



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 10855 OF 2024
[@ SPECIAL LEAVE PETITION (C) NO. 24041 OF 2013]**

PRAKASH BHALOTIA (D) THR HIS LRS APPELLANT(S)

VERSUS

INDRA CHANDRA GOYAL (D) THRU. LRS RESPONDENT(S)

ORDER

1. Leave granted.
2. Challenging the judgment dated 22.01.2001 passed in Suit No. 1 of 1992 by Small Causes Court dismissing the suit for eviction filed by landlord due to 'non-payment of rent', 'subletting', and 'expiry of rent agreement', as affirmed by the High Court *vide* impugned judgment dated 31.01.2013, the present appeal has been filed.
3. The facts leading are that appellant (now deceased) was the owner of Shop No. 4 (Western Direction) situated in Mohalla Begupur, Muglani, Ram Prasad Bhalotia Market, District Gorakhpur city with the prescribed boundaries shown in the suit. The defendant/respondent (now deceased) was inducted as a tenant on a monthly rent of ₹ 330/-. The tenancy was for a fixed period of five

years, which started from 01.07.1985 and ended on 30.06.1990. As per the terms of tenancy, on expiry of period of five years, the tenant may continue with increase of rent @ 15 % per month provided the same is agreeable to the owner.

4. It was averred in the suit that neither plaintiff – landlord intimated about construction of shop to Municipality nor Municipality recorded the same on its own and did the tax assessment of the shop in 1972. On objections being raised by plaintiff/landlord, the same was admitted by the Municipality. The plea of sub-letting has also been averred, but it is not being dealt here as the said ground has not been pressed during hearing. As contended, after expiry of the period of tenancy, it was not renewed by consent and the respondent – tenant became unauthorized occupant of the shop. However, as per agreement, for the period of overstay, he ought to pay ₹ 1,000/- per month. Therefore, due to non-payment of rent, notice was issued for termination of tenancy, which was not responded to by defendant/respondent – tenant.

5. On filing suit, defendant entered appearance and filed the written statement, *inter-alia*, stating that plaintiff did not have right to bring the suit, and claimed protection under Section 20 of The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction)

Act, 1972 (hereinafter referred to as “UP Rent Act”). It was averred that, prior to the fresh tenancy agreement dated 13.03.1986, which was from 01.07.1985 for five years, defendant was a tenant since 1977, therefore, being in continuous tenancy, the same would not extinguish and he would be entitled to protection available under Section 20 of the UP Rent Act, if rent is deposited in the Court under Section 30 of the said Act.

6. Learned Trial Court, on Issue No. 4 noted that from the agreement it can be determined that the tenancy was not for a definite period of five years. On Issue No. 5 it was held that the benefit under Section 20(4) of the UP Rent Act is available to the tenant. Further, Issue No. 6 which relates to default in payment of the rent, it was concluded against the landlord and in favour of tenant and hence, suit was dismissed.

7. The revision filed against the judgment of the Trial Court was dismissed by the High Court, observing that in revisional jurisdiction, re-appraisal of evidence is not permissible, and consequently findings of the Trial Court were affirmed.

8. Being dissatisfied, the present appeal has been preferred, *inter-alia*, submitting that tenancy was for 5 years, and ended on 30.06.1990. The tenancy was monthly in nature and the rent was

payable on month-to-month basis. As per Clause 14, such tenancy may be extendable, by consent of the landlord with monthly increase of rent @ 15%, after entering into registered agreement. In absence thereof, Clause 6 of the agreement would attract and the defendant be treated an unauthorized occupant and liable to pay ₹ 1000/- per month as penalty for overstay.

9. It is contended that the rent and the penalty, as agreed in the lease agreement, has not been deposited even on receipt of the notice by the Court within the time and the respondent – tenant was in default of payment of rent even during pendency of proceedings. This Court vide order dated 18.09.2018 directed the respondent-tenant(s) to file affidavit giving details of the rent deposited within a week. Thereafter, four weeks' time was granted to deposit arrears of rent and taxes etc. Later, one more opportunity of four weeks was granted to comply the said orders. In compliance, the respondent – tenant filed an affidavit and explained that the rent as agreed above after expiry of the period of tenancy has been deposited, including House Tax as detailed therein.

10. The contention of appellant – landlord is that the findings of Trial Court on Issue No. 6 is vague and referring to the documents, he submitted that respondent – tenant is in default in depositing month

to month rent as per UP Rent Act. Therefore, the findings are completely perverse and contrary to the record placed before this Court.

11. Per contra, learned counsel for the tenant – respondent(s) has taken us through the findings of the Trial Court on Issue Nos. 4, 5 and 6 and submitted that in absence of any material controverting those findings, re-appraisal in exercise of power under Article 136 of the Constitution of India ought not to be done. It is contended that the affidavit filed is only regarding arrears of rent and taxes during pendency, therefore, it cannot form basis to set aside the findings of the Trial Court which dismissed the suit seeking eviction. Learned counsel further made an attempt while referring various documents filed subsequently stating that, the rent which was due has already been deposited.

12. During hearing, it was not disputed by learned counsel for the parties that the provisions of the UP Rent Act are applicable to the suit filed by the appellant – landlord for eviction. Therefore, we are inclined to appreciate the findings recorded on this issue by the Trial Court as affirmed by the High Court.

13. In the UP Rent Act, ‘tenant’ has been defined in Section 3(a) as “*a person by whom its rent is payable, till his death.*” Further Section

7 deals with 'Liability to pay taxes' which specifies '*subject to any contract in writing to the contrary, but notwithstanding the provisions of Section 149 of the Uttar Pradesh Municipalities Act, 1916, the tenant shall be liable to pay to the landlord the taxes i.e. water tax, house tax, in addition to the part of the rent.*' Section 20 of the UP Rent Act, in Chapter-IV, stipulates about bar of suit for eviction of tenant except on specified grounds and provides protection to the tenant as specified. Section 20(2)(a) of the UP Rent Act makes it clear that a suit for eviction of a tenant after determination of his tenancy may be instituted on the ground, where the tenant is in arrears of rent for not less than four months and has failed to pay to the landlord within one month from the date of service of notice of default upon him. Section 20(4) makes it clear that in a suit for eviction for non-payment of rent, at the first hearing of the suit, if the tenant unconditionally pays or tenders to the landlord or deposits in Court the entire amount of rent including the damages for use and occupation of the building due from him together with interest @ 9% per annum along with landlord's cost of the suit, after deducting any amount already deposited by him under Section 30(1), on such deposit, the Court may pass an order relieving the tenant against his liability for eviction. Meaning thereby, it is clear that in case the tenant is in arrears of four months, the suit

may lie, but such rent may be deposited within one month from the date of service on him. In case, the due rent along with damages and occupation charges is not paid as required under Section 20(2)(a) of the UP Rent Act read with Sections 20(4) and 30 of the Act, no protection would be available as stipulated under Section 20 of the said Act.

14. In case the landlord refuses to accept the rent, which is required to be paid by the tenant, then such amount can be deposited in the manner prescribed under Section 30 of UP Rent Act and the tenant can continue to deposit rent due even for any subsequent period until the landlord signifies by notice to accept the same by his willingness. Therefore, it can safely be said that in addition to cause of action to file a suit for arrears of due rent of not less than four months, if the rent is not deposited regularly, including the damages and the occupational charges along with the interest @ 9%, the suit seeking eviction can be maintained and decreed.

15. As already noted, the ground of sub-letting has not been pressed and during hearing, learned counsel for the appellant(s) – landlord has pressed this appeal only for non-payment of rent, therefore, we are appreciating the said issue only. In this regard, if we peruse the findings of the Trial Court on Issue Nos. 5 and 6, then it

clearly indicates that such findings are relying upon Exhibits K1 to K6 – receipt of the rents and Exhibits K7 to K12 – receipts of sending the Money Orders and Exhibits K13 and K14, which relate to deposit of the money in the Court of Munsiff, Gorakhpur. Those documents, i.e., Exhibits K1 to K6 have not been produced, but placed before us. On perusal, it is clear that those are receipts of rent for the years 1984, 1988, 1989 and K6 is receipt of 31.03.1990 depositing consolidated rent of ₹3460/-, which is from April 1989 to March, 1990. Thus, except receipt K6, no other receipt relates to the demand of rent by notice in the suit. From the document Exhibits K7 to K12, it is not clear that these Money Orders were of which period of rent. Similar is the position with document Exhibits K13 and K14. Therefore, those documents are not sufficient to discharge burden of payment or deposit of rent by respondent – tenant and to shift onus on appellant – landlord. Similarly on filing the suit on 06.02.1992, whether the rent was regularly paid by the respondent – tenant as contemplated under Section 20(4) including Section 30(1) of the UP Rent Act has not been considered.

16. By the proceeding dated 18.09.2018 of the case, this Court directed the respondent – tenant to file an affidavit giving details of the payment of the rent. Later, directions were issued to deposit the

arrears of rent and taxes after filing of eviction petition. Due to non-compliance, in a later proceeding, four weeks' further time to comply with the previous orders was allowed. In response, an affidavit was filed by respondent – tenant, wherein paragraph 3, details of deposit have been disclosed. Those details are relevant and reproduced as thus: -

“3. That I have deposited the rent for the shop room in the Court of the Civil Judge, Junior Division, Gorakhpur through the Sub-Treasury in Misc. Rent Case No. 71 of 2001 as shown below :-

| <i>Date of Deposit</i> | <i>Period for which Rent was Remitted</i> | <i>Amount Deposited</i> |
|-------------------------------|--|--------------------------------|
| 28.09.2012 | October 2011 to September 2012 | Rs. 4554 |
| 21.03.2013 | October 2012 to September 2013 | Rs. 4554 |
| 19.10.2013 | October 2013 to March 2014 | Rs. 2277 |
| 19.04.2014 | April 2014 to September 2014 | Rs. 2277 |
| 02.02.2015 | October 2014 to September 2015 | Rs. 4554 |
| 02.11.2015 | October 2015 to September 2016 | Rs. 4554 |
| 01.12.2016 | October 2016 to September 2017 | Rs. 4554 |
| 07.11.2017 | October 2017 to September 2018 | Rs. 4554” |

17. The respondent – tenant also filed an application (I.A. No.

61800 of 2020) seeking permission to bring additional documents on record. The documents annexed as R1 and R3 are the receipts of deposit of the rent from January 2019 to December 2019 and January 2020 to December 2020 in the case of Yashoda Devi and not related to this case. Document annexed as R2 relates to this case, whereby the respondent – tenant deposited the rent from October 2019 to March 2020 and Annexure R4 is the House Tax Receipt of ₹50,049/- deposited in compliance of the order of this Court.

18. In this respect, appellant – landlord has also filed a document along with I.A. No. 11110 of 2020 indicating deficit rent of ₹28462.6 and Tax of ₹1912.68 @ 24% for a period of 75 months viz. from July 1995 to December 1995, January 1996 to December 1996, January 1997 to March 1997, April 2002 to March 2003, April 2003 to March 2004, October 2006 to September 2007, October 2008 to March 2009 and October 2009 to September 2010. In the said document, it is also specified that from October, 2001 to September, 2019, i.e., a total 216 months, the Tax has not been deposited, which comes to ₹19,673.28 and there is a total deficit of ₹50048.56.

19. On perusal of the affidavit and the documents referred hereinabove, it can safely be concluded that the rent from October 2011 to September 2012 was paid on 28.09.2012, hence, month to

month rent was not paid during this period, and the default of respondent – tenant was there. Similarly, from October 2012 to September 2013, the rent was deposited on 21.03.2013, thus, default in payment of rent for October 2012 to March 2013 is clear. The rent from April 2014 to September 2014 was paid on 19.04.2014. It shows default of payment of rent for the month of April which was paid after 10th day of month. Similar is the position from October, 2015 to September, 2016 and October, 2016 to September, 2017. In those cases, there was a default of payment of rent for the months of October 2015 and November 2016.

20. If we peruse the payment of rent from October 2014 to September 2015, deposited on 02.02.2015, again there was a default for October 2014 to January 2015. Therefore, from the averments of the affidavit of the tenant, defaults in deposit of rent are clearly luculent, which cannot be ignored.

21. By the documents Annexures R2 and R4 also, default of continuous payment of rent during pendency either before the Trial Court or before the High Court or before this Court has not been rectified. During hearing, nothing has been brought on record by the respondent – tenant to substantiate that in compliance to the provisions of Section 20(4) and Section 30(1) of the UP Rent Act,

regular rent from the date of receipt of notice of the suit has been deposited. Reference of some documents have been made by learned Trial Court, by which it is not clear that the rent deposited by the tenant was within the period of one month from the date of receipt of notice and the rent was paid regularly thereafter. In addition, it is not clear that in case of default, 9% interest has been paid. Simultaneously, deposit in one-go after the order of this Court would not absolve the tenant from consequence of non-payment or delayed payment of rent.

22. As per the discussion made hereinabove, we are constrained to hold that the tenant has not paid rent regularly during the pendency of the suit, revision and appeal, and was in default in payment of rent, tax and interest due. In a suit seeking eviction on the ground of arrears of rent, if the rent is not paid during the pendency, it can be a ground for directing eviction for non-payment of the rent.

Therefore, the findings of the Trial Court, dismissing the suit seeking eviction, affirmed by the High Court without any appraisal of the material, do not appear to be justified.

23. Learned counsel for the appellant – landlord has placed reliance on a Constitution Bench decision in case of “**Gian Devi Anand Vs. Jeevan Kumar and Ors.**” (1985) 2 SCC 683, whereby in

a Rent Control and eviction matter, this Court has specified the nature of the statutory tenancy and its concept. It was thereby held that the distinction between the contractual tenancy and the statutory tenancy is obliterated by Rent Control Legislation because the contractual tenancy would be converted into statutory tenancy. There cannot be any doubt in this regard, particularly in the facts of the case whereby the tenancy of the appellant, though contractual for a limited period, but continued by virtue of applicability of the provisions of UP Rent Act as accepted by the parties.

24. Underlying the revisional jurisdiction of the High Court in rent eviction matters, this Court in “**Shankar Ramchandra Abhyankar Versus Krishnaji Dattatreya Bapat**” (1969) 2 SCC 74, observed that revisional jurisdiction partakes the appellate jurisdiction of a superior Court. The right of appeal is one of entering a superior Court and invoking its aid and interposition to redress the error of the Court below. When the aid of High Court is invoked on the revisional side, it is done because it is a superior Court and it can interfere for the purpose of rectifying the error of the Court below. Further, in the case of “**Babulal Nagar and others Versus Shree Synthetics Ltd. and others**” (1984) Supp SCC 128, it was observed that jurisdiction

to examine the propriety of the order or decision carries with it the same jurisdiction as the original authority to come to a different conclusion on the said set of facts. If any other view is taken, the expression “propriety” would lose its significance. Lastly, in the case of **“Nalakanth Sainuddin versus Koorkikadan Sulaiman” (2002) 6 SCC 1**, this Court observed that once a revision petition is entertained by the High Court, whichever be the party invoking the revisional jurisdiction, it acquires jurisdiction to call for and examine the records of the authority subordinate to it. Any illegality, irregularity or impropriety coming to its notice is capable of being corrected by it by passing such appropriate order or direction as the law requires and justice demands.

Therefore, we are of the view that in the revision in the eviction matter, the High Court was required to look into the material placed and justifiability of the findings relying those documents. In absence of its satisfaction, interference ought to be have been made by the High Court and such revision cannot be thrown out on the ground of limited scope of jurisdiction.

25. Coming to the case in hand, the agreement of tenancy has been admitted with effect from 01.07.1985, on month-to-month basis

and rent had to be paid against receipt. The said tenancy was for a period of five years. Clause 14 depicts that on expiry of five-year, it may be extendable by consent of landlord with enhancement @ 15% rent per month (claimed to be *per annum*). Indeed, it is true that no agreed lease agreement was entered into after 30.06.1990, but as per the provisions of the UP Rent Act, the tenancy would become statutory and subject to payment of the enhanced rent, the suit can be maintained. But, in case of consecutive default of monthly payment of rent and continuous non-payment as specified under the UP Rent Act, it may be a ground to grant decree of eviction.

26. In view of our foregoing discussions, it can safely be concluded that the respondent – tenant was in default in regular payment of monthly rent during pendency of the suit, revision before the High Court and also before this Court. He has deposited the amount deficit towards rent payment and house tax totaling to ₹50,048.56/- after the direction of this Court in one-go as specified above. The findings recorded by the Trial Court and confirmed by the High Court are completely perverse and without appreciating the real intent of provisions of Sections 20 and 30 of UP Rent Act, therefore, liable to be set-aside.

27. Accordingly, we allow the appeal and set-aside the orders

passed by the Trial Court and the High Court and decree the suit filed by the appellant – landlord on the ground of non-payment of arrears of rent and direct eviction from the suit subject property.

28. In the facts and circumstances of the case, as prayed by respondent(s) – tenant(s) we grant time up to 31.03.2025 to vacate the suit premises subject to payment of due rent and arrears thereof, after adjusting the amount of rent already deposited, within one month and continue to pay regular monthly rent for the permissible period of occupation. They shall hand over the vacant possession of the suit premises to the appellants on or before 31.03.2025 and shall not part with or create third party right therein. The respondents – tenants shall file usual undertaking on affidavit in this regard within a period of nine weeks from today before the Registrar, High Court of Judicature at Allahabad. The violation of the aforesaid terms would be treated as non-compliance of the order of this Court. Pending interlocutory application(s), if any, is/are disposed of.

.....J.
[J. K. MAHESHWARI]

.....J.
[RAJESH BINDAL]

**New Delhi;
September 25, 2024**

ITEM NO.11

COURT NO.8

SECTION III-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (C) No. 24041/2013

(Arising out of impugned final judgment and order dated 31.01.2013 in CR No. 175 of 2001 passed by the High Court of Judicature at Allahabad)

PRAKASH BHALOTIA (D) THR HIS LRS

Appellant(s)

VERSUS

INDRA CHANDRA GOYAL (D) THRU.LRS

Respondent(s)

IA No. 105233/2024 - APPLICATION FOR SUBSTITUTION

IA No. 105237/2024 - CONDONATION OF DELAY IN FILING SUBSTITUTION APPLN.

IA No. 61806/2020 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 61801/2020 - EXEMPTION FROM FILING O.T.

IA No. 134816/2022 - EXEMPTION FROM FILING O.T.

IA No. 11111/2020 - EXEMPTION FROM FILING O.T.

IA No. 117423/2022 - EXEMPTION FROM FILING O.T.

IA No. 105239/2024 - EXEMPTION FROM FILING O.T.

IA No. 147496/2018 - EXEMPTION FROM FILING O.T.

IA No. 158406/2021 - EXEMPTION FROM FILING O.T.

IA No. 151031/2022 - EXEMPTION FROM FILING O.T.

IA No. 151030/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 61800/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 134815/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 11110/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 117421/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 158405/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 105235/2024 - SETTING ASIDE AN ABATEMENT

Date : 25-09-2024 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.K. MAHESHWARI
HON'BLE MR. JUSTICE RAJESH BINDAL

For Appellant(s) Mr. Amitabh Chaturvedi, Adv.
Mr. Rahul Shukla, Adv.
Mrs. Bachita Baruah Shukla, Adv.
Mr. Barbeshwar Bhalotia, Adv.
Mr. Kumar Dushyant Singh, AOR

For Respondent(s) **Ms. Aarohi Bhalla, Adv.**
 Mr. Anupam Mishra, AOR
 Mr. Harikumar V., Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed of.

(JAYANT KUMAR ARORA)
ASTT. REGISTRAR-cum-PS

(NAND KISHOR)
COURT MASTER

(Signed order is placed on the file)