

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7675 OF 2019

(Arising out of Special Leave Petition (Civil)No.6530 of 2019)

SUHAIL AHMAD AND ORS.

...Appellants

VERSUS

HAZI MOHD ISMAIL (D) THROUGH LRS AND ORS.

...Respondents

JUDGMENT

Uday Umesh Lalit, J.

- (a) Leave granted.
- (b) This Appeal challenges the judgment and order dated 27.08.2018 passed by the High Court of Judicature at Allahabad, Lucknow Bench in Civil Revision No.104 of 1992.
- (c) On 03.05.1971 a notice was issued by the Appellants terminating the tenancy of the Respondents in respect of premises no.5, Khandhari Bazar Lane, Thana Kaiserbagh, Lucknow and demanding rent for the period from 05.01.1970 to 04.05.1971 @ Rs.1,000/- (Rupees One Thousand only) per month. This notice was admittedly received by the Respondents. Thereafter, notice dated 05.02.1974 was issued by the Appellants demanding payment of rent in respect of subsequent period viz. 5.11.1972 to 5.2.1974. Another notice was issued on 15.04.1974 which made reference to the earlier notices and

stated as under:-

“4. That you have avoided service of this notice when sent on earlier occasion and so this notice is being sent to you both under registered A/D as well as also under certificate of posting and Express Delivery under certificate of posting and a telegram to the following effect is also being served on you demanding rent:”

4. Thereafter, SCC Suit No.22 of 1976 was filed by the Appellants in the court of Additional District Judge, Lucknow for recovery of rent, compensation for use and occupation as well as for ejection of the Respondents. Considering the pleadings, following issues were framed on 03.11.1978:-

- “1. Whether there is a relationship of landlord and tenant between the parties? If yes, its effect.
2. Whether the plaintiff due to selling off the property, cannot maintain the suit?
3. Whether the plaintiff's suit is maintainable?
4. Whether there was agreed rent between the parties? If yes, then its effect.
5. What relief, if any, the plaintiff deserves?

Three more issues were added on 09.04.1981 as under:-

- “6. Whether the notice of Section 106 T.P. Act, 1882 and under Section 20(2)(a) UP Act No.13 of 1972 was not served on the defendant? If yes, then its effect.
7. Whether the court fee is insufficient and the suit is undervalued?
8. Whether the suit is suffering from the defect of non-joinder of Parties?”

5. In respect of Issue No.6, the Trial Court found that the notice dated

03.05.1971 was received by the Respondents. As regards other notices it was found that the notice dated 15.04.1974 was sent through registered post as well as through certificate of posting and though there was no evidence of actual service of that notice, the conduct of the Respondents indicated that they were aware of and had knowledge about the notice. The Trial Court, thus, concluded that the plaintiff was entitled to a decree for eviction and payment of arrears of rent. The operative part of its judgment and order dated 19.08.1992 was to the following effect:-

“The suit of the plaintiff is decreed for eviction and payment of arrears of rent of Rs.19,561/- with 6% interest per annum *pendente lite* and the defendant is ordered that they shall vacate the suit property premises no. 3, Khandhari Bazar Lane, as written in para 9 of the suit plaint, within 60 days of this order and otherwise, the court will get it vacated on the expenses of the defendants.”

6. The Respondents, being aggrieved, filed Civil Revision No.104 of 1992 in the High Court which came to be allowed by judgment and order dated 27.08.2018 which is presently under Appeal. It was observed as under:-

“So far as the first notice dated 12.05.1971 is concerned, there is no dispute that since later other notices were sent demanding rent as well as terminating the tenancy, the landlord had waived the said notice. So far as the notice dated 05.02.1974 is concerned, it is admitted that the same could not be served on the tenant, as it was returned with noting that tenant was out of station and it was not known as to when she would be returning. The same was found not to be sufficient service of notice. So far as the third notice dated 15.04.1974 is concerned, it was sent through three modes i.e. by registered post, certificate of posting and by telegram. There is nothing on record to prove the service of the said notices.

The said finding of the Court below is illegal inasmuch as the notice dated 12.05.1971 was waived by the landlord himself by sending repeated notices thereafter. Therefore,

the service of notice dated 12.05.1971 lost its relevance and could not be relied upon by the Court below for decreeing the suit for eviction.”

7. We have heard learned counsel for both sides and have gone through the record.

8. In our view, the conclusion drawn by the High Court that upon issuance of notice dated 15.04.1974, the earlier notice dated 03.05.1971 stood waived, is not quite correct. According to the Respondents said notice dated 15.04.1974 was never received by them. If the notice was not received at all, there was no knowledge with respect to any contents of the notice, on the basis of which a submission could be advanced that the first notice stood waived. The ground so urged by the Respondents was completely unsustainable and no benefit on that count could be extended in favour of the Respondents. We, therefore, have no hesitation in allowing this Appeal and setting aside the order passed by the High Court.

9. However, considering the fact that the Respondents have been in occupation of the premises for last more than three decades, we grant to the Respondents time to vacate the premises in question till 30.09.2020 subject to;

- (a) the Respondents filing usual affidavit of undertaking within four weeks from today undertaking that they shall vacate and handover peaceful possession of the premises in question to the Appellants on or before 30.09.2020.

(b) the Respondents shall clear all the arrears of rent within eight weeks from today and shall keep on making payment of rent @ Rs.1,000/- per month.

10. In case, there is any default in respect of any of the terms as stated above, the decree passed by the Trial Court shall become executable forthwith.

11. The Appeal is allowed in aforesaid terms. No costs.

.....J.
[Uday Umesh Lalit]

.....J.
[Indira Banerjee]

New Delhi;
September 25, 2019.

ITEM NO.16

COURT NO.7

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 6530/2019

(Arising out of impugned final judgment and order dated 27-08-2018 in CR No. 104/1992 passed by the High Court Of Judicature At Allahabad, Lucknow Bench)

SUHAIL AHMAD & ORS.

Petitioner(s)

VERSUS

HAZI MOHD ISMAIL (D) THROUGH LRS & ORS.

Respondent(s)

Date : 25-09-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s) Mr. Vaibhav Prakash, Adv.
Mr. Piyush Dwivedi, Adv.
Mr. K.K. Shukla, Adv.
Mr. Ajay Pandey, adv.
Mr. Abhinandan Kain, adv.
Mr. Pahlad Singh Sharma, AOR

For Respondent(s) Mr. Shakil Ahmed Syed, AOR

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

Leave granted.

The appeal is allowed in terms of the non-reportable judgment.

Pending applications, if any, shall also stand disposed
of.

(INDU MARWAH)
COURT MASTER

(SUMAN JAIN)
COURT MASTER

(Signed non-reportable judgment is placed on the file)