A SUDERSHAN DEVI AND ANR.

v.

SUSHILA DEVI AND ANR.

SEPTEMBER 29, 1999

B [M. JAGANNADHA RAO AND M.B. SHAH, JJ.]

Rent Control and Eviction.

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972—Section 20(4)—Default in payment of rent—Suit for Eviction—Tenants' rights to claim relief against eviction by depositing arrears of rent on the "first hearing of suit"—Summons issued fixing date of "first hearing" on 20.2.90—Summons not accompanied by plaint—Fresh date for hearing fixed for 12.4.90—Arrears of rent deposited on 6.2.92—Trial Court's holding that arrears of rent not deposited on due date—Eviction Order—Affirmed by High Court—Validity of—Held, arrears of rent not deposited on or before "the first hearing of suit"—Order of Eviction confirmed.

C D

Words and Phrases:

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"The first hearing of the suit"—Meaning and scope of in the context of Section 20(4) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

F **Respondent no.1 filed a suit for eviction against her tenant on the ground of default in payment of rent. Notices were issued to the tenants by substituted service and the date for hearing was fixed on 22.2.90. The tenant filed an application seeking a copy of the plaint. The said application was allowed and next hearing was fixed for 12.4.90. Thereafter, the matter was adjourned from time to time and the arrears of rent was** G **deposited by tenants in the Court on 6.2.1992. The Trial Court, decreed the suit holding that the arrears of rent were not deposited on the 'first hearing of the suit' on 22.2.90 as provided under Section 20(4) of The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The said eviction order was affirmed by the District Court and the** H **High Court. Aggrieved, tenants have preferred the present appeal.**

On behalf of the appellant-tenant it was contended that the words 'at the first hearing' meant the date when the first hearing actually took place and not the date fixed in the summons for hearing; and that the events that happened prior to the demise of the original tenant have to be ignored. A

Dismissing the appeal, this Court B

HELD : 1. Appellant-tenant is not entitled to claim relief against eviction as the arrears of rent was not deposited on 'the first hearing of suit'. Thus, High Court and Subordinate courts were justified in ordering eviction under Section 20(4) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 on the ground of default in payment of arrears of rent. [243-D-E; 247-G] C

2.1. "The date of first hearing of the suit" appearing in Section 20(4) of the Act and in the Explanation added thereto would not be the date fixed *for* filing the written statement but would be the date *proposed* for the hearing i.e. the date *proposed* for applying the Court's mind to determine the points in controversy and to frame issues, if necessary. The due date is the date fixed in the summons for final hearing. [251-G; H] D

Siraj Ahmad Siddiqui v. *Prem Nath Kapoor*, [1993] 4 SCC 406 and *Advaitea Anand* v. *Judge Small Causes Court, Meerut & Ors.*; [1995] 3 SCC 407, relied on. E

Ved Prakash Wadhwa v. *Vishwa Mohan*, [1981] 3 SCC 667; *Sham Lal (dead) by Lrs.* v. *Atma Nand Jain Sabha*, [1987] 1 SCC 222 and *First Addl. District and Sessions Judge, Saharanpur and Ors.*, [1989] 2 SCC 110, referred to. F

Srinath Aggarwal v. *Srinath*, (1983) 2 ARC 422 and *Sia Ram* v. *District Judge, Kheri*, (1984) 1 ARC 410 (FB), disapproved.

2.2. In the instant case, the summons initially stated that the date for first hearing i.e. the date fixed for final hearing would be 22.2.90. All the three courts below, therefore, held that the crucial date was 22.2.90 and there was clear default by 22.2.90. But 22.2.90 would not be the due date. The summons were served in this case by substituted service and it was common ground that the summons were not accompanied by the plaint. The tenant therefore, filed an IA seeking a copy of the plaint. That G H

A **application was allowed and a fresh date for filing written statement and a fresh date for 'first hearing' were given. The fresh date for final hearing was 12.4.90. but the arrears were not deposited even by that date. The contention that the Presiding Officer was on training on the due date is not relevant in as much as there was no difficulty in depositing the rent in the manner prescribed. [253-A; B; C]**

B

3. The events which took place before the date of death of the original tenant could not be ignored if prior to his death, the summons had indicated that the suit would be finally disposed of on a particular date if the rents etc. were not deposited by that date. [252-C]

C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6635 of 1994.

From the Judgment and Order dated 1.2.94 of the Allahabad High Court in C.M.W.P. No. 3787 of 1994.

D

C. Siddarth and R.C. Verma for the Appellants.

S.C. Birla, Subrat Birla and P.K. Jain for the Respondent no. 1.

Yashpal Dhingra for the Respondent no. 2.

E

The Judgment of the Court was delivered by

M. JAGANNADHA RAO, J. The appellants and the 2nd respondent are the legal representatives of the original tenant. The appeal is directed against the judgment of the High Court of Allahabad dated 1st February, F 1994, dismissing the appellants' writ petition bearing Civil Miscellaneous W.P. No. Nil of 1994 (*Smt. Sudershan Malhotra & Others* v. *Addl. District Judge, Hardwar*). The 1st respondent is the landlady. The eviction case registered as Small Cause Case no. 6 of 1989 was filed by the 1st respondent under the provisions of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Act 13/72) (hereinafter G called 'the Act') against the tenant. It was decreed by the Trial Court on 27.3.1993 on the ground that the arrears of rent were not deposited on due date under Section 20(4). Subsequently, the Small Causes Revision no.12 of 1993 filed by the appellants was dismissed on 25.1.1994 by the revisional Court. Later, the High Court dismissed the appellants' writ petition. Thus, H the decree for eviction was passed by the courts under Section 20(4) of the

Act on the ground of non-deposit of the arrears of rent at *'the first hearing'* of the case in the Trial Court. The tenant's legal representatives have come up in appeal. A

The following are the relevant facts:

Late Sharvan Kumar Malhotra was the tenant of the 1st respondent in respect of D.No.26/4, Civil Lines Hardwar Road, Roorkee, District Hardwar,(U.P.) from 1977 upon a monthly rent of Rs.70 (allegedly inclusive of house tax and water tax). On the ground of default in payment of rent for 33 months from 2.6.1986 to 28.2.1989, the 1st respondent sent a notice dated 10.3.1989 to the tenant which notice was received by the tenant on or about 28.3.1989. The tenant sent a reply on 28.3.1989. The first respondent-landlady filed the present suit for eviction in 1989. The Trial Court found that the rent was due for more than four months, that the tenant was liable only to pay rent of Rs.70 and not the house tax or water tax, that there was default in payment of rent for 33 months as contended by the first respondent, that the arrears of rent were not deposited at the 'first hearing' of the suit but were deposited long thereafter on 6.2.1992. The suit was therefore decreed for eviction under Section 20(4) of the Act and for arrears in a sum of Rs. 2310. The Trial Court found, in that connection, that the 'first hearing' was on 22.2.90 as per the 'substituted service' taken out by the first respondent. On 22.2.90, the tenant did not deposit the rents and hence the tenant was liable to be evicted. This view was affirmed by the District Court and by the High Court, as stated earlier. B C D E

In as much as there was considerable debate before us as to whether the words 'at the first hearing' meant the date to which the matter was listed for 'first hearing' (as contended by the landlord-respondent) i.e. final hearing as this was a Small Cause suit, or whether it would be the date when the first hearing actually took place (as contended by the appellants-tenants), - it would be necessary to refer to the various events which took place after the suit for eviction was filed, in some detail. F G

No doubt the summons stated, this being a suit filed in the Small Causes Court, that the suit would be coming up for hearing on 22.2.90. But it must be noted that the service on the original tenant was by substituted service taken out by the first respondent. It appears that the substituted service did not comply with the requirement of serving a copy of the plaint. H

A Therefore, on 22.2.90, the tenant filed an application for a copy of the plaint stating that the plaint was not made available since service was by 'substituted service'. The suit and IA were adjourned for hearing for 12.4.90. On 12.4.90 the arrears were not deposited. But as the Presiding Officer was on training, the hearing was adjourned to 3.5.90, on which day the written statement was filed and parties were present. The matter was B adjourned to 5.7.90 for hearing. On 5.7.90, parties were present and the case was again adjourned to 23.8.90 on which day parties were present but the officer was on leave, the tenant filed documents and filed a petition for fixing points for determination. The Suit and IA were adjourned to 29.9.90 for hearing. From 1.9.90 to 4.10.90 the Court was closed due to lawyers' C strike. Suit was adjourned to 25.10.90 for hearing on which date parties were present, counter was received and suit was adjourned for hearing to 15.11.90 on which day parties were present but case was again adjourned because of lawyers' strike to 6.12.90 for hearing, then to 20.12.90 when officer was on leave to 10.1.91, and thereafter to 24.1.91. On 24.1.91, the D tenant again filed IA for determining the points which according to him arose for consideration. The case was adjourned to 14.2.91. In the meantime, the tenant died on 7.2.91. Application for substitution was filed on 4.4.91, notice was ordered. The suit was thereafter adjourned on various dates for service on the legal representatives.

E On 9.9.91 it was reported that only one of the legal representatives was served for the hearing proposed on 9.9.91. Plaintiff sought for substituted service again to the other legal representatives and the suit was adjourned to 10.11.91 and to 8.1.92. On 8.1.92, the legal heirs were reported served but as they were absent, they were set *ex-parte*. The Suit was F adjourned to 31.1.92 for *ex-parte* hearing. On 29.1.92, the legal representatives applied for setting aside the *ex-parte* order and sought time to file written statement. On 31.1.92, *ex-parte* order was set aside and 10 days time was granted for filing written statement and suit was adjourned for 17.3.92 for final hearing. On 6.2.92, arrears as stated in plaint were deposited.

G

The points that arise for consideration in the appeal are :

(1) What is the meaning of the word 'hearing' in the group of words 'the first hearing of the suit' in Section 20(4) of the U.P. Act (Act 13 of H 1972) and in the Explanation added thereto by U.P. Act 28/76?

(2) Do the words 'the first hearing of the suit' in Section 20(4) read with the Explanation added by U.P. Act 28 of 1976 mean the *date fixed FOR THE PURPOSE* of the 'hearing', i.e. for final disposal of the suit, or for settlement of issues, if necessary; OR do they mean the date when the suit is *actually* disposed of or the issues are *actually* settled?

Point 1: S.20(4) of the U.P. Act :

It is first necessary to refer to Section 20(4) of the U.P. Act, 1972 as it stands amended by Act 28/76 (w.e.f. 5.7.1976) which added the Explanation :

> "In any suit for eviction on the ground mentioned in clause (a) of sub-section (2), if *at the first hearing of the suit* the tenant unconditionally pays or (tenders to the landlord or deposits in Court) the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under sub-section (1) of Section 30, the Court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground;
>
> Provided that nothing in this sub-section, shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area.
>
> *Explanation:* For the purposes of this sub-section –
>
> (a) the expression 'first hearing' means the first date for any step or proceeding mentioned in the summons served on the defendant;
>
> (b) the expression 'cost of the suit' includes one-half of the amount of counsel's fee taxable for a contested suit."

U.P. Amendment to Small Causes Courts Act :

Now a suit by the lessor against the lessee for eviction under Section 20 upon giving a notice for determination of the tenancy has to be filed in the Court of Small Causes in view of the Amendment (U.P. Act 37 of 1972) to Section 15 and Article 4 of the Second Schedule of the Provincial Small Causes Courts Act, 1887. Under Section 38 of the Act, the provisions of the U.P. Act "shall have effect notwithstanding anything *inconsistent* therewith contained in the Transfer of Property Act, 1882 (Act IV of 1882) or in the Code of Civil Procedure, 1908 (Act No. V of 1908)." That is how the suit for eviction under the U.P. Act of 1972 came to be filed in the Small Causes Court.

Summons in Small Cause Suits are for final disposal:

So far as the method of issue of summons in Small Causes suits is concerned, the Code of Civil Procedure, 1908 makes a special provision.

Now Order 5, Rule 1(1) contains the general procedure in suits, namely, that the summons directs the defendant to appear on the notified date to answer the claim on a day specified therein and that the Court may also direct him to file his written statement. Further, Order 5 Rule 2 states that every summons shall be accompanied by a copy of the plaint or, if so permitted, by a concise statement. This provision is intended to enable the defendant to have notice of the contents and relief claimed in the suit.

However, the proviso to Order 5, Rule 5 which deals with Small Cause Suits, lays down a slightly different procedure than what is stated in Order 5, Rule 1 and reads as follows :

> "Order 5, Rule 5 : The Court shall determine, at the time of issuing the summons, whether it shall be *for* the settlement of *issues only,* or *for* the *final disposal* of the suit; and the summons shall contain a direction accordingly :
>
> Provided that, in every suit heard by *a Court of Small Causes*, the summons shall be *for the final* disposal of the suit."

Thus, while in other suits the Court has to decide at the time of summons whether it shall be *for* settlement of issues or for final disposal – so far as suits heard by a Court of Small Causes are concerned, the summons shall

be for the final disposal of the suit and under Order 5, Rule 8, on issue of summons for final disposal, the defendant has also to be directed to produce his witnesses too on the day fixed for his appearance.

The Form for summons as prescribed in the Code of Civil Procedure for Small Cause suits, is as follows :

"Whereas _____has instituted a suit against you for _____ you are hereby summoned to appear in this Court in person or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the ____day of _____19__, at _____o'clock in the _____noon, to answer the claim; and *as the day fixed* for your appearance is appointed for the *final disposal of the suit*, you must be prepared to produce on that day all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

Given under my hand and the seal of the Court, this_____day of ____19___.

Judge.

Notice : 1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses.

(2) If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both."

In other words, in Small Cause Suits, the summons will say that the suit is coming up on the notified date for 'final disposal' of the suit and the defendant must be prepared to produce his witnesses also.

A The above Form for summons in Small Cause Suits as prescribed in the Code of Civil Procedure is in compliance with the proviso to Order 5, Rule 5 and also Order 5, Rule 8.

Section 20(4) of the U.P. Act of 1972 uses the words - "at the first hearing of the suit" and requires the tenant to unconditionally pay or B deposit or tender the entire amount of rent and damages, interest and costs after deducting amounts, if any, deposited under Section 30(1). The Explanation defines the "first hearing" as the 'first date *FOR* any step or proceeding mentioned in the summons served on the defendant'. Now in the words 'first hearing', the emphasis is certainly on the word 'hearing'.

C

Question arises under Point 1 as to whether the words "for any step or proceeding mentioned in the summons" used in the Explanation are meant to bring about any change in the understanding that in a Small Cause suit, notice is for final disposal of the suit on the specified date?

D

Before U.P. Amendment Act 28 of 1976.'First' hearing meant date on which Court applied its mind to the case or on which the issues were settled or evidence taken.

This Court had occasion to explain the meaning of the words 'first E hearing of the suit' as they occurred in Section 20(4) of the U.P. Act, 1972, before the amendment of Section 20(4) in U.P. Act 28 of 1976, in *Ved Prakash Wadhwa* v. *Vishwa Mohan*, [1981] 3 SCC 667. It was held that the words 'first hearing' meant 'after framing of issues' when the suit would be posted for production of evidence. This Court referred in that context to F Order 10, Rule 1, Order 14, Rule 1(5) and Order 15, Rule 1 and held that the 'first hearing of the suit' could never be earlier than the date fixed for preliminary examination of witnesses (Order 10 Rule 1) and the settlement of issues (Order 14 Rule 1(5)). In that case, the learned District Judge, ordered eviction on the ground that although the money was tendered before the first hearing, the actual deposit in the treasury was made later, G which was a few days beyond the first hearing but before the framing of the issues. The deposit was on 18.9.1974 while the issues were framed on 24.10.1975. This Court held that the deposit was in time. It was, however, observed (see p. 699 of SCC) that the Court was not there concerned with the Amendment by the Amending Act 28/76 when the Explanation was H added.

Thereafter, in *Sham Lal (dead) by Lrs.* V. *Atme Nand Jain Sabha*, [1987] 1 SCC 222, though the case arose under Section 13(2)(i) of the East Punjab Urban Rent Restriction Act, 1949, reference was made to U.P. Act of 1972. It was observed that the provisions were *pari materia*. There the summons were served on the tenant 'returnable' by 26.6.69. On that date, the tenant appeared and prayed for adjournment to file written statement. The case was adjourned to 2.7.69. On that date written statement was filed and the tenant tendered the arrears as fixed by the Rent Controller. The landlord accepted the same under protest. The High Court treated 26.6.69 the date for return of summons as the date of first hearing. This Court observed that the date 26.6.69 mentioned in the summons could not be treated as the date of first 'hearing' because that was the date for appearance and the Court did not take up the hearing or apply its mind to the hearing of the application. It was only after the written statement was filed, issues were framed that the 'hearing' could commence. *Ved Prakash Wadhwa* was followed. This Court also clarified that the 'first day of hearing' would not be the day for return of the summons nor the returnable day but would mean the *day on which the Court applied its mind to the case - which ordinarily, would be at the time when either the issues are determined or evidence taken.* It was stated that it was so held by the Bombay and Gujarat High Courts while dealing with Section 12(3)(b) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 and that that view was correct. The judgment of the High Court was set aside and the eviction suit was dismissed.

Subhash Chand Jain v. *First Addl. District and Sessions Judge, Saharanpur and Ors.*, [1989] 2 SCC 110 again arose under the U.P. Act, 1972 and related to facts before the 1976 Amendment. The High Court ordered eviction and the same was confirmed by this Court. The tenant in that case did not appear on 4.4.75, the day fixed in the summons, the suit proceeded *ex parte* and was decreed. The *ex-parte* decree was set aside and on 30.5.77 a fresh date was fixed for hearing, namely, 30.8.1977. But the deposit was made on 1.10.1977. A three Judge Bench of this Court observed that 30.8.77 would be the date of first hearing and that the deposit having been made much later, the High Court was right in ordering eviction.

After Amendment by Act 28 of 1976 which introduced Explanation :

First hearing means date fixed FOR PURPOSE OF framing disposal of suits or FOR PURPOSE OF framing issues, if necessary :

A After the Amendment, this Court had occasion to deal with the question in two cases :

Siraj Ahmad Siddiqui v. *Prem Nath Kapoor*, [1993] 4 SCC 406 is the first case after the introduction of the Explanation by U.P. Amendment Act 28/76. In that case, the Trial Court passed an order on 20.1.84 directing B notice be issued to the tenant requiring him to file a written statement by 22.2.1984 and fixed 28.2.84 for framing issues. On 22.2.1984, the Court noticed that summons were not served and adjourned the suit to 28.2.1984. On 24.2.84, the tenant filed an application stating he had not received the summons and that he had not refused the summons, as indicated in the C return. He prayed that a specific date may be fixed for filing written statement and for depositing arrears of rent. He also sought a copy of the plaint. On 24.2.84, the Court passed an order directing written statement to be filed in a month (i.e. upto 24.3.84) and posted the suit for "FH" to 12.4.84 (in a Small Cause suit means final hearing) cancelling 28.2.84. The D tenant made the deposit on 25.2.84. On 2.3.84, he filed an application stating that he had not received the copy of the plaint and therefore could not get the arrears computed. Therefore, he deposited something less than what was due as per the plaint and sought time for deposit of balance. The application was allowed and a fresh date of final hearing was given as 12.4.84 without prejudice and on 5.3.84, the balance was deposited. This E Court held that the date for 'first hearing' was not the date of service of summons (P. 411, page 10), nor 24.2.84 when order was passed on the IA giving time for written statement (para 16). The date for first hearing was fixed as 12.4.84 because defendant had not received the plaint earlier. The earlier date for first hearing, namely, 28.2.84 was expressly cancelled. F Hence the deposit was in time, well before 12.4.84.

This Court, considered the meaning of the words 'step' in the Explanation, and held (para 13) that the first 'hearing' of the suit as per the Explanation did not mean the 'step' of filing of the written statement. This was because of the fact that a written statement could be filed even earlier G than the first hearing "when the Court takes up the case". It was held that, therefore, the date of 'first hearing' as per the Explanation would be the date on which the Court 'proposed' to apply its mind to determine the points in controversy between the parties and to frame issues, if necessary. This, the Court said, was clear because even the Explanation used the word H 'hearing'. This Court held (Para 13) :

"We are of the view, therefore, that the date of first hearing as defined in the said Act is the date on which the Court *proposes to apply* its mind to determine the points in controversy between the parties to the suit *and to frame* issues, if necessary." A

This Court further held (in para 16) as follows and this is important: B

"The date of first hearing in the instant case is not, therefore, February 24, 1984 when the Trial Court passed orders on the application of the appellant for time to file a written statement and permission to deposit the full amount of the arrears. The contention of learned counsel for the respondents to this effect must be rejected. Now, February 24, 1984 was a date earlier than the date of hearing mentioned in the summons, namely, February 28, 1984. The Trial Court gave to the appellant time until March 24, 1984 to file his written statement and deferred the date of final hearing to April 12, 1984, expressly cancelling the date February 28, 1984 given in the summons. In our view, whether or not the provisions of Section 20(4) of the said Act were complied with by the appellant must be judged by the date of *hearing so fixed*. The full amount of the arrears was deposited on March 5, 1984; there was, therefore, compliance by the appellant with the provisions of Section 20(4) of the said Act prior to the earliest date fixed by the Court for the defendant to *take the first step* in the suit." C D E

It will be noticed that, on the facts, it was held in that case that the summons fixed the first hearing for 28.2.1984 initially, but that the summons were not received nor the plaint. The Trial Court therefore passed an order on 24.3.1984 fixing a revised date for final hearing, namely, 12.4.84. In those circumstances, this Court treated 12.4.84 as the due date, i.e. the date for the hearing, before which the rents had to be deposited. On facts, the deposit was made on 5.3.84 itself. Hence, deposit was in time. F

This Court also approved in part (see paras 14, 15) the judgment of the Allahabad High Court in *Srinath Aggarwal* v. *Srinath*, [1983] 2 ARC 422. In that case, the High Court observed that under Order 5, Rule 1(1) it was not obligatory to issue summons in the suit if the defendant voluntarily appeared and was informed about the claim and the date fixed for hearing, it must be deemed that the defendant waived his right to summons. In such a case, if some date is fixed for filing the written statement and for G H

A hearing of the suit, it would rather be too technical a view to take that service of summons in the ordinary course was still necessary. The Court order dated 11.9.78 passed in the presence of the party was to be treated as in the nature of summons and 24.10.78 was to be treated as the date for hearing of suit as informed to counsel. This Court held further that to the above extent, the Allahabad High Court was correct, and stated that "when B time is fixed by the Court *for* filing of the written statement and *hearing,* these dates bind the defendant, regardless of the service of the summons and compliance with the provisions of Section 20(4) of the said Act must be judged *on the basis of the dates so fixed.*" (As we shall presently show, this case in *Srinath Aggarwal* v. *Srinath* was overruled in a latter judgment C of this Court, on the other aspect, namely to the extent it said that the period of one month fixed for filing written statement was to be treated as the period fixed *for* the purposes of the Explanation).

We then come to *Advaita Anand* v. *Judge Small Causes Court, Meerut* D *& Ors.*, [1995] 3 SCC 407. There the summons were issued fixing 23.3.93 for filing written statement and fixing 28.3.93 for the first hearing. The plaint was not annexed to the summons. Therefore, the tenant filed IA on 28.3.90 for copy of the hearing. The plaint was supplied on 28.3.90 itself and on that date the Court passed an order directing written statement to be filed in one month (i.e. by 27.4.90) and fixing 24.7.90 for final hearing E the suit. The deposit was made on 2.5.90. The High Court referred to the Explanation and held that the date fixed for filing written statement (i.e. 27.4.90) was the date on which a 'step' was to be taken in the suit and that the deposit made on 2.5.90 was beyond time. But this Court disagreed, and following *Siraj Ahmed Siddiqui's* case, held that notwithstanding that the F summons fixed one date for filing written statement and another latter date for final hearing, the date for 'first hearing' was not the date fixed for filing the written statement but it was 24.7.90. It would be noticed that 24.7.90 was the revised date for first or final hearing and that was treated as the due date for deposit.

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This Court, in *Advaita Anand's* Case, disagreed with the Full Bench of the Allahabad High Court in *Sia Ram* v. *District Judge, Kheri*, (1984) 1 ARC 410 (FB)) and reiterated what was stated in *Ved Prakash Wadhwa's* case, and in *Siraj Ahmad Siddiqui's* Case as to the meaning of 'first date H of any step or proceeding' and observed (para 7 of SCC P. 410) as follows:

> "We find that in *Siraj Ahmad Siddiqui's* case this Court took note of the Explanation and has observed that it was not possible to construe the words "fixed date for any step or proceeding", which were contained in the Explanation, to mean the step of filing the written statement, though the date for that purpose may be mentioned in the summons, for the reason that it is permissible under the Code of Civil Procedure for the defendant to file a written statement even thereafter but prior to the first hearing when the court takes up the case. It cannot, therefore, be said that the Explanation to Section 20(4) was not given due consideration in Siraj Ahmad Siddiqui".

A B C

This Court again reiterated (Para 7) :

> "The said decision (Siraj Ahmad Siddiqui) shows that even after the insertion of the Explanation, the expression, "first hearing of the suit" in Section 20(4) means the date on which the court proposes to apply its mind to determine the points in controversy between the parties to the suit and to frame issues, if necessary."

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Advaita Anand then referred to the ruling of the Allahabad High Court in *Sri Nath Aggarwal* v. *Srinath*, (1983) 2 ARC 422) and pointed out that that ruling was only partly approved in *Siraj Ahmad Siddiqui's* case to the extent of waiver of summons. But after stating so, this Court in *Advaita Anand* expressly overruled *Srinath Aggarwal* to the extent that that ruling held that the date for filing of the written statement was a step in the proceeding for purposes of the Explanation.

E F

Thus both in *Siraj Ahmad Siddiqui and Advaita Anand* this Court construed Section 20(4) and the Explanation to say that the date of first hearing of the suit would not be the date fixed for filing the written statement but would be the date proposed for the hearing i.e. the date *proposed* for applying the Court's mind to determine the points in controversy and to frame issues, if necessary. These decisions are binding on us. *Point 1* is decided accordingly.

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POINT 2 :

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A Learned Counsel for the appellants-tenants, contended that the events that happened prior to the demise of the original tenant on 7.2.91 have to be ignored, that thereafter the legal representatives were set *ex-parte* on 8.1.92, that that order was set aside on 31.1.92 and ten days time was given to the legal representatives to file written statement, the suit was adjourned to 17.3.92 and the arrears were deposited on 6.2.92 and hence B there was compliance with Section 20(4). Learned counsel for the appellants also contended that it is the actual date of hearing or framing of issues that is relevant and not the date fixed therefor in the summons.

In our view, the events which took place before the date of death of C the original tenant on 7.2.91 could not be ignored if prior to his death, the summons had indicated that the suit would be finally disposed of on a particular date and if factually the rents etc. were not deposited by that date. Therefore, we shall have to examine what happened before 7.2.91, the date of death of the tenant.

D The question is whether it is the actual date of hearing or framing of issues, that is relevant or the date mentioned in the summons for the aforesaid purpose?

The position after *Siraj Ahmad Siddiqui* and *Advaita Anand* is as E follows. This Court held in those cases that the date fixed for filing the written statement was not the due date and that it was the fresh date *proposed* for 'first hearing' of the suit that would be the due date. It was observed, that the crucial date even after the Explanation was the date on which

F

> "the Court *proposes* to apply its mind to determine the points in controversy between the parties to this suit and to frame issue, if necessary."

G In our view, the use of the words 'proposing to apply its mind' and the word 'for' final hearing used in *Siraj Ahmad Siddiqui's* case and in *Advaita Anand's* case are significant. In fact, though S.20(4) uses the word 'at', the Explanation uses the word 'for'. Therefore, we cannot accept the contention of the learned counsel for the tenant-appellants that the due date is the actual date when the final hearing takes place. The due date is the date H fixed in the summons for final hearing as explained above in Point 1.

In the present case before us, the case being one tried by the Small Causes Court, the summons initially stated that the date for first hearing i.e. the date fixed for final hearing would be 22.2.90. All the three courts below, therefore, held that the crucial date was 22.2.90 and there was clear default by 22.2.90. But, in our opinion, 22.2.90 would not be the due date. The summons were served in this case by the method of substituted service and it was common ground that the summons were not accompanied by the plaint. The tenant therefore filed an IA seeking a copy of the plaint. That application was allowed and a fresh date for filing written statement and a fresh date for 'first hearing' were given. The fresh date for final hearing was 12.4.90. But the arrears were not deposited even by that date.

It is also true that on 12.4.90, the Presiding Officer was on training but that, in our view, is not relevant in as much as there is no difficulty in depositing the rents etc. in the manner prescribed.

Therefore, we confirm the Judgments of the High Court and of the Subordinate Courts though for different reasons. The Appeal fails and is dismissed but without costs.

The appellants are however, granted six months time from today to vacate subject to filing usual undertaking in this Court within four weeks from today. If the undertaking is not filed or if the terms of the undertaking are not complied with, the decree for eviction can be executed forthwith without reference to this Court

S.V.K.I. Appeal dismissed.