A

HARIDEV MISRA
v.
JAMUNADAS AGARWAL & ORS.

FEBRUARY 17, 1989

B

[K. JAGANNATHA SHETTY, A.M. AHMADI AND KULDIP SINGH, JJ.]

U.P. Urban Building (Regulation of Letting Rent and Eviction) Act, 1972—Sections 3(i) and 20(2)(a)—Eviction of tenant for default—Landlord raising a new plea that tenancy was for furnished house—Whether permissible to raise such plea.

C

The respondent-landlord filed a suit for eviction of the appellants-tenant from the house in question on the ground of failure to pay rent and for realisation of arrears of rent. While the respondent pleaded that the rate of rent was Rs.70 per month, the appellant contended that it was only Rs.40 and not Rs.70, and that he was paying Rs.30 per month for the furniture, provided by the landlord which he returned sometime after the tenancy commenced.

D

The trial court dismissed the suit holding that the rate of rent was Rs.40 per month and, as such, the appellant was not defaulter. In the revision filed by the respondent, the Revisional Court held that the rent was Rs.70 per month.

E

The appellant filed a writ petition before the High Court, which quashed the revisional order and remanded the case for deciding the revision petition afresh.Thereafter, the revisional court again allowed the revision.

F

The appellant challenged the revisional order before the High Court which dismissed the same.

In the appeal, by special leave, it was contended on behalf of the appellant-tenant that in the face of clear admission of the respondent in the receipt, the rent of the house was Rs.40 per month, and that the amount of Rs.70 per month mentioned in the rent note had been explained in the receipts, to be Rs.40 as house rent and Rs.30 for furniture.

G

H

On behalf of the respondent, it was contended that the tenancy

was for a furnished building and failure to pay a part of the rent, in respect of furniture, would attract the provisions of s. 20(2)(a) of the U.P. Urban Building (Regulation of Letting Rent and Eviction) Act, 1972 and the appellant was liable to be ejected. It was also contended that the tenancy being of a furnished house the tenant could not under law, unilaterally surrender part of tenancy.

Allowing the appeal,

HELD: It was never the case of the respondent at any stage that furnished house was given on rent to the appellant. In the notice before filing the suit and in the plaint, it was specifically pleaded that rent of the house was Rs.70 per month and the tenant was in arrears. In the written statement, appellant took a clear stand that the rent of the house was only Rs.40 and Rs.30 was for the furniture, which according to him, was returned after the commencement of the tenancy. [760C-D]

In the face of clear pleadings on the record, it is impermissible to raise the plea that the landlord rented a furnished house to the tenant. It would be contrary to the pleadings. That apart, neither before the trial court nor before the Revisional Court and not even before the High Court this plea was raised. [760F]

The trial court relied upon the rent receipts, 39/C and 40/C, produced by the appellant. It was clearly mentioned in the receipt 39/C that Rs.40 were towards house rent and Rs.30 towards furniture charges and Rs.3 towards water and electricity charges. The respondent admitted the contents of the receipt but explained that Rs.30 towards furniture charges was mentioned at the request of the tenant. [758G-H]

In the face of the clear admission by the respondent in the two receipts, the finding of the Revisional Court that the monthly rent was Rs.70 is erroneous. [759D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 912 of 1989.

From the Judgment and Order dated 11.5.1988 of the Allahabad High Court in Misc. W.P. No. 7886 of 1985.

Yogeshwar Prasad and Mrs. Shobha Dikshit for the Appellant.

A Satish Chandra and Madan Lokur for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J. Special leave granted.

B This appeal arises out of a suit filed by respondent (plaintiff) landlord in the Court of Judge, Small Causes, Gorakhpur, for eviction of the appellants (defendant) tenant from the house in question on the ground of failure to pay the rent and for realisation of arrears of rent and electricity charges amounting to Rs.2,560.60. It was pleaded that the tenant was to pay a monthly rent of Rs.70 apart from Rs.3 per C month as water and electricity charges and was in arrears since July, 1979 which he failed to pay. The appellant contested the suit mainly on the ground that the rate of rent was not Rs.70 per month but it was only Rs.40 and besides that he was provided with furniture by the landlord for which he was paying Rs.30 per month. His case further was that some time after the tenancy commenced, he returned the D furniture.

The Judge, Small Causes Court, by his judgment dated 10th November, 1983, dismissed the suit holding that the rate of rent was Rs.40 per month and as such the appellant was not a defaulter. The respondent filed a revision which was allowed by the Additional District Judge, Gorakhpur. The Revisional Court held that the rate of E rent was Rs.70 per month. The appellant filed a writ petition against the revisional order before the Allahabed High Court. The High Court allowed the writ petition, quashed the revisional order and remanded the case for deciding the revision petition afresh. Thereafter, the Revisional Court again allowed the revision and set aside the judgment of the Trial Court and ordered ejectment. The appellant again F challenged the revisional order by way of a writ petition before the Allahabad High Court but the same was dismissed. Hence this appeal.

The Trial Court primarily relied upon documents 39/C and 40/C produced by the defendants. Document 39/C is a receipt by the plaintiff wherein details of Rs.73 are given. It is clearly mentioned in the G receipt that Rs.40 were towards house rent, Rs.30 towards furniture charges and Rs.3 water and electricity charges. The plaintiff admitted the contents of receipt 39/C but he explained that Rs.30 towards furniture charges were mentioned at the request of the defendant. The plaintiff strongly relied upon the rent note 97/C wherein monthly rent H of the house was mentioned at Rs.70. The Trial Court rejected the rent

note on the ground that the same was not signed by the defendant. Basing its findings on the receipt 39/C, the Trial Court dismissed the suit. The Revisional Court, on the other hand, found force in the contention of the plaintiff that the rent note 97/C was signed by the defendant. It was held that the admission, if any, of the plaintiff in receipt 39/C is contradicted by the rent note 97/C and as such cannot be taken into consideration. The Revisional Court thus differed from the Trial Court and ordered ejectment.

Before us, the counsel for the appellant Shri Prasad contends that in the face of clear admission of the respondent in the receipt 39/C the rent of the house was Rs.40 per month. He further contends that the rent note, even if taken into consideration, has been explained by the receipts 39/C and 40/C. According to him Rs.70 per month mentioned in the rent note has been explained in the receipts to be Rs.40 as house rent and Rs.30 for the furniture. We find force in the contention of the learned counsel. In the face of clear admission by the respondent in the two receipts the finding of the Revisional Court to the effect that the monthly rent was Rs.70 is erroneous. Faced with this situation Shri Satish Chandra, learned counsel for the respondent invited our attention to Section 3(i) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter called 'the Act') and contends that the tenancy was for a furnished building and as such failure to pay even Rs.30 in respect of furniture would attract the provisions of Section 20(2)(a) of the Act and the appellant is liable to be ejected. Section 3(i) and Section 20(2)(a) of the Act are as under:

> "Section 3(i) "building", means a residential or non-residential roofed structure and includes—
>
> (i) any land (including any garden), garages and out-houses, appurtenant to such building;
>
> (ii) any furniture supplied by the landlord for use in such building;
>
> (iii) any fittings and fixtures affixed to such building for the more beneficial enjoyment thereof".
>
> "Section 20(2)(a). "that the 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."

A Shri Satish Chandra contends that definition of building under Section 3(i) includes any furniture supplied by the landlord for use in such building and as such non-payment of part of the rent meant for furniture would amount to arrears of rent and the appellant having failed to pay the same is liable to be ejected. In other words, he contends that it was a furnished house which was let-out to the appel-
B lant. He also contends that tenancy being of a furnished house, the tenant could not under law unilaterally surrender part of the tenancy by returning the furniture. There may be some force in the abstract proposition of law canvassed by Shri Satish Chandra on the basis of Sections 3(i) and 20(2)(a) of the Act, but there is no basis for him in the present case to advance the same. It was never the case of the
C respondent at any stage that furnished house was given on rent to the appellant. In the notice before filing the suit, and in the plaint it was specifically pleaded that rent of the house was Rs.70 per month and the tenant was in arrears. In the written statement appellant took a clear stand that the rent of the house was only Rs.40 and Rs.30 was for furniture which, according to the appellant, he returned after the com-
D mencement of the tenancy. The respondent filed a replication to the written statement of appellant. In Clause 3 of the replication the respondent denied that either the rent was Rs.40 per month or Rs.30 was being charged for furniture. He stated that neither any such goods had been supplied to the appellant by him nor the rent was agreed at Rs.40 per month.

E

It is thus obvious from the pleadings that at no stage the respondent pleaded that he had given furnished house on rent to the tenant. Rather the supply of furniture was categorically denied. In the face of clear pleadings on the record it is impermissible to raise the plea that the landlord rented a furnished house to the tenant. It would be con-
F trary to the pleadings. That apart neither before the Trial Court nor before the Revisional Court and not even before the High Court this plea was raised. Therefore, there is no force in the contention of Shri Satish Chandra and the same is rejected.

This Appeal is, therefore, allowed. The judgments of the High
G Court and of the Revisional Court are set aside. The judgment of the Trial Court is restored and the suit of respondent is dismissed. There will be no order as to costs.

N.P.V.

Appeal allowed.