

Surendra Kumar and Another Vs. Rajendra Kumar Agarwal

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Court : Allahabad

Decided On : Jul-17-1989

Reported in : AIR1990All49

Judge : A.N. Dikshita, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 8, Rule 1 - Order 15, Rule 5 - Order 17, Rule 1 - Order 32, Rule 1; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21

Appeal No. : Civil Revn. No. 194 of 1989

Appellant : Surendra Kumar and Another

Respondent : Rajendra Kumar Agarwal

Advocate for Def. : Ranjeet Saxena, Adv.

Advocate for Pet/Ap. : Rajesh Tandon, Adv.

Judgement :

ORDER

1. Being aggrieved by the judgment and order dated 29-11-1988 decreeing the suit for eviction and for the recovery of Rs. 3010/- as arrears of rent besides Rs. 1035/-mesne profits up to the date of filing of suit and for pendente lite and future mesne profit at the rate of Rs. 15/- per day, the applicant (tenant) has preferred

this revision.

2. When this revision was listed for admission on 2-3-1989 after hearing the learned counsel for the applicant Sri Rajesh Tandon for the first time, it was directed to be listed as part heard on 9-3-1989. On 13-3-1989 the learned counsel for the applicants was permitted to serve the respondent and their dispossession was stayed till 13-4-1989.

3. Later on Sri Ranjeet Saxena appeared for the Opp. Party.

4. A counter affidavit was filed on 28-4-1989. On that date learned counsel for the applicants Sri Rajes Tandon and Sri Ranjeet Saxena for the opposite party submitted that instead of disposing of the stay matter the revision be disposed of finally at the admission stage.

5. In view of the statement by the learned counsel for the parties this revision was heard finally today and is being disposed of accordingly at the admission stage.

6. Heard the learned Counsel for the parties.

7. Learned counsel for the applicant Sri Rajesh Tandon has very strenuously submitted that the trial court has acted in an arbitrary manner in decreeing the suit even without the applicants (defendants) written statement having been brought on the record. The trial court granted adjournments as many as 13 times to the applicants but in spite of the above adjournments, the defendants (applicants) did not file the written statement and seemingly was more interested in procrastinating the proceedings in order to save the tenancy as far as possible. But howsoever reprehensible or malicious the conduct of the defendants may be, still in the fitness of the things an opportunity to the applicants (defendants) ought to have been granted to file the written statement. It is also true that defendants were callously negligent or deliberately avoiding to file the written statement. Yet the perusal of the order sheet clearly shows that there was some hurry or haste for the disposal of the case may be at the behest of the opposite party (pltff.) Often adjournment is sought and the court on finding the grounds to be sufficient, allows it and once such adjournment has been allowed, it cannot be said that the several

adjournments have been granted. In each case depending upon the merits and sufficiency of the reasons for allowing the adjournment, the court has to exercise its discretion and having exercised its discretion it is not imperative for the court to go into the past conduct that in view of several adjournments having granted, no adjournment can be allowed. Circumstances may be there which may prompt the court to allow the adjournments. Likewise the circumstances may be there which may ultimately find rejection in the application for adjournment. It has now become a common practice with the tenants to seek adjournments on frivolous grounds solely for the purpose to delay the proceedings where the suit is for eviction but that alone would not be a guiding factor to disallow adjournment. Costs could have been imposed for granting adjournment. Exemplary costs can be imposed where the conduct of the defendant warrants such imposition. However it appears that the trial court was more swayed by the conduct of the defendant, still it would have been appropriate to allow time to the defendant to file written statement.

8. On 26-6-1988 vide application 49-C the defendant prayed that the plaintiff be directed to file the will or give a copy thereof to the defendant. It was rejected by trial Court/ Immediately after an application 50-D couched in identical language was filed. It was again rejected. The defendants sought for time to bring stay order from this Court against the order rejecting their applications to produce the will. It was allowed.

9. No such stay order was ever produced on (8-10-1988. Another application 52-C was filed for granting adjournment as the applicant No. 2 had gone to Allahabad to obtain stay order. By that time no written statement was filed. The court further found that compliance of Order 15, Rule 5 of the C.P.C. has not been achieved. On that very day the statement of Sri Virendra Kumar Goyal (P.W. 1) was recorded. The defendant then adopted very dubious and mischievous tactics in filing the application for transfer of the case. The trial court should not have allowed it. However the judgment was deferred till 27-10-1988 again an application for 15 days time to bring stay order was filed but the time was allowed till 2-11-1988. On 2-11-1988 the defendant again filed an application for a month's time to bring stay order. The trial court granted time till 17-11-1988. On 28-11-1988 the case was listed and as no stay order from the appropriate court was filed the case

was directed to be listed on 29-11-1988 for delivery of judgment. It was accordingly done on that date and the suit was decreed. Hence this revision.

10. Learned counsel for the applicants has submitted that this day (28-11-1988) was not fixed for hearing. Learned counsel for the applicant even went to the extent of submitting that this is a rarest of the rare cases where the suit has been decreed without the statement of the plaintiff having been recorded. Unfortunately such a submission is not borne out from the record and such an exercise is futile much to the detriment of the court's time as the statement of P.W. 1 Sri Virendra Kumar Goyal was recorded on 18-10-1988. As regards the other submission that 28-11-1988 was not the date fixed for hearing. I do not find any merit in the submission. The case in fact had already been concluded on 18-10-1988. Only the judgment was to be pronounced. The defendants had made reckless allegations for seeking transfer by displaying militancy in undermining the prestige of the court, though they did not file the written statement for more than two years.

11. However as has been observed above an opportunity to file the written statement was required and such denial has to my mind ended in the miscarriage of justice.

12. Before parting with this case it may further be observed that the suit has been filed on behalf of the minor Rajendra Kumar Agarwal by Sri Virendra Kumar Goyal. Para 1 of the plaint discloses that one Smt. Shanti Devi, widow of Late Kishan Lal, during her lifetime had bequeathed her entire property in favour of one Rajendra Kumar Agarwal. This will was registered with the Sub Registrar of Dehradun. This will further directed that till Rajendra Kumar Agarwal, who was a minor at the time of the execution of the will, one Sri Virendra Kumar Goel son of Lala Amarnath would be the guardian. It was on this basis that Sri Virendra Kumar Goel has filed the suit on behalf of the minor. The plaint has been signed by Sri Virendra Kumar Goel and the verification of the plaint has also been done by him. There was no document on the record which would have suggested that Virendra Kumar Goel has a right to maintain the suit. The trial court illegally erred in decreeing the suit and has in fact acted in the exercise of the jurisdiction illegally and has committed material irregularity. Once such an allegation was made in the plaint giving such a

right to Sri Viredra Kumar Goel to maintain the suit, it was necessary that the opposite party (plaintiff) should have established that he is the person entitled to maintain the suit. This was not done. The trial court did not consider this aspect and it only reflects that the suit was decreed in haste.

13. Learned counsel for the opposite party Sri Ranjit Saxena has vehemently decried the conduct of the applicants (tenants) and has submitted that it was on account of laches on the part of the applicants that the trial court as per force was compelled to proceed. No doubt Sri Saxena has commendably exposed the conduct of the applicants and has also displayed a fair approach to this case. Being quite young at the Bar he has displayed generosity suggesting that the case be disposed of by the court at the earliest and the applicants may file the written statement. I am quite impressed with such a statement, but looking to the conduct of the applicants this case requires imposition of some costs which may appear to be heavy and are indeed heavy. Learned counsel for the applicants Sri Rajesh Tandon has submitted that the written statement would be filed within a week of the preparation of the copy of this order and would also deposit the costs in this court payable to Sri Ranjit Saxena.

14. In the result the revision succeeds and is hereby allowed with costs fixed at Rs. 2000/-. The judgment and the order dated 29-11-1988 decreeing the suit is hereby set aside. The case is remanded back to the court below for trial according to law.

15. Let a copy of this order be made available to the learned counsel for the parties on payment of necessary charges within a week. Even if no copy is made available by that time the defendant is directed to file the written statement by 31st July, 1989. The trial court immediately on the filing of the written statement shall proceed to dispose of the suit expeditiously.

16. Sri Rajesh Tandon, learned counsel for the applicants has further submitted that the applicants would not seek any adjournment in the case and would participate in the proceeding.

17. Petition allowed.

