A UMESH CHAND GANDHI

v.

1 ST ADDL. DIST. AND SESSIONS JUDGE AND ANR.

SEPTEMBER 23, 1993

B [K. RAMASWAMY AND N.P. SINGH, JJ.]

U.P. (Urban Building Regulation of Letting Rent and Eviction) Act, 1972—Section 39—Deposit made by tenant falling short of the amount required to be deposited—Applicability of the principle of substantial compliance/de minimus non curet lex.

C

Section 39 of the U.P. (Urban Building Regulation of Letting Rent and Eviction) Act, 1972 conferred right on the tenant to absolve the default by depositing the arrears, interest accrued thereon, and full costs of the suit within one month from the date of commencement of the Act.

D

The respondent landlord initiated proceedings in the court of Small Causes for ejectment of the Appellant/tenant on the ground of default.

Due to an error in the calculation there was a short fall in making the deposit. The Trial Court decreed ejectment. The Dist. Judge, in revision, held that the appellant had substantially complied with Section 39 and the shortfall in deposit was due to *bonafide* mistake in calculation. The landlord filed a writ petition before the High Court. A Single Judge referred the matter to the Division Bench for decision on the question as to whether the Court had the jurisdiction to go into the question of *bonafide* mistake of calculation or substantial compliance. The Division Bench held that the tenant would not be entitled to get the benefit of the rule de minimus. Basing on this finding, the Single Judge allowed the Writ petition, set aside the order of the appellate authority and granted decree of eviction.

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Disposing of the appeal, by special leave, preferred by the tenant, this Court

HELD : 1.1. Section 39 of the UP (Urban Building Regulation of Letting Rent and Eviction) Act, 1972 confers right on the tenant to absolve his default and save his tenancy provided he complied with the conditions

H

prescribed therein, namely, deposit of arrears into the court made within one month from the date of the commencement of the Act or from the date of his knowledge of pendency of the suit whichever is later. [517-E] A

1.2. The theory of substantial compliance is not a compliance of S.39. But when there is a *bonafide* mistake in calculation, the burden is on the tenant to establish by adducing evidence, regarding the *bonafides* in committing mistake. If the Court is satisfied that the tenant committed *bonafide* mistake in computation of the three components referred to in Sec.39 or anyone and there is a default in compliance thereof, if the amount in deficit is small, it would ignore the said mistake applying *de minimus* principle and refuse decree for eviction. The mistake in calculation must be due to the above *bonafide* mistake. [517-G-H; 518-A] B C

1.3 It is settled law that the courts of justice generally do not take trifling and immaterial matters into account except under peculiar circumstances. The strictness or harshness or inflexibility would lead to injustice or miscarriage of justice. Therefore, in working out equities, the court would apply in general the maxim "*de minimis non curet lex*". [518-B] D

1.4 *Bona fide* mistake may occur in myriad circumstances but it depends upon each case. Neither rigid nor exhaustive nor inflexible rule could be laid cutting its amplitude into mathematical formula, in which even also it would lead to miscarriage of justice or injustice. The division bench has rightly left the question to the discretion of the courts under the Act to consider in each case in the given facts and circumstances whether non-compliance was *bona fide* and trifle, and then to grant relief accordingly. [518-D] E

1.5. There is no justification to put the compliance of Sec. 39 in straight jacket formula. Each case has to be considered on its own facts and it is for the courts below to consider and decide on the basis of factual matrix. [518-E] F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3425 of 1983. G

From the Judgment and Order dated 11-11-82 of the Allahabad High Court in Civil Misc. Writ Petition No. 9296 of 1979.

Joseph Vellapally and D.K. Garg for the Appellant. H

A Satish Chandra and Vijay Kumar for the Respondents.

The following Order of the Court was delivered :

The appellant/tenant had the demised premises on a monthly rent of Rs. 40 from Ram Lal, the landlord. Ram Lal initiated action for ejectment B of the appellant in the Court of the Small Cause (District Munsif), Saharanpur under the U.P. (Temporary Control of Rent and Eviction) Act, 1947. Pending proceedings this Act was repealed and U.P. (Urban Building Regulation of Letting Rent and Eviction) Act, 1972, for short 'the Act' came into force w.e.f. July 15, 1972. Section 39 permitted the appellant to C deposit the arrears, interest accrued thereon and full costs of the suit within one month from the date of the commencement of the Act. As on date a sum of Rs. 2,048 was due. Due to error in calculation a sum of Rs. 1,944 was deposited within one month leaving a deficit of Rs. 104. The Trial Court decreed ejectment, but on revision, the Dist. Judge held that the D appellant had substantially complied with s.39. A sum of Rs. 104 was not deposited due to *bonafide* mistake of calculation. Though alternative remedy was available, Ram Lal instead filed a writ petition in the High Court under Art. 227 in Civil Misc. Suit Petition No. 9296/79. When the matter came up before the learned Single Judge, the respondent restricted E his case to three contentions, namely: (1) When the tenant committee default in deposit of the full amount within one month as enjoined under s.39, whether the court has jurisdiction to go into the question of *bona fide* mistake of calculation; or substantial compliance; (2) whether the tenant should not be treated as a defaulter; and (3) whether the finding of the courts below that the short fall in the deposit made by the tenant was F caused by a *bona fide* mistake of calculation is manifestly unsustainable. The learned Single Judge answered the latter two questions against Ram Lal but on the first question since there was a conflict of decisions, for its resolution referred the matter to the division bench which by its order dated September 10, 1982 held that "if the deposit made by a tenant falls G short of the amount or amounts required to be deposited under s.39, the tenant would not be entitled to the principle of substantial compliance for the benefit of s.39." The court applying the principle of *de minimis non curat lex* held thus "if the amount is found to be small, which has no consequence, the court would be justified in ignoring the said mistake by H extending the *de minimis* rule to such a case. As to what is a case deserving

the benefit of the aforesaid rule is a question of fact to be decided in each case for which no rigid and exhaustive law can be laid down..... In a case of *de minimis*, the Court ignores the short fall and extends the benefit contemplated by s.39 to the defaulting tenant. It will not grant any decree of the amount short deposited. The defence of substantial compliance does not absolve the tenant of his liability to pay the entire amount". It further held that whether the mistake to calculate arrears could have no consequence at all and same cannot be regarded as false or misleading in a material respect and hence a tenant is required to prove his *bona fide* by bringing evidence of the reason, e.g. clerical mistake in calculation etc. for getting the advantage of the rule of *de minimis*. On the facts in this case, the division bench concluded that "we have noted that the total amount which the tenant was required to deposit was Rs. 1,944 (Rs. 2,048) and there was a deficiency of Rs. 104. The amount of Rs. 104 was not a small sum which could qualify the requirement of getting the benefit of rule of *de minimis*." On receipt of the finding on reference the learned Single Judge by the impugned judgment dated November 11, 1982 allowed the writ petition, set aside the order of the appellate authority and granted decree of eviction. Thus this appeal by special leave.

1.01 Section 39 confers right on the tenant to absolve his default and save his tenancy provided he complied with the conditions prescribed therein, namely, deposit of arrears into the court should be made within one month from the date of the commencement of the Act or from the date of his knowledge of pendency of the suit whichever is later : (1) the entire amount of rent and damages for use and occupation; (2) with interest @ 9 per cent annum; and (3) the landlord's full cost of the suit. On compliance thereof the court is enjoined not to grant decree for eviction except on any other grounds mentioned in proviso to sub-s.(1) or in Clauses (b) to (g) of sub-s.(2) of S.20. Thus s.39 gives further opportunity to the defaulting tenant to tender into the court of the aforesaid sum to save his tenancy within the time envisaged therein lest he would be liable to ejectment. Therefore, the division bench has rightly pointed out that the theory of substantial compliance is not a compliance of s.39. But when there is a *bona fide* mistake in calculation, the burden is on the tenant to establish by adduction of evidence his *bona fides* in committing the mistake. On the Court's satisfying that the tenant committed *bona fide* mistake in computation of the three components referred to earlier or anyone and there is a default in compliance thereof, if the amount in deficit is small,

court would ignore the said mistake applying *de minimis* principle and refuse decree for eviction. Therefore, the tenant has to act in good faith. The mistake in calculation must be due to the above *bona fide* mistake. It is settled law that the courts of justice generally do not take trifling and immaterial matters into account except under peculiar circumstances. The strictness or harshness or inflexibility would lead to injustice or miscarriage of justice. Therefore, in working out equities, the court would apply in general the maxim "*de minimis non curat lex*". The division bench, therefore, rightly pointed out that the doctrine deserves extension giving the benefit to the tenant but it is a question of fact to be decide in each case. *Bona fide* mistake may occur in myriad circumstances but it depends upon each case. Neither rigid nor exhaustive nor inflexible rule could be laid cutting it amplitude into mathematical formula, in which event also it would lead to miscarriage of justice or injustice. Accordingly we find that the division bench has rightly left the question to the discretion of the Courts under the Act to consider in each case in the given facts and circumstances whether non-compliance was *bona fide* and was a trifle, and then to grant relief accordingly.

Though the learned counsel for the appellant sought to contend that the case would require consideration at the hands of this Court, we find no justification to put the compliance of s.39 in a straight jacket formula. Each case has to be considered on its own facts and it is for the courts below to consider and decide on the basis of factual matrix. In this case the High Court found that a deficit of Rs.104 is not a trifle. In the facts and circumstances, it calls for no interference by this court. The Appellant has been in possession of the demised premises for commercial use as a shop. It is agreed by the parties across the bar that the appellant be given two years time from today for use and occupation of the demised premises. We approve of the consensus. The appellant shall pay the market rent from October 1, 1993. The learned Dist. Munsiff is directed to determine the prevailing market rent within a period of two months from the date of receipt of this order. On such determination the appellant shall pay the same without taking any further judicial remedy of an appeal, a revision or a writ petition under Art.226 of the Constitution. He should pay the arrears within one month from the date of the determination of the market rent to the respondent against receipt or on his refusal to deposit the amount to the credit of the suit till he vacates the premises. The present rent shall be continued to be paid till the date of determination of the market rent.

Arrears, if any, as on date shall also be deposited within a period of two months from today. It there ia ny default in payment of rent for two successive months, it is open to the respondent to have the decree executed. The appellant shall file usual undertaking in this Court within a period of six weeks from today. The appeal is disposed of accordingly. No costs. A B

B.V.B. Appeal disposed of.