefore, that the date of first hearing as defined in the said Act is the date on which the court proposes to apply its mind to determine the points in controversy between the parties to the suit and to frame issues, if necessary."

In that case the suit was filed for ejectment of the tenant under clause (a) of sub-section (4) of Section 20 of the U.P. Act. The Trial Court issued summons to the tenant requiring him to file written statement by February 22, 1984 specifying February 28, 1984 for framing of issues. On February 24, 1984, the tenant made to the Trial Court an application stating that he had not been served with the summons and that he should be given a suitable date for filing the written statement and deposit of rent. He was granted a month's time. However, on the very next day the tenant deposited the rent in part. For depositing the balance of the arrears of rent he filed an application on March 2, 1984 which was contested on the ground that the Court had no power to extend the time for deposit of arrears of rent beyond the first hearing of the suit. The court allowed the application without prejudice to the landlord's objection. The tenant then deposited the balance of the arrears of rent on March 5, 1984. In that context this Court construed the definition of the expression the "first hearing" in clause (a) of the Explanation to Section 20(4) of the U.P. Act. In *Advaita Nand vs. Judge, Small Cause Court, Meerut & Ors.* [1995 (3) SCC 407], the same provisions of the U.P. Act again came up for consideration of this Court. *Siraj Ahmad Siddiqui's case* (supra) was sought to be distinguished on the ground that therein the Court was dealing with an ordinary civil suit governed by the provisions of the Code of Civil Procedure requiring framing of issues whereas in that (*Advaita Nand*) case the suit was filed before the Judge, Small Cause Court wherein issues were not required to be framed for the trial of such a suit. This Court rejected the contention and followed *Siraj Ahmad Siddiqui's case* (supra) observing thus : "Even though issues are not required to be framed and the date is fixed for the purpose of final hearing of the suit filed before the Small Cause Court but for the purpose of such suit also, first hearing of the suit would mean the date on which the Court proposes to apply its mind i.e. the date fixed for final hearing of the suit and it cannot be the date fixed for filing the written statement."

In *Sudershan Devi & Anr. vs. Sushila Devi & Anr.* [1999 (8) SCC 31], the aforesaid provisions of the U.P. Act were sought to be pressed into service to non-suit the landlord. This Court followed the dicta in *Siraj Ahmad Siddiqui's case*, quoted above; however, on the facts it was found that the amount of arrears of rent was not deposited on time (at the first hearing).

Now advertent to the facts of the case on hand it has been noticed above that the suit was posted on May 20, 1980 for final disposal but that date cannot be treated as the first hearing of the suit as the Court granted time till July 25, 1980 to the tenant for filing written statement. On July 25, 1980 time was extended for filing

written statement and the suit was again adjourned for final disposal to October 10, 1980. Inasmuch as after giving due opportunity to file written statement the suit was posted for final disposal on October 10, 1980 it was that date which ought to be considered as the date fixed by the Court for application of its mind to the facts of this case to identify the controversy between the parties and as such the date of first hearing of the suit. Admittedly, on that date the appellant-tenant deposited all the arrears of rent. Though, the suit was again adjourned to December 5, 1980, it would be irrelevant because the date of first hearing of the suit is the date when the court proposes to apply its mind and not the date when it actually applies its mind. It follows that the first hearing of the suit would not change on every adjournment of the suit for final disposal. The effective date of the first hearing of the suit on which the Court proposed to apply its mind, on the facts of the case, was October 10, 1980, as stated above. The amount of arrears of rent having been paid on that date, there is compliance of sub-section (4) of Section 20 of the U.P. Act so the tenant is entitled to the benefit of the said provision.

In this view of the matter we are unable to sustain the order under challenge. The impugned order of the High Court upholding the order of the IV Additional District Judge which confirmed the order of the learned Trial Judge, is set aside. The suit of the respondents-landlords shall stand dismissed. The appeal is accordingly allowed. In the facts and circumstances of the case, we make no order as to cost.

Syed Shah Mohammed Quadri, S.N. Variava.