

PETITIONER:
SUBHASH CHAND JAIN

Vs.

RESPONDENT:
1ST ADDITIONAL DISTRICT & SESSIONS JUDGESAHARANPUR AND OTHER

DATE OF JUDGMENT24/02/1989

BENCH:
PATHAK, R.S. (CJ)
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PATHAK, R.S. (CJ)
DUTT, M.M. (J)
KANIA, M.H.

CITATION:
1989 AIR 1070 1989 SCR (1) 837
1989 SCC (2) 110 JT 1989 (1) 408
1989 SCALE (1)483

ACT:

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972--S.20(4)--Tenant's right to claim relief against eviction on payment of entire arrears of rent on or before the first date of hearing--Requirement of strict compliance.

HEADNOTE:

Respondent-owners' suit for recovery of arrears of rent was decreed ex-parte when the appellant-tenant failed to appear in the suit; however, on a subsequent application made by him the decree was set aside on 24.3.1977. The appellant made a deposit of Rs.2,912 on 30.5.1977 stating that the said date was the first date of hearing in the suit. The appellant, who had first stated that he was not obliged to deposit the entire arrears as they were barred by time, later on prayed for amendment of his pleadings and sought to deposit the time-barred arrears on 29.9.1977, but the deposit was actually made on 1.10.1977. The Court allowed the prayer for amendment but the Additional District Judge held that the appellant was liable to be evicted from the premises since he had failed to deposit the entire arrears on or before 30.8.1977 which was the date of first hearing in the suit in terms of s. 20(4) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The appellant's writ petition challenging the afore-said finding was dismissed by the High Court.

Dismissing the appeal,

HELD: As the suit was in the nature of a small cause suit, and as the Provincial Small Causes Courts Act did not contemplate the fixation of any date for settlement of issues, it must be taken that 30.8.1977 was the date of first hearing in the suit, and inasmuch as the entire amount due as arrears of rent had not been deposited within time, the High Court was right in dismissing the Writ Petition.

[839D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1728 of 1989.

From the Judgment and Order dated 15.4.1982 of the Allahabad High Court in Civil Misc. Writ Petition No. 6324 of 1980.

R.K. Garg, M.K.D. Namboodiri and S. Balakrishnan for the Appellant.

S.N. Kaicker, Pradeep Kumar Jain for the Respondents.

The Judgment of the Court was delivered by PATHAK, CJ Special leave granted.

This tenant's appeal by special leave arises out of a suit for ejectment and recovery of arrears of rent and damages.

The suit was brought by the respondents who claimed that a shop owned by them had been let to the appellant, that the appellant had fallen in arrears of rent from 1 February, 1968 and had not paid the arrears, notwithstanding a notice of demand dated 8 January, 1975 served on the appellant. The suit was decreed ex parte by the Trial Court and the decree was set aside by the first Appellate Court. In writ Petition before the High Court, it was urged on behalf of the appellant that the appellant had deposited the arrears of rent under sub-s. (4) of s. 20 of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972, and that therefore the Court should have made an order relieving the appellant against his liability for eviction on the ground of arrears of rent. The High Court noted that the suit was filed on 12 February, 1975 and as the appellant did not appear on 4 April, 1975, the day fixed in the summons, the suit proceeded ex parte and was decreed. The High Court also noticed that upon subsequent application made by the appellant the ex parte decree was set aside on 24 March, 1977, and on 30 May, 1977, the fresh date now fixed, the appellant made a deposit of Rs.2,912 accompanied by an application stating that the said date was the first date of hearing and he was making a deposit of the entire arrears of rent. The appellant first stated that he was not obliged to deposit the entire arrears of rent as they were barred by time. However, the appellant prayed for amendment of his pleadings. On 29 September, 1977, the appellant sought to deposit the time barred arrears also and got the tender passed for that purpose. In pursuance of the tender the amount was deposited on 1 October, 1977. The amendment application was allowed, but when the matter came before the learned First Additional District Judge, he took the view that the appellant had failed to comply with the conditions of sub-s. (4) of s. 20 of the Act. He held that 30 August, 1977 was

839

the date of first hearing in the suit within the meaning of sub-s. (4) of s. 20. He recorded that the parties did not dispute that the time barred arrears claimed by the respondents were also required to be deposited under sub-s. (4) of s. 20. As the time barred arrears had been deposited by the appellant on 1 October, 1977 only, the High Court took the view that the entire arrears of rent had not been deposited on or before the date of first hearing. The High Court declined to go into the further question whether the deposits made by the appellant on 1 October, 1977 ought to relate back to 29 September, 1977. In the result the High Court dismissed the Writ Petition.

We have heard learned counsel for the parties and we see no reason to take a different view from that adopted by the High Court. The High Court was plainly right in holding that 30 August, 1977 was the date of first hearing in the suit. As the suit was in the nature of a small cause suit, and as

the Provincial Small Causes Courts Act did not contemplate the fixation of any date for settlement of issues, it must be taken that 30 August, 1977 was the date of first hearing in the suit, and inasmuch as the entire amount due as arrears of rent had not been deposited within time, the High Court was right in dismissing the writ petition.

Accordingly the appeal is dismissed but there As no order as to

costs.

H.L.C.

missed.

840

Appeal dis-

JUDIS