

CASE NO.:
Appeal (civil) 1187 of 2002

PETITIONER:
MAM CHAND PAL

Vs.

RESPONDENT:
SMT. SHANTI AGARWAL

DATE OF JUDGMENT: 14/02/2002

BENCH:
R.C. Lahoti & Brijesh Kumar

JUDGMENT:

JUDGEMENT
BRIJESH KUMAR, J.

Leave granted.

Heard learned counsel for the parties. The main question involved and canvassed before us in this case is, as to whether or not the tenant-appellant had deposited the arrears of rent along with other amounts payable, in terms of Section 20(4) on the UP Urban Building (Regulation, Letting and Eviction Act 1972, (for short the 'Act') on the date of first hearing so as to be absolved of the liability of eviction. It also leads to consideration of the question as to what is the meaning of the date of first hearing as envisaged under sub-section (4) of Section 20 of the Act which reads as under:

(4) In any suit for eviction on the ground mentioned in clause (a) of sub-section (2), if a 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 percent 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.

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

The appellant is the tenant of the respondent

landlady, in respect of a shop in the city of Meerut at a rent of Rs.128.70 paise per month. According to the landlady the tenant failed to pay the rent since 1.10.1986, despite notice. Hence she filed a suit in the Court of the Judge, Small Causes, Meerut being Small Cause Suit No.290 of 1988 for arrears of rent etc and eviction of the tenant on the ground of default in payment of rent.

The defendant denied the allegations about default in payment of rent or that any other amount on account of electricity charges or otherwise was payable by him. It has also been the case of the tenant that the husband of the plaintiff had received the rent and had even issued a receipt on 4.11.1986. All these points and other pleas raised however, are not relevant, since defense of the tenant has been struck off under Order 15 Rule 5 CPC. The only question that remains for consideration is about compliance of Section 20(4) of the Act.

So far the question as to the meaning of the date of first hearing is concerned, the position stands well settled that it is the date on which the Court applies its mind to the facts and controversy involved in the case. Any date prior to such a date would not be date of first hearing. For instance date for framing of issues would be the date of first hearing when the Court is to apply its mind to the facts of case. As it relates to proceedings under the Small Cause Courts Act, there being no provision for framing of issues any date fixed for hearing of the case would be the first date for the purpose. The above stated position is clear from a catena of cases of the Allahabad High Court and some decisions of this Court also. In *Ved Prakash Wadhwa Vs. Vishwa Mohan* AIR 1982 SC 816 this Court held that the date of first hearing would not be before a date fixed for preliminary examination of parties and framing of issues. It has further been held that if the amount is deposited before the date of first hearing, it would amount to compliance with the relevant provision of the Act. In *SUDARSHAN DEVI & ANR. VS. SUSHILA DEVI & ANR.* 1999(8) SCC 31, the service of notice was by publication, hence tenant applied for copy of the plaint which was furnished and fresh dates for filing WS and hearing was fixed. The Court considered the provisions of sub-section (4) of Section 20 of the Act along with Explanation (a) as well as a series of earlier decisions and held that the date fixed for hearing of the matter was the date of first hearing and not the date fixed for filing of the written statement. It has been observed that the emphasis in the relevant provision is on the word 'hearing'. The decision in the case of *Ved Prakash (supra)* was also relied upon. In yet another case *ADVAITA NAND VS. JUDGE, SMALL CAUSE COURT, MEERUT & ORS.* 1995 (3) SCC 407, the dates were fixed for filing of the written statement and later for hearing of the case after furnishing of a copy of the plaint, it was held that the Court was to apply its mind to the facts of the case on the date fixed for hearing and not earlier on the date fixed for filing of the written statement.

After considering the legal position in regard to the date of first hearing, we may advert to the facts of the case in hand regarding the dates fixed and the amount of arrears deposited in Court. The suit was filed on 5.12.1988, on which date the order for issue of summons seems to have been passed fixing 19.1.1989 for filing of the written

statement and 27.1.1989 for hearing. Initially, it transpires that the defendant was not served, and ultimately order was passed for service of notice on defendant by publication fixing 3.7.1989 for hearing. It however, appears that by mistake in the publication, the date of hearing was shown as 26.4.1989 instead of 3.7.1989. It may however not detain us since nothing would turn upon it as 26.4.1989 was the date published and it was therefore taken as the date of first hearing. The Order-Sheet further shows that on 26.4.1989 the Presiding Officer was not available having proceeded for training. The case was adjourned to 11.5.1989. Thereafter also the case only seems to have been adjourned due to one reason or the other e.g. lawyer's strike etc. and later on after furnishing copy of the plaint, dates were again fixed for filing of written statement and for hearing. In the meantime, it appears that the tenant-defendant had gained knowledge of the proceedings and made a deposit of the amount of arrears of rent etc. on 11.2.1989. In the Counter Affidavit filed on behalf of the landlady-respondent it is indicated that a total amount of Rs.5024/- was deposited out of which Rs.3474.90 paise was on account of rent up to February, 1989, Rs.358.20 paise as electricity charges, Rs.725/- on account of Court Fee, Rs.365/- being interest on the arrears and a sum of Rs.100/- as miscellaneous amount. The said deposit did not include the lawyer's fee amounting to Rs.375/- which was later on deposited on 11.5.1989.

The objection of the respondent as against the deposit made by the tenant is that the requirements of sub-section (4) of Section 20 of the Act were not fulfilled, since lawyer's fee was not deposited on or before 26.4.1989, which was the date of first hearing. Subsequent deposit of the said amount on 11.5.1989 will not enure any benefit to the tenant. The tenant's case however, is two fold- one that: 26.4.1989 could not be regarded as the date of first hearing for the reason that the Presiding Officer was not available on that date having proceeded on training. He had deposited the amount of lawyer's fee on the next adjourned date, namely, on 11.5.1989. Hence, there is no default or non compliance of Sec. 20(4) of the Act in the deposit made. In the alternative, it is submitted that electricity charges are not required to be deposited under sub-section (4) of Section 20 of the Act, which amount came to a sum of Rs.358.20 and that would make up the shortfall on account of non deposit of lawyer's fee on 11.2.1989. It is submitted that a minor difference of a sum of around Rs.17/- would be inconsequential. The contentions raised on behalf of the tenant did not find favour with any of the Courts; namely the Trial Court or the Appellate Court. The High Court also upheld the orders passed by the Judge, Small Cause Court and the additional District Judge, Meerut. The date 26.04.1989 was accepted as date of first hearing and the amount on account of lawyer's fee was taken to be deposited after the date of first hearing. It was also held that the amount deposited on account of electricity charges could not be adjusted for the lawyer's fee. Hence, the appellant was denied benefit of sub-section (4) of Section 20 of the Act and order for his eviction was consequently passed.

In regard to the date of first hearing as indicated earlier, while ordering for publication of the notice, date of hearing was fixed as 3.7.1989. It was wrongly published as

26.4.1989, nothing however would turn upon this, but on 26.4.1989, the Presiding Officer was not available and 11.5.1989 was fixed as the next date. In cases where the Court itself is not available it could not be treated as date of first hearing. This contention of the tenant-appellant finds support from a Division Bench decision of Allahabad High Court reported in 1982 A.R.C. page 665 Jagannath and another versus Ram Chandra Srivastva and another. The Court was considering the expression "first hearing" as occurring in Order XV Rule 5 C.P.C. . It was held that the 'first hearing' will be the date mentioned in the summons for the purpose except when the Presiding Officer is absent or otherwise is not available to take up the case on that. Two other dates of deposits made by the tenant shall also be important. The amount of lawyers' fee was deposited on 11.5.1989 and on 1.5.1989 the tenant had deposited the rent for the months of March, April and May, 1989. Copy of the relevant tenders has been filed along with Counter Affidavit of the respondent. The Appellate Court also mentioned about the deposit of the rent for the months of March, April and May, 1989 in its judgment while dealing with the matter relating to the point raised about striking off the defence of the tenant-defendant under Order XV, Rule 5 CPC. The High Court however observed that if the next date of hearing is to be taken as 3.7.1989, in that event there would be no deposit of rent for the months of March, April, May and June 1989. It is difficult to sustain above observations made by the High Court as there is material on the record to indicate that rent for the months of March, April and May 1989 was deposited by the tenant-appellant in court on 1.5.1989 and the amount on account of fee of the lawyers was deposited on 11.5.1989 which was the next date fixed after 26.4.1989. That is to say by 11.5.1989 of the amounts of arrears due up to May, 1989 stood deposited. The amount deposited even before the date of first hearing amounts to sufficient compliance of sub-section (4) of Section 20 of the Act. Such observations have also been made in the decisions of this Court as referred to earlier namely; Ved Prakash Wadhwa and SUDARSHAN DEVI .(supra). It is thus clear that all the dues of arrears of rent as well as other amounts liable to be deposited under sub-section 4 of Section 20 of the Act had been duly deposited by 11.5.1989. There has been thus sufficient compliance of sub-section (4) of Section 20 of the Act. The High Court and the Courts below erred in treating 26.4.1989 as the date of first hearing.

According to the appellant alternatively the matter can be viewed from another angle as well. As per the respondent, there has been a shortfall of the amount payable on account of counsel's fee, which was deposited only after 26.4.1989. In this connection, it may be observed that under sub-section(4) of Section 20 arrears of rent, damages for use and occupation, interest, costs of litigation is required to be deposited. There is no requirement of depositing any other amount or electricity charges. Admittedly, the petitioner had deposited a sum of Rs.358/- also as electricity charges. The amount on account of fee of the lawyer was a sum of Rs.375/-. The amount of electricity charges could well be adjusted or treated to be as against lawyer's fee. A minor deficiency of Rs.17/- only against the total amount deposited near about six thousand or around that would be inconsequential and insignificant to defeat the purpose of enacting the relevant provisions as contained in sub-section

(4) of Section 20 of the Act. It would only be a hyper technical view of the matter which would in no way serve the ends of justice even where virtually and substantially requirement of the legal provision is stands satisfied.

In one of the cases relating to landlord-tenant dispute, decided by the Allahabad High Court reported in Dr. Neelambar Jha Versus First Addiional District Judge, Gorakhpur and others 1982 ARC 555, it has been held that if some amount is deposited in excess under one head, the same can be adjusted towards the shortfall of an amount under any other head.

After the suit was filed the tenant was too willing and ready to clear all the dues so much so that he did it before the first date of hearing and made subsequent deposits as well to make it up to date. We feel that the whole purpose of enacting sub-section (4) of Section 20 of the Act is to do substantial justice between he parties. It covers those cases alone where the ground for eviction is default in payment of rent still the Legislature intended to provide an opportunity to a tenant for payment of rent. On availing of such an opportunity, equities between the parties are levelled as the landlord gets the amounts of arrears of rent and damages along with legal expenses and interest on the defaulted amount and the tenant is saved of liability of being thrown out of the premises. While considering the import of such provisions, it may have to be seen that the requirement of law is substantially and virtually stands satisfied. A highly technical view of the matter will have no place in construing compliance of such a provision. We may however, hasten to add that it is not intended to lay down that non compliance of any of the requirements of the provision in question is permissible. All the dues and amounts liable to be paid have undoubtedly to be paid or deposited on the date of first hearing but within that framework virtual and substantial compliance may suffice without sticking to mere technicalities of law.

In view of the discussion held above, we find that the appellant had duly complied with the requirement of sub-section(4) of Section 20 of the Act and is entitled for the benefit of protection against eviction as provided thereunder.

In the result, the appeal is allowed and the order passed by the High Court upholding the orders of Courts below ordering eviction of the petitioner-appellant are set-aside. However, there would be no order as to costs.

-----J.
(R.C. LAHOTI)

-----J.
(BRIJESH KUMAR)

February 14, 2002