A SIRAJ AHMAD SIDDIQUI

v.

SHRI PREM NATH KAPOOR

SEPTEMBER 13, 1993

B [J.S. VERMA, M.M. PUNCHHI AND S.P. BHARUCHA, JJ.]

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 : Section 20 (4)—Explanation—Expression—'First hearing'—Scope of.

C *Code of Civil Procedure, 1908 : Order VIII, Rule I—Expression 'First Hearing'—Scope of.*

The respondent-landlord filed a suit against the appellant-tenant for ejectment and recovery of arrears of rent. On 20th January 1984 the Trial D **Court issued notice to the appellant directing him to file written statement by 22nd February 1984 and also fixed 28th Ferbruary 1984 for framing the issues. On 24th February 1984 the appellant made an application praying for grant of time for filing the written statement and depositing the rent stating that he had no knowledge of the suit before and had come to know of it on that very day. He also sought a copy of the plaint stating that he** E **had not been served with summons. The Trial Court cancelled the hearing fixed for 28th February 1984 and deferred until 24th March, 1984 the date for filing the written statement and until 12 April, 1984 the date for first hearing. On 25th February, 1984 the appellant deposited the rent in the Court but on 2nd March, 1984 made another application stating that since** F **he had not received a copy of the plaint and had inspected the record of the case hurriedly, a mistake had occurred so that some part of the arrears had not been deposited. Accordingly he prayed for further time to deposit the same. The respondent opposed the application contending that under Section 20(4) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, the entire amount of arrears had to be deposited on** G **or before the first hearing and the court had no power to extend the time but appellant's application was allowed without prejudice to the respondent's objection. On 5th March, 1984 the appellant deposited the balance amount of arrears. However, after hearing the argument, the Trial Court held that he appellant was not entitled to the benefit of Section 20(4)** H **and decreed the respondent's suit. The revision application filed by the**

appellant dismissed. A

In appeal to this court, a preliminary objection was raised on behalf of the respondent-landlord that this Court should not exercise its discretion under Article 136 in favour of the appellant-tenant because he had not approached the Court with clean hands inasmuch as in his type-written application dated 24th February he had not mentioned that he had not B received a copy of the plaint but had subsequently made interpolations in this regard by hand for securing the benefit of Section 20(4). On merits it was contended that for the purpose of Section 20(4) the expression 'first hearing' meant the first date for any step or proceedings mentioned in the summons served on the defendant. C

On behalf of the appellant it was contended that by its order dated 24th February 1984 the Trial Court had not only cancelled the hearing fixed for 28th February, 1984 but also had deferred until 24th March, 1984 the date for filing the written statement and until 12th April, 1984 the date for the first hearing; and since he deposited the entire amount of the D arrears on 5th March, 1984 he was entitled to the benefit of Section 20(4).

Allowing the appeal, this Court

HELD : 1. The appeal cannot be dismissed only upon the ground E that the appellant had not approached the court with clean hands for, basically, two reason. In the type-written application it is mentioned that the summons had not been served on the appellant and that he had not refused to accept it. What was added by hand was that a copy of the plaint relative to the summons had not been supplied. There was, therefore, only an amplification in hand-writing of the averments already made in the F type-written application. Secondly, each hand-written addition on the application was flanked on either side by the initials of the advocate for the appellant. [258-A-C]

2. The date of the first hearing cannot, plainly, be the date of service G of the summons. That is plain from the expression "first hearing" itself and from the meaning given to it in the Act. [260-F]

3. The "steps or proceedings mentioned in the summons" referred to in the definition should be construed to be a step or proceeding to be taken by the court for it is, after all, a "hearing" that is the subject matter of the H

A definition unless there be something compelling in the said Act to indicate otherwise; and in the Act there is no such compelling provision. Further, it is not possible to construe the expression "first date for any step of proceeding" to mean the step of filing the written statement, though the date for that purpose may be mentioned in the summons, for the reason
B 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, since there is nothing in the said Act which conflicts with the provisions of the Code in this behalf. Therefore, the date of first hearing as defined in the Act is the date on which the court proposes to apply its mind to determine the points in controversy between
C the parties to the suit and to frame issues, if necessary. [261-E-G]

4. In the circumstances, the date of first hearing in the instant case is not therefore, 24 February, 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. 24th February, 1984
D was a date earlier than the date of hearing mentioned in the summons, namely, 28th February 1984. The Trial Court gave to the appellant time until 24th March, 1984 to file his written statement and deferred the date of final hearing to 12th April, 1984, expressly cancelling the date 28th February, 1984 given in the summons. Whether or not the provisions of
E 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 were deposited on 5th March, 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
F the suit. [263-B-D]

Sri Nath Agarwal v. *Sri Nath*, (1983) 2 Allahabad Rent Cases 422, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4924 of
G 1993.

From the Judgment and Order dated 21.5.93 of the Allahabad High Court in C.R. No. 366/90.

Arun Jaitley, Abhay Singh, D.R.Roy and M.P. Shorawala for the
H Appellant.

S.N. Singh, B.N. Sharma, T.N. Singh and H.L. Srivastava for the Respondent. A

The Judgment of the Court was delivered by

BHARUCHA, J. Special leave to appeal granted. B

This appeal impugns the judgment and order passed by a learned Single Judge of the Allahabad High Court in its civil revisional jurisdiction. Thereby the revision application filed by the appellant was dismissed but it was ordered that, subject to compliance with certain conditions, the appellant should not be evicted from the shop in suit for a period of four months. C

Briefly stated, the facts are that the respondent, the landlord of the shop in suit, filed against the appellant, its tenant a suit for ejectment and for recovery of rent which was alleged to be in arrears since 1st November, 1980. The appellant contested the correctness of the averments in the plaint. He also claimed the benefit of Section 20(4) of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 (hereinafter referred to as the said Act). The trial court, after evidence was recorded and arguments heard, found that the appellant was not entitled to the benefit of Section 20(4) of the said Act and decreed the suit. The revision application filed by the appellant was, as aforesaid, dismissed. D E

Learned counsel for the respondent raised a preliminary objection before us. He submitted that the appellant had no approached the court with clean hands and that, therefore, we should not exercise in his favour the discretion under Article 136. The submission that the appellant had not approached the court with clean hands was based upon the findings of the trial court, affirmed by the High Court, that when the defendant had appeared before the trial court and made an application for time for filing a written statement and permission to deposit the arrears of rent under Section 20(4) for the said Act, it had not been stated that a copy of the plaint had not been received by the defendant. Upon the type-written application interpolations in this behalf had been made by hand. To the trial court the interpolations did not spite to be genuine additions made in the course of preparation of the application or its presentation before the court but were in the nature of interpolations made for securing the benefit of Section 20(4) of the said Act "somehow or the other". F G H

A A photo copy of the application has been placed before us at out instance. We are not inclined to dismiss the appeal only the ground that the appellant had not approached the court within clean hands for, basically, two reasons. In the type-written application it is mentioned that the summons had not been served on the appellant and that he had not refused to accept it. What was added by hand was that a copy of the plaint relative to the summons had not been supplied. It was averred in the application, as typed, that the defendant had not cone to know of the suit filed against him prior to 4th February, 1984, which was the date of the application, and in hand-writing what was added was that the appellant had only just come to know about the suit and was depositing the entire amount of arrears. There was, therefore only an amplification in hand-writing of the averments already made in the type-written application Secondly, we find that each hand-written addition on the application is flanked on either side by initials and these initials are stated at the Bar to be of the advocate of the appellant before the trial court.

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D To turn now to the merits, we must notice, first the provisions of Section 20(4) of the said Act. It reads, so far as it is relevant, thus:

> "(4) 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 if 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 annum and the londlord'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:
>
> Explanation - For the purposes of this sub-section -
>
> (a) the expression 'first hearing' means the first date for any step or proceedings mentioned in the summons served on the defendant;"

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H The trial court passed an order on 20th January, 1984, on receipt of

the record of the suit from the court of the District Judge with orders to register the same, directing that notice be issued to the appellant requiring him to file a written statement by 22nd February, 1984 and fixing 28th february, 1984 for the framing of issues. On 22nd February, 1984 the trial court noted than the acknowledgment of the summons sent by registered post to the appellant had not been received and directed that the matter should stand over till the date fixed for the framing of issues. On 24th February, 1984 the appellant made to the trial court the application hereinbefore referred to. He averred that he had not been served with the summons nor had he refused to receive the same. He had come to know of the suit on that very day when the advocate for the respondent had asked him for how long he was not going to attend the hearing. He than instructed his advocate to inspect the file and in this manner came to know of the suit. He also came to know that the summons had been returned as having been refused by him, which was false. Since the appellant had no knowledge about the suit before that day it was submitted that he should be given a suitable date for filing his written statement and for the deposit of all the arrears claimed from him. The appellant also sought a copy of the plaint. The application was supported by an affidavit. On the same date, that is, 24th February, 1984. The trial court noted that the application supported by an affidavit, had been filed the prayer for grant of time for filing of the written statement and permission to deposit the full amount of the debt. It ordered thus :

> "Heard. Let the amount be deposited without prejudice to the rights of the party. For time to file W.S. the defdt. may file W.S. within a month of payment of Rs.15 as costs. Fix 12.4.84 for F.H. The date for 28.2.84 is cancelled. Inform."

The appellant made a deposit in the trial court of Rs. 11,000 on 25th February, 1984. On 2nd March, 1984 the appellant made a further application that, since he had not received the copy of the plaint and the record of the case had been inspected very hurriedly, a mistake had occured so that some part of the arrears had not been deposited. He prayed that he should be allowed to deposit the same. The application was opposed on the ground that, under Section 20(4) of the said Act, the entire amount of the arrears had to be deposited on or before the first hearing and the court had no power to extend the time or to grant the permission that was sought. The application dated 2nd March, 1984 was allowed without prejudice to

A the respondents objection. On 5th March, 1984 the appellant deposited the sum of Rs. 1,205 which, admittedly, made the aggregate deposit of Rs. 12,205 more than the amount in arrears.

Mr. Arun Jaitley, learned counsel for the appellant, submitted that, by virtue of the order dated 24th February, 1984, the trial court had
B deferred until 24th March, 1984 the date for filing the written statement and until 12th April, 1984 the date for the first hearing. The order expressly cancelled the hearing fixed in the summons on 28th February, 1984. The deposit of the entire amount of the arrears having been completed on 5th March 1984, the appellant was entitled to the benefit of Section 20(4) of
C the said Act and, consequently, the order of eviction made against him was erroneous. It was submitted that the judgment of the learned Single Judge of the Allahabad High Court in the case of *Sri Nath Agarwal* v. *Sri Nath,* 1983(2) Allahabad Rent Cases 422, which was relied upon by the trial court and the High Court, supported the case of the appellant.

D Learned counsel for the respondent drop attention to the provisions of Section 20(4) of the said Act and laid emphasis upon the Explanation thereto which said that for the purpose of this sub-section the expression "first hearing" meant the first date for any step or proceedings mentioned in the summons served on the defendant. In his submission, the date of
E first hearing was the date of the service of the summons on the appellant, which, in the instant case, had to be presumed since the summons had been returned by the postal authorities with the remark "Refused". We do not question the latter part of the submission but, in our view, the date of the first hearing cannot, plainly, be the date of service of the summons. That is plain from the expression "first hearing" itself and from the meaning given
F to it in the said Act.

In the alternative, learned counsel for the respondent submitted that the date of first hearing was 24th February, 1984 because that was the date of the hearing at which the court had made the order quoted above.

G A few provisions of the said Act and of the Code of Civil Procedure, 1908, need to be examined. Section 38 of the said Act states that the provisions thereof would have effect notwithstanding anything inconsistent therewith contained in the Code. Order V, Rule 1 of the Code states that when a suit has been duly instituted summons may be issued to the
H defendant to appear and answer the claim on a day to be therein specified,

provided that no summons need be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim. Where the summons is issued the court may direct the defendant to file a written statement on the date of his appearance and cause an entry to that effect to be made in the summon. Order V, rule 5 provides that in every suit heard by a Court of Small Causes (which the trial court was) the summons shall be for the final disposal of the suit. Order VIII, Rule I of the Code uses the expression first hearing and it says that the defendant shall on or before the first hearing or within such time as the court may permit present written statement of his defence. The court is called upon to frame issues under the provisions of Order XIV, Rule 3 on the basis of the pleadings and documents of either party to the suit.

The date of first hearing of a suit under the Code is ordinarily understood to be the date on which the court proposes to apply its mind to the contentions in the pleadings of the parties to the suit and in the documents filed by them for the purpose of framing the issues to be decided in the suit. Does the definition of the expression 'first hearing' for the purposes of Section 20(4) mean something different? The "step or proceedings mentioned in the summons" referred to in the definition should we think, be construed to be a step or proceeding to be taken by the court for it is, after all, a "hearing" that is the subject matter of the definition, unless there be something compelling in the said Act to indicate otherwise; and we do not find in the said Act any such compelling provision. Further, it is not possible to construe the expression "first date for any step or proceeding" 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, as set out earlier, it is permissible under the Code for the defendant to file a written statement even thereafter but prior to the first hearing when the court takes up the case, since there is nothing in the said Act which conflicts with the provisions of the Code in this behalf. 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.

We must now consider the judgment of the Allahabad High Court in Sri Nath Aggarwal's case from which support has been derived in the judgment of the trial court and the High Court and which the appellant

A claims is, in fact, in his favour. In the court below the case of the defendant therein was that since he had deposited the entire amount before the first date of hearing he was entitled to the protection of Section 20(4) of the said Act, but this contention was rejected and the defendant filed a revision application before the High Court. It was argued on his behalf that, admittedly, no summons had been issued and, therefore, he had not been B given the opportunity of taking the benefit of Section 20(4) of the said Act by depositing the requisite monies on or before the first date of hearing. The defendant had, admittedly, deposited the entire amount due from him on 24th October, 1978, which was the first date when the court applied its mind and this should be treated as the date of the hearing of the suit. Prior C to this date no other date had been fixed for the hearing of the suit. Notice was taken of the provisions of Section 20(4) of the said Act and the Explanation thereto defining the expression first hearing. The High Court said that if the defendant appears before the court after the registration of the suit and he is informed about the nature of the claim and the date, D fixed for reply thereto, the defendant must be deemed to have waived the right to the summons served on him. The same legal position would arise when a defendant suo moto appreared before the court before the actual service of the summons. In such a case, if some date was fixed for filing the written statement or for the hearing of the suit it would be too technical to hold that service of the summons in the ordinary course was till required E and that further proceedings in the suit would take place only thereafter. The High Court concluded (in para 10) by holding that when the order was passed on 11th September, 1978 in the presence of counsel for the defendant fixing the date for filing of the written statement and the date for the final hearing, the summons was issued and served on the defendant F within the meaning of the Explanation to Section 20(4) of the said Act on that day. Since 11th September, 1978 was the date when the summons was so served and one month's time was allowed for filing the written statement, though it might be the date for the taking of a step by the defendant, the defendant should have complied with the provisions of Section 20(4) of the said Act by that date. This had not been done. The rent had been G deposited only thereafter. In those circumstances, it was held that the defendant could not avail of the advantage of Section 20(4) and was liable to be ejected.

We are in agreement with the ratio of the judgment in so far as it H says that when time is fixed by the court for the filing of the written

statement and the 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 upon the basis of the dates so fixed. A

The date of first hearing in the instant case is not, therefore, 24th February, 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, 24th February, 1984 was a date earlier than the date of hearing mentioned in the summons, namely, 28th February, 1984. The trial court gave to the appellant time until 24th March, 1984 to file his written statement and deferred the date of final hearing to 12th April, 1984, expressly cancelling the date 28th February, 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 were deposited on 5th March, 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. B C D

In the result, the appeal is allowed. The judgment and order under appeal and the judgment and decree of the 8th Additional District Judge, Varanasi, passed on 28th April, 1990 are set aside and the suit filed by the respondent is dismissed. There shall be no order as to costs. E

We have told the dimensions of the shop in suit and the present rent thereof. We think that the amount of the rent should be increased. Mr. Arun Jaitley, learned counsel for the appellant, immediately agreed and left it to the court to fix the amount it thought reasonable. Learned counsel for the respondent was unable to respond to this offer without taking instructions. We think it appropriate that the appellant should pay to the respondent a higher rent determined by agreement between them, failing which as determined under the statute. F G

T.N.A. Appeal allowed.