REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JUJRISDICTION

CIVIL APPEAL NO. 20833 OF 2017
ARISING OUT OF SLP (C) NO. 33994 OF 2014

TRILOK SINGH CHAUHAN ... APPELLANT

VERSUS

RAM LAL(DEAD) THR. LRS ... RESPONDENTS

J U D G M E N T

ASHOK BHUSHAN, J.

1. This appeal has been filed against the judgment dated 26.08.2014 of High Court of Uttarakhand in Civil Revision No. 32 of 2010 by which judgment High Court has allowed the Revision and set aside the order passed by the Judge, Small Causes Court directing the eviction of the respondent-tenant with recovery of rent and damages. The landlord aggrieved by the judgment has come up in this appeal.

2. Brief facts of the case, necessary to be noted for deciding this appeal are:

The appellant is the owner of Shop No. 46 Adarsh Gram Chauhan Market, Yatra Bus Station, Rishikesh. The

respondent is carrying on business of clothe merchant in the shop as tenant. A notice dated 07.09.2001 was issued that respondent has not paid the rent of above-mentioned shop from December, 2000 till present date. The rate of rent was claimed as Rs. 1500/- per month. Notice was given to pay the whole outstanding rent with interest within one month from the receipt of the notice, failing which tenancy shall be treated as terminated. After prescribed period damages at the rate of Rs. 50/- per day were also claimed. As notice was not replied, the appellant filed a Small Causes Case No. 32 of 2001 in the Court of Additional District Judge praying for recovery of rent with compensation and expenses and any other relief. The written statement was filed by the respondent where he denied the rate of rent to be Rs. 1500/- per month. It was stated that the rate of rent is only Rs. 250/- per month and since October 1994, he is carrying on business of clothe. It was stated that the plaintiff has already received the rent for the month of August, 2001 but he did not issue any receipt. Appellant has stopped to receive the collection of rent from September, 2001. The respondent forwarded the total rent of Rs. 1250/- for the period of September, 2001 to January, 2002 at the

rate of Rs.250/- per month through money order which was denied, stating that 'it is denied to accept due to this amount is less than the actual amount'. Respondent pleaded that premises is covered by U.P. Act No. 13 of 1972. Trial Court by order dated 13.05.2004 framed ten issues. An application for amendment was filed by appellant for adding a prayer 'that the plaintiff may be given possession of disputed shop which is stated in the list of property annexed at the end of the plaint after evicting the respondent from the above shop'. The amendment application was although rejected by the Trial Court on 25.4.2007, but the High Court by an order dated 05.08.2008 allowed the amendment application subject to payment of cost of Rs. 3000/-.

3. High Court also allowed three week's time to respondent to file amended written statement. Additional counter statement was filed by the respondent. Trial Court framed an additional issue on 20.01.2009 which is to the following effect:

> "1. Whether the plaintiff has waived to oppose for eviction in his notice dated 07.09.2001? If yes, whether the required relief added by the plaintiff is barred to the limitation as stated in the additional counter statement."

4. Parties led their evidences before the Trial Court including the documentary evidences. Trial Court after considering the evidences of the parties decided issue No. 1 in favour of the appellant that rate of rent is Rs.1500/- per month. Other issues were also decided in favour of the appellant, consequently, the Trial Court passed a decree of eviction against the respondent-tenant with balance amount of payment of rent and damages at the rate of Rs. 50/- per day.

5. Aggrieved by the above-said judgment, the respondent filed a Revision before the High Court. The Revision filed by the respondent was under Section 25 of the Provincial Small Cause Courts Act, 1887(hereinafter referred to as 'Act, 1887'). The High Court *vide* its judgment allowed the Revision and set aside the judgment and decree of the Trial Court holding that rate of rent is Rs. 250/- per month and not Rs. 1500/- per month. High Court also made observation against the landlord that the motive of landlord is to secure the possession back and profit hunting.

6. Learned counsel for the appellant submits that the High Court committed error in upsetting the findings of fact regarding rate of rent which was held by the Trial Court as Rs. 1500/- per month but reversed by the High Court holding it to be Rs. 250/- per month only. It was further stated that the tenant is in possession of shop for nineteen years and although tenancy was terminated by landlord after one month of the service of the notice, appellant could not get the possession of the shop. The counsel for the appellant referring to Page No. 88 and 89 of the paper book submits that Trial Court has given cogent reasons and considered relevant evidence for recording a finding that rate of rent is Rs. 1500/- per month which has been set aside by the High Court.

7. Learned counsel appearing for the respondent, refuting the submission of the learned counsel for the appellant contends that the Trial Court while decreeing the suit had not adverted to the additional issues which were framed by the Trial Court on 20.01.2009. He submits that Trial Court having not adverted to additional issues, the Revisional Court has rightly set aside the judgment and order of the Trial Court and dismissed the

suit.

8. We have considered the submissions of the learned counsel for both the parties and perused the record.

9. The basis of judgment of the High Court in setting aside the judgment of the Trial Court is the reversal of the findings regarding rate of rent. As noted above, the case of the plaintiff was that the rate of rent is Rs. 1500/- per month whereas the case of the tenant was that rate of rent was Rs. 250/- per month. The High Court while coming to the conclusion that the rate of rent is Rs. 250/- per month gave following reasonings:

> "I have perused the impugned judgment of the trial court and find the force in the argument so submitted by the learned counsel of the revisionist and instead remanding the case and lingering this old litigation further between the parties, I am of the view that no rent due was payable to the landlord at the time of issuing the notice dated 07.09.2001. Relatively, the oral testimony of the landlord is rebutted by the oral testimony of the tenant, revealing the fact that the tenanted premises was taken on the rent to the tune of Rs. 250/- per month with a payment of premium of Rs. 1,20,000/- wherefor no receipt was issued by the landlord to the revisionist. The fact can not be over sighted that this is in quite prevalent practice in such matters that

> the landlord takes the lump sump premium from the tenant, as has been taken in the instant case. After taking such a hefty premium, the rent must not be more than what it has been stated way back in the year 1994.
>
> No additional reliable testimony has been brought by the landlord on record to create the force in his pleadings."

10. Learned counsel for the appellant has referred to findings of the Trial Court at Page No. 88 and 89. It is useful to refer to the discussions made by the Trial Court deciding the Issue No. 1, which issue was whether the respondent is tenant in the disputed shop of the plaintiff for the rate of rent, a sum of Rs. 1500/- per month? The discussion of the Trial Court at Page No. 88 to 90 is as follows:

> ".....In support of the above statement, the plaintiff produced the Evaluation List for the period 2004-2009 issued by the Executive Officer, Nagar Palika, Rishikesh vide document no. 96Ga. Though, it also clearly proves that the rent of above disputed property is equaled to Rs. 1500/- per month. The respondent has not filed any documentary evidence to oppose the above fact which it can be proved that the rent of the above disputed shop is equaled to Rs. 250/- per month in place of Rs. 1500/- month.
>
> It clearly proves from the statements of the above witnesses and the documentary evidence available on record that any written agreement regarding the rent of the questioned property has neither been made between the

> parties nor filed any rent receipt by the respondent against the payment of rent though it is accepted by both the parties that the plaintiff himself used to come at shop for the collection of rent and the respondent used to acknowledge the entry of this payment of rent in his diary at the shop.
>
> The respondent ought to have proved this fact that the rent of the above questioned shop was equaled for sum of Rs. 250/- per month. The respondent should have produced the above diary, which was important documentary evidence and having under the possession of the respondent and the signatures of the plaintiff were also taken in this diary, therefore, the adverse presumption shall be taken against respondent u/s 114 of the Evidence Act due to having not to produce the above diary. This fact cannot be proved by the respondent; therefore, after analyzing the above facts, I am of the view that there is not present any ground to disbelieve the statement of the plaintiff in which he stated the rent was equaled for sum of Rs. 1500/- per month.....”

11. The findings recorded by the Trial Court were based on evidence brought on record. A reference to Evaluation List for the period 2004-2009 by the Executive Officer, Nagar Palika, Rishikesh *vide* document No. 96Ga was also mentioned. Trial Court has further drawn an adverse inference against respondent that he had not produced the diary in which acknowledgment of the entry of the payment of rent was made by the appellant. The entire discussion of the High Court as extracted above, does not refer to

above two factors which weighed that the Trial Court in coming to the conclusion that rate of rent is Rs. 1500/- per month. We thus are of the clear opinion that High Court committed an error in setting aside the findings of the Trial Court on the rate of rent.

12. The High Court was exercising the jurisdiction under Section 25 of the Act, 1887 which provision is as follows:

> **"Sec. 25. Revision of decrees and orders of Courts of Small Causes:**
>
> The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit."

13. The scope of Section 25 of the Act, 1887 came for consideration before this Court on several occasions. In ***Hari Shankar & Ors. Vs. Rao Girdhari Lal Chowdhury, AIR 1963 SC 698,*** in Para Nos. 9 and 10, this Court laid down the following:

> "**9.** The section we are dealing with, is almost the same as Section 25 of the Provincial Small Cause Courts Act. That section has been considered by the High Courts in numerous

cases and diverse interpretations have been given. The powers that it is said to confer would make a broad spectrum commencing, at one end, with the view that only substantial errors of law can be corrected under it, and ending, at the other, with a power of interference a little better than what an appeal gives. It is useless to discuss those cases in some of which the observations were probably made under compulsion of certain unusual facts. It is sufficient to say that we consider that the most accurate exposition of the meaning of such sections is that of Beaumont, C.J. (as he then was) in Bell & Co. Ltd. v. Waman Hemraj, (1938) 40 Bom LR 125: (AIR 1938 Bom 223) where the learned Chief Justice, dealing with Section 25 of the Provincial Small Cause Courts Act, observed:

> "The object of Section 25 is to enable the High Court to see that there has been no miscarriage of justice, that the decision was given according to law. The section does not enumerate the cases in which the Court may interfere in revision, as does Section 115 of the Code of Civil Procedure, and I certainly do not propose to attempt an exhaustive definition of the circumstances which may justify such interference; but instances which readily occur to the mind are cases in which the Court which made the order had no jurisdiction, or in which the Court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the Court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court

> can interfere. But, in may opinion, the Court ought not to interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at."

This observation has our full concurrence.

> 10. What the learned Chief Justice has said applies to Section 35 of the Act, with which we are concerned. Judged from this point of view, the learned single Judge was not justified in interfering with a plan finding of fact and more so, because he himself proceeded on a wrong assumption."

14. Another judgment which needs to be noted is judgment of this Court in ***Mundri Lal Vs. Sushila Rani(Smt) & Anr., (2007) 8 SCC 609***. This Court held that jurisdiction under Section 25 of the Act, 1887 is wider than the Revisional Jurisdiction under Section 115 C.P.C. But pure finding of fact based on appreciation of evidence may not be interfered with, in exercise of jurisdiction under Section 25 of the Act, 1887. The Court also explained the circumstances under which, findings can be interfered with in exercise of jurisdiction under Section 25. There are very limited grounds on which there can be interference in exercise of jurisdiction under Section 25; they are, when (i) Findings are perverse or (ii) based on no material or (iii) Findings have been arrived at upon taking into consideration the

inadmissible evidences or (iv) Findings have been arrived at without consideration of relevant evidences.

15. Present is not a case where High Court set aside the finding of the Trial Court on any of above grounds where Revisional Court under Section 25 can interfere. High Court has not even referred to the reasons given by the Trial Court while coming to the conclusion that the rate of rent is Rs. 1500/ per month. We thus are of the view that judgment of the High Court is unsustainable.

16. The submission which has been much pressed by the learned counsel for the respondent is that Trial Court has not adverted to the additional issues which were framed by the Judge, Small Causes Court after allowing the amendment. The additional issue was as to whether the plaintiff has waived to oppose for eviction in his notice dated 07.09.2001 and whether the prayer for relief added by the plaintiff is barred by limitation. The notice dated 07.09.2001 brought on record by the appellant as Annexure P.1. Notice after setting out facts and claim in last paragraph states as follows:

> "Therefore, you are hereby given the notice

> that you should pay the whole outstanding rent of my client from December 2000 to till today at the rate of Rs. 1500/- per month with interest within one month from the date of receipt of this notice and the tenancy be terminated and shall be treated as terminate after passing above prescribed period. You shall also be liable to pay the compensation at the rate of Rs. 50/- per day to my client after passing the above limitation and the suit will be filed against you before the competent court, for which you will be sole responsible for all the costs and expenses. You should pay the expenses of notice for sum of Rs. 500/-. You are informed hereby that the copy of this notice has been put into custody at my office for further need. The second copy of this notice is being forwarded to you through U.P.C. Post."

17. The notice clearly contemplated the termination of the tenancy after expiry of one month. It is relevant to note that the High Court in its judgment has noted the arguments of revisionists regarding non-decision of the additional issues. The High Court noticed the aforesaid submission in following words:

> "Learned counsel of the revisionist has vehemently argued that none of such added point of determination has been dealt with by the court below in the body of the judgment, much less any finding on either of them...."

18. High Court although noted the above submission but has not proceeded to examine the above contention or

recorded any finding in favour of the respondent. Trial Court had already framed Issue No. 9 to the following effect: "Whether the plaintiff has any right to evict the respondent from the disputed property?" The issue was answered in favour of plaintiff.

19. Although, the above argument was not adverted by the High Court but since the respondent has raised the argument before us, it is necessary to consider the above-said argument. The additional issue as noticed above is as to whether by notice dated 07.09.2001 the landlord has waived his right of eviction. From the averments of notice, as quoted above, it is clear that tenancy was terminated and landlord contemplated eviction of the tenant. We thus are of the view that there is no question of the waiver of eviction. The prayer of eviction which was formally added by amendment can not be said to be barred by time since suit was filed in the year 2001 itself. It was clearly pleaded in the plaint that in spite of the service of notice neither payment of balance amount of rent has been made nor the possession of the shop has been given to the respondent, even after, terminating the tenancy. In para

4 of the plaint following was stated:

> "4. That the tenancy of the respondent had been terminated by the plaintiff through above notice but the above shop of the plaintiff had neither been vacated nor entrusted the possession by the respondent. The respondent did not receive this notice deliberately. The denial of acceptance of the service of above notice was recorded on the envelope of above registered post. It was necessary to file the above case due to non-compliance of above notice, do not make the payment of balance amount of rent and do not delegate the possession of the shop to the plaintiff by the respondent even after terminating tenancy."

20. Thus, the landlord was clearly insisting on termination of the tenancy and was also mentioning a cause of action of not handing over of the possession. In these circumstances, we are of the view that it cannot be held that there was any waiver of relief of eviction either on the notice or in the suit. Formal prayer has already been added in the plaint seeking possession of shop after eviction which amendment was allowed by the High Court in its judgment dated 05.08.2008. We are thus of the view that High Court committed an error in setting aside the judgment and decree of the Judge, Small Causes Court.

21. In result, the appeal is allowed. The judgment and

order of the High Court is set aside and decree of the Judge, Small Causes Court is restored. The parties shall bear their own costs.

.....J.
(A. K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI,
December 11, 2017