

A MOHAMMAD AHMAD & ANR.
v.
ATMA RAM CHAUHAN & ORS.
(Civil Appeal No. 4422 of 2011)

MAY 13, 2011

B [DALVEER BHANDARI AND DEEPAK VERMA, JJ.]

Rent Control and Eviction:

C *Interim order – Writ petition before High Court arising out of order of eviction of tenants – Orders by Single Judge enhancing the monthly rent while granting stay of dispossession of tenants, as an interim measure – HELD: Enhancement in rent will not ipso facto be deemed to be*
D *unreasonable and exorbitant unless the tenant is able to give cogent reasons for the same – In the instant case, in the absence of any valuation report, the assessment and the judgment of the Single Judge, after taking into account the yardsticks and the contentions of both the parties appears to*
E *be absolutely correct – In order to minimize landlord-tenant litigation, guidelines and norms enumerated – Constitution of India, 1950 – Articles 226, 132 and 142 – Interim order.*

F **Two shops each admeasuring 12'x10', both equivalent to 240 sq. ft. belonging to landlords-respondents nos. 1 to 3 and under tenancy of the appellants, were released by the appellate authority in the appeal arising out of the application u/s 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The shops were fetching a monthly**
G **rent of Rs.40/- and Rs.20/- (a total of Rs.60/-). In the writ petition filed by the tenants, the Single Judge of the High Court, by order dated 14.9.2005, granted stay of their dispossession enhancing the monthly rent to Rs.600/-.**

H

Since the writ petition remained pending, the Single Judge after hearing both the parties, by order dated 13.2.2007, enhanced the rent of both the shops to Rs.2100/- per month, as an interim measure. A

On the strength of some unreported decisions, it was contended for the tenants-appellants that the practice of enhancement of rent during the pendency of writ petitions under Articles 226/227 and that too without any valuation report, was deprecated by the Supreme Court. B
It was further contended that the monthly rent having been enhanced to Rs.600/- only on 14.9.2005, no case was made out for further enhancement to Rs.2100/- by order dated 13.2.2007 within a period of two years. C

Dismissing the appeal, the Court D

HELD: 1. In the case in hand it is clearly reflected that respondents-landlords made an offer to the appellants/tenants which they agreed, and only thereafter the rent was enhanced from Rs. 600/- per month to Rs. 2100/- per month, for both the shops. Thus, the ratio of the judgments cited on behalf of the appellants has no application to the facts of the case. [para 15] [830-E-F] E

2.1. The rent as has been fixed by the Single Judge for the two shops, having total area of 240 sq. ft., to Rs. 2100/- per month is not only reasonable but would be just and proper. Any enhancement in rent will not *ipso facto* be deemed to be unreasonable and exorbitant, unless the party aggrieved is able to give cogent reasons for the same. [para 17] [831-D-E] F G

Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd. 2004 (6) Suppl. SCR 843 = (2005)1 SCC 705 – relied on. H

A 2.2. No doubt, it is true that the Single Judge has applied his own yardstick in working out the rent but only after both parties' contentions were taken into account and the said yardstick appears to be absolutely correct and perfect method of working out the current market rental of the premises. Even though no valuation report was taken into consideration, as there was none, but the assessment and judgment of the Single Judge cannot be disallowed, even if detailed reasons have not been assigned by the Single Judge for enhancing the rent because the ultimate conclusion arrived at by him does not suffer from any infirmity, illegality or perversity. [para 18-19] [832-E-H]

D 3. In the considered view of the Court, majority of these cases are filed because landlords do not get reasonable rent akin to market rent, then on one ground or the other litigation is initiated. In order to minimise landlord-tenant litigation, the following guidelines and norms are laid down:

E (i) The tenant must enhance the rent according to the terms of the agreement or at least by ten percent, after every three years and enhanced rent should then be made payable to the landlord. If the rent is too low (in comparison to market rent), having been fixed almost 20 to 25 years back, then the current market rate should be worked out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas, let out on rent recently.

G (ii) Apart from the rental, property tax, water tax, maintenance charges, electricity charges for the actual consumption of the tenanted premises and for common area shall be payable by the tenant only so

H

that the landlord gets the actual rent out of which nothing would be deductible. In case there is enhancement in property tax, water tax or maintenance charges, electricity charges then the same shall also be borne by the tenant only. A

(iii) The usual maintenance of the premises, except major repairs would be carried out by the tenant only and the same would not be reimbursable by the landlord. B

(iv) But if any major repairs are required to be carried out then in that case only after obtaining permission from the landlord in writing, the same shall be carried out and modalities with regard to adjustment of the amount spent thereon, would have to be worked out between the parties. C D

(v) If prevalent market rent assessed and fixed between the parties is paid by the tenant then landlord shall not be entitled to bring any action for eviction against such a tenant at least for a period of 5 years. Thus, for a period of 5 years the tenant shall enjoy immunity from being evicted from the premises. E

(vi) The parties shall be at liberty to get the rental fixed by the official valuer or by any other agency, having expertise in the matter. F

(vii) The rent so fixed should be just, proper and adequate, keeping in mind, location, type of construction, accessibility with the main road, parking space facilities available therein etc. Care ought to be taken that it does not end up being a bonanza for the landlord. [para 21] [833-B-H; 834-A-D] G

H

A Case Law Reference:

2004 (6) Suppl. SCR 843 relied on para 17

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4422 of 2011.

B From the Judgment & Order dated 13.7.2007 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 39727 of 2004.

C Dinesh Kumar Garg for the Appellants.

Rachna Gupta, R.C. Kaushik for the Respondents.

The Judgment of the Court was delivered by

D DEEPAK VERMA, J. 1. Leave granted.

E 2. One half of the *lis* between landlord and tenant would not reach courts, if tenant agrees to pay the present prevalent market rate of rent of the tenanted premises to the landlord. In that case landlord would also be satisfied that he is getting adequate, just and proper return on the property. But the trend in the litigation between landlord and tenant shows otherwise. Tenant is happy in paying the meagre amount of rent fixed years ago and landlord continues to find out various grounds under the Rent Acts, to evict him some how or the other. This case **F** appears to be another classic example of the aforesaid scenario.

3. Thumb nail sketch of the facts of the case are mentioned hereinbelow:-

G Appellants herein are the tenants of two shops admeasuring 10x12 feet each, equivalent to 240 sq. ft., situated at National Highway Chakrata Saharanpur (U.P.). The map attached alongwith counter affidavit of the Respondent Nos. 1 **H** to 3 (which is not disputed by the Appellants) shows that these

shops are part of the building known as Jaitpur Sadan, now coming under commercial area. As per the sketch on record, it is bounded by 110 ft. wide National Highway to the east, a 90 ft. wide Town Hall Road to the west, a 20 ft. by lane to the south, and nothing is shown and no construction appears to be there in the north. In all, Jaitpur Sadan has five shops of the same size facing east and four shops of the same size and one adjoining mini-store (which is probably another smaller shop) and staircase for reaching first floor, facing west.

4. Earlier when the abovementioned Jaitpur Sadan was constructed, it appears that the same was about 20 Kms. away from the city of Saharanpur. Now with the passage of time, the outer limits of the city have grown and have come to include the said building. Thus, it can be called a commercial area.

5. Respondent No. 1 who was working as the Medical Officer at Zila Parishad, Saharanpur retired on 31.07.1992. For his personal bonafide need he needed these two small shops, i.e. an east-facing room (for consultation and setting up medical equipment) and an adjoining west-facing room (to serve as a waiting room for patients). The sketch map shows that one of the shops facing western side is already in his occupation. He had requested both Appellant No.1 and Respondent No.4, Shri Md. Ahmad Iqbal, respectively, for release of any one pair of shops, but neither of the two acceded to his request.

6. Thus, he filed an application under Section 21(1)(a) of the U.P. Act No. 13 of 1972 (hereinafter shall be referred to as the 'Act') against the Appellants/Tenants as well as the Respondent No.4 praying for release of any one pair of the said two pairs of shops in his favour. At that time the Appellants were paying rent at Rs. 40 and Rs. 20/- (total Rs. 60/- per month) for the pair of shops in their possession.

7. The matter was contested by the Appellants before the Prescribed Authority/IV Additional Civil Judge, Saharanpur,

A whereby and whereunder the said authority allowed the application of Respondents Nos.1 to 3 - landlords and on a comparative assessment of facts and circumstances, released the property (shown as Item A in the Map annexed) in which Respondent No.4 was a tenant, in their favour.

B

8. Feeling aggrieved thereof Rent Control Appeals were preferred by both the parties, i.e., Respondent Nos.1 to 3 - landlords and Respondent No.4 before Additional District Judge, Saharanpur. Vide judgment and order dated 24.08.2004, the Appellate Court upheld the decree of the IV Additional Civil Judge, Saharanpur but modified it, to the extent that the pair of shops in tenancy of present Appellants be released (shown as Item B in the Map annexed), instead of the pair of shops in the possession of Respondent No.4 as decreed by the Trial Court, and furthermore, they were directed to deliver peaceful and vacant possession thereof to the Respondent Nos. 1 to 3, within one month from the date of the said order. Thus, the order of release passed by Prescribed Authority came to be partially modified by the Appellate Authority in as much as the order of release for two shops in their favour was maintained.

9. Thus, unsatisfied and feeling aggrieved thereof the Appellants preferred Civil Miscellaneous Writ Petition No. 39727 of 2004 before learned Single Judge of the High Court of Judicature at Allahabad. It appears while considering the application for stay, the learned Single Judge directed that the Appellants will not be dispossessed from the shops in dispute provided, w.e.f. September, 2005 onwards they pay the Respondent Nos. 1 to 3, rent at the rate of Rs. 600/- per month by 7th of each succeeding month. In case of two defaults, the stay order would stand vacated automatically. Non-payment of rent may also be a ground for dismissal of the writ petition. The said order was passed by learned Single Judge in the

H

Appellants' Writ Petition on 14.09.2005.

A

10. It appears that the said writ petition continued to be pending before learned Single Judge. The same matter again came up for hearing before another learned Single Judge on 13.02.2007. On the said date learned counsel for Respondent Nos. 1 to 3 submitted that the rent of the shops is too meagre looking to the present rent available for other similarly situated shops, so a prayer was made that it be increased reasonably according to market rate. On this offer being made, learned counsel appearing for the Appellants submitted that the case for enhancement of rent may be considered by the court according to the condition, location and situation etc. of the tenanted shops. It was further submitted by the learned counsel for the Appellants that in case Appellants are evicted from the disputed shops then they would suffer irreparable loss and injury. Lastly, it was contended by them that even though many accommodations are available nearby but none would be available at the rent, which is being paid presently by Appellants to landlords.

B

C

D

E

11. In the light of aforesaid offer having been made by the Respondents and duly considered by the Appellants, the learned Single Judge thought it fit to enhance the rate of rent from Rs. 600/- per month for both the shops to Rs. 2100/- per month, payable from February 2007.

F

12. Even though, the Appellants' writ petition was kept pending and directed to be listed in the month of July, 2007 for reporting compliance of the aforesaid directions, the Appellants feeling aggrieved thereof have preferred this appeal on variety of grounds.

G

13. We have accordingly heard Mr. Dinesh Kumar Garg for the Appellants and Mrs. Rachna Gupta and Mr. R.C. Kaushik for the Respondents and perused the record.

H

A 14. The first thrust of the arguments of learned counsel for
 Appellant was that the rent having been enhanced to Rs. 600/
 - per month only on 14.09.2005, no case was made out for
 further enhancement from Rs. 600/- to Rs. 2100/- per month
 vide the impugned order dated 13.02.2007, within two years
 B thereof. It was then submitted that this Court has deprecated
 severely the practice of enhancement of rent in petitions filed
 under Articles 226/227 of the Constitution of India, during the
 pendency of those petitions on merits in the High Court, that
 too without any valuation report. To advance contention in this
 C regard, several unreported orders of this Court have been
 placed before us. They are judgment and order dated
 19.01.2009 passed in Civil Appeal No. 316 of 2009 titled *Md.*
Iqbal Vs. Atma Ram & Ors.; order dated 03.01.2008 passed
 in Civil Appeal No. 14 of 2008 titled *Md. Safi (D) Th. his LRs.*
 D & Ors. Vs. *Sri Farhat Ali Khan* and order dated 20.10.2008
 passed in Civil Appeal No. 6171 of 2008 titled *Sadan Gopal*
Gautam Vs. Sushila Devi & Ors.

15. Critical scrutiny of the aforesaid judgments/ orders
 E would show that in these cases neither there was any offer made
 by the landlord nor any corresponding acceptance by the tenant,
 still the High Courts, in each of these cases, had enhanced the
 rates of rent unilaterally. But in the case in hand it is clearly
 reflected that Respondents-landlords made an offer to the
 F Appellants/tenants which they agreed, only thereafter the rent
 was enhanced from Rs. 600/- per month to Rs. 2100/- per
 month, for both the shops. Thus, the ratio of the aforesaid
 judgments cited by learned counsel for Appellants has no
 application to the facts of the present case.

G 16. On the other hand learned counsel appearing for
 Respondents strenuously contended that building known as
 Jaitpur house, with the passage of time has come within the
 market area of Saharanpur and can therefore be called as
 H falling within the meaning of commercial area. It was also

contended that looking to various factors such as the nature of construction, its prime location in the city, being situated on the main highway, and thus having easy accessibility to it and the availability of all other amenities and facilities etc. even the rent fixed by learned Single Judge at the rate of Rs. 2100/- per month for both the shops is on the lower side and too meagre. According to her, the total area under occupation of the Appellants would be 240 sq. ft. and with the rent fixed at Rs.2100/-, the rent would come to Rs.87.50 per sq. ft. This according to her is too low, keeping in mind the present trend and the prevalent market rate of rent. She thus submitted that no case for interference is made out and the appeal being devoid of merit and substance deserves to be dismissed.

17. Thus, looking to the matter from all angles we are of the considered opinion that the rent as has been fixed by the learned Single Judge for the two shops having total area 240 sq. ft. to Rs. 2100/- per month is not only reasonable but would be just and proper. Any enhancement in rent will not *ipso facto* be deemed to be unreasonable and exorbitant, unless the party aggrieved is able to give cogent reasons for the same. In this context, we may profitably refer to the judgment pronounced by this Court, reported in (2005)1 SCC 705 titled Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd. The relevant portion thereof is reproduced hereinbelow:-

“In the case at hand, it has to be borne in mind that the tenant has been paying Rs. 371.90/- rent of the premises since 1944. The value of real estate and rent rates have skyrocketed since that day. The premises are situated in the prime commercial locality in the heart of Delhi, the capital city. It was pointed out to the High Court that adjoining premises belonging to the same landlord admeasuring 2000 sq. ft. have been recently let out on rent at the rate of Rs. 3,50,000/- per month. The Rent Control Tribunal was right in putting the tenant on terms of payment

A of Rs. 15,000/- per month charges for use and occupation
during the pendency of appeal. The tribunal took extra care
to see that the amount was retained in deposit with it until
the appeal was decided so that the amount in deposit
could be disbursed by the appellate Court consistently with
B the opinion formed by it at the end of the appeal. No fault
can be found with the approach adopted by the Tribunal.
The High Court has interfered with the impugned order of
the Tribunal on a erroneous assumption that any direction
for payment by the tenant to the landlord of any amount at
C any rate above the contractual rate of rent could not have
been made. We cannot countenance the view taken by the
High Court. We may place on record that it has not been
the case of the tenant-respondent before us, nor was it in
the High Court, that the amount of Rs. 15,000/- assessed
D by the Rent Control Tribunal was unreasonable or grossly
on the higher side”.

In fact, learned Single Judge has also taken note of the
aforesaid judgment of this Court and only thereafter, the rental
E was worked out from Rs. 600/- per month for two shops to Rs.
2100/- per month.

18. No doubt, it is true that learned Single Judge has
applied his own yardstick in working out the rent but only after
F both parties' contentions were taken into account and the said
yardstick appears to be absolutely correct and perfect method
of working out the present market rental of the premises.

19. Even though, the report of the valuation was not taken
into consideration as there was none but the assessment and
G judgment of the learned Single Judge cannot be disallowed,
even though detailed reasons have not been assigned by the
learned Single Judge for enhancing the rate of rent because
the ultimate conclusion arrived at by him does not suffer from
any infirmity, illegality or perversity.
H

20. Thus in our considered opinion, the appeal from such an interim order of the learned Single Judge, being devoid of merit and substance deserves to be dismissed. We accordingly do so. A

21. According to our considered view majority of these cases are filed because landlords do not get reasonable rent akin to market rent, then on one ground or the other litigation is initiated. So before saying omega, we deem it our duty and obligation to fix some guidelines and norms for such type of litigation, so as to minimise landlord-tenant litigation at all levels. C
These are as follows:-

(i) The tenant must enhance the rent according to the terms of the agreement or at least by ten percent, after every three years and enhanced rent should then be made payable to the landlord. If the rent is too low (in comparison to market rent), having been fixed almost 20 to 25 years back then the present market rate should be worked out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas, let out on rent recently. D E

(ii) Apart from the rental, property tax, water tax, maintenance charges, electricity charges for the actual consumption of the tenanted premises and for common area shall be payable by the tenant only so that the landlord gets the actual rent out of which nothing would be deductible. In case there is enhancement in property tax, water tax or maintenance charges, electricity charges then the same shall also be borne by the tenant only. F G

(iii) The usual maintenance of the premises, except major repairs would be carried out by the tenant only and the same would not be reimbursable by the landlord.

(iv) But if any major repairs are required to be carried out H

A then in that case only after obtaining permission from the landlord in writing, the same shall be carried out and modalities with regard to adjustment of the amount spent thereon, would have to be worked out between the parties.

B (v) If present and prevalent market rent assessed and fixed between the parties is paid by the tenant then landlord shall not be entitled to bring any action for his eviction against such a tenant at least for a period of 5 years. Thus for a period of 5 years the tenant shall enjoy immunity from being evicted from the premises.

C (vi) The parties shall be at liberty to get the rental fixed by the official valuer or by any other agency, having expertise in the matter.

D (vii) The rent so fixed should be just, proper and adequate, keeping in mind, location, type of construction, accessibility with the main road, parking space facilities available therein etc. Care ought to be taken that it does not end up being a bonanza for the landlord.

E 22. These are some of the illustrative guidelines and norms but not exhaustive, which can be worked out between landlord and tenant so as to avoid unnecessary litigation in Court.

F 23. As mentioned hereinabove, the aforesaid appeal is dismissed with costs throughout.

24. Counsels' fee Rs. 10,000/-.

R.P.

Appeal dismissed.