

Bata India Ltd. and Others Vs. Vth Additional District Judge, Agra and Others

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Court : Allahabad

Decided On : Feb-04-1999

Reported in : 1999(2)AWC999

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 3, 21(1) and 22; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 16(2); [Bengal, Agra and Assam Civil Courts Act, 1887](#) - Sections 13 and 21(4)

Appeal No. : C.M.W.P. No. 39313 of 1998

Appellant : Bata India Ltd. and Others

Respondent : Vth Additional District Judge, Agra and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Pankaj Bhatia, Adv.

Judgement :

Sudhir Narain, J.

1. This writ petition (s directed against the order dated 14.10.1998 passed by respondent No. 1, allowing the appeal and releasing the disputed shop in favour of the landlord-respondent No. 3 under Section 21 (1) (a) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. 1972 (in short the 'Act').

2. Briefly stated, the facts are that respondent No. 3 filed an application in the year, 1983 for release of the shop in question against the petitioner on the allegation that the petitioner is a tenant of the shop in question on monthly rent of Rs. 125 per month. His family consists of himself, his wife, four sons and two daughters. He wants to start the business of general merchandise in the shop in question. He is running 'Prasad Cinema' and 'Jai Kaushilya Cinema' in partnership but both the Cinemas are running at loss and the Income derived from them is hardly sufficient to meet out the necessities of his family. He had to sell his two properties at Tundla. one worth Rs. 45,000 and the other worth Rs. 15,000. The tenant is a well-known Shoe Company and can shift its business to any other accommodation. The application was contested by the tenant-petitioner. It was denied that the Income of the petitioner was insufficient and he requires the shop in question for carrying on business. The prescribed authority rejected the application on 16.11.1990. Respondent No. 3 preferred an appeal. The appeal has been allowed vide impugned order dated 15.10.1998.

3. Learned counsel for the petitioner urged that the prescribed authority, Agra had no jurisdiction to decide the application filed by the petitioner and the District Judge, Agra to entertain and decide the appeal filed by respondent No. 3. The application under Section 21 (1) (a) of the Act was filed before the prescribed authority. Agra on 19.5.1983. During the pendency of the proceedings, district Firozabad was created on February 5, 1985 vide Government Notification No. 5-4 (4)/81-64 (Ga) Ra-5, dated 4.2.1989. The town of Tundla which formed part of district Agra was included in district Firozabad. Subsequently, a new Judgeship in Firozabad was created vide Government Order No. U.O. No. 110/VII-A-Nya-NI-204/9, dated October 21. 1989. The place of sitting of District Judge and Civil Judge at Firozabad was defined in the Government Notification dated November 30. 1989. After the creation of a new Judgeship at Firozabad and four other places, the representations were made by various persons and Bar Association for

transfer of the cases already Instituted at Agra Judgeship to Firozabad Judgeship which were covered under the local jurisdiction of Firozabad Judgeship. The matter was taken up by the Administrative Committee of this High Court and in its meeting held on May 23, 1990, the following decision was taken :

'Following the practice of this Court in such matter, it is resolved that the cases pending in the Courts at Saharanpur, Muzaffarnagar, Mtrzapur, Bijnor, Azamgarh, Agra, Mainpuri, arising from the territories, which are now comprised in the new districts, shall not be transferred to the newly created districts, but shall remain with the parent Judgeships.'

In view of the said decision, the cases which were already instituted and pending in the Courts at Agra Judgeship were not transferred to Firozabad Judgeship even though such cases were within the local Jurisdiction of Firozabad Judgeship.

4. Learned counsel for the petitioner submitted that Section 3 (e) of the Act defines the prescribed authority and only such authority can decide the application. Section 3 (e) of the Act reads as under :

'3. In this Act, unless the context otherwise requires-

.....

(e) 'prescribed authority' means a Civil Judicial Officer or Judicial Magistrate authorised by the District Judge to exercise, perform and discharge all or any of the powers, functions and duties of the prescribed authority under this Act, and different such officers may be so authorised in respect of different areas or cases or classes of cases, and the District Judge may recall any case from any such officer and may transfer it for disposal to any other such officer.'

The application was filed in the year 1983 when the prescribed authority at Agra had jurisdiction to entertain the application. The application under Section 21 was filed before such prescribed authority. The jurisdiction will not cease if subsequently a Government Notification is issued under Section 13 of the [Bengal, Agra and Assam Civil Courts Act, 1887](#) (12 of 1987), fixing and altering the local limits of the jurisdiction of any civil court under the Act. The prescribed authority

which had entertained the application is entitled to decide the case unless the case is transferred in accordance with law to another prescribed authority. The High Court had taken a decision not to transfer the cases which were instituted and pending prior to the creation of Firozabad Judgeship. As regards the appeal against the order of the prescribed authority, it was entertainable only by the District Judge, Agra inasmuch as the cases were decided by the prescribed authority. Agra.

5. Section 22 provides that any person aggrieved by an order under Section 21 may prefer an appeal against it to the District Judge. The District Judge will entertain the appeal against the decision of the prescribed authority which has been conferred power under Section 3 (e) of the Act. The District Judge, Agra had conferred the power on the prescribed authority, Agra to decide the cases under Section 21 of the Act and only such District Judge was entitled to decide the appeal unless the High Court under sub-Section (4) of Section 21 of the Bengal. Agra and Assam Civil Courts Act with the previous sanction of the State Government, direct by Notification in the Official Gazette that appeals lying to the District Judge under sub-section (2) of Section 21 of the Act from all or any of the decrees or orders of any Munsif shall be preferred to the Court of such subordinate Judge as may be mentioned in the Notification and the appeals shall thereupon be preferred accordingly. Admittedly, there is no such notification conferring powers on the Firozabad Judgeship in regard to the appeals against the order of the prescribed authority, Agra. In *Kongandra Appayya and others v. Kongandra Kuttappa and others* AIR 1921 Mad 687, it was held that where a case is transferred, it is the appellate authority of the same Court which is entitled to decide the appeal. Respondent No. 1 in the facts and circumstances of the case, was entitled to decide the appeal.

6. Learned counsel for the petitioner has assailed the finding recorded by the appellate authority on the question of bona fide need.' It is contended that respondent No. 3 does not require (he shop in question to carry on the business of general merchandise, as alleged by him because he has sufficient income from other sources. It is contended that respondent No. 3 is a partner in two Cinemas namely, 'Prasad' and 'Jai Kaushilya'. The appellate authority has examined this

aspect and found that respondent No. 3 is only a partner and the cinemas are running at loss. This finding was based on the assessment of the evidence. Respondent No. 3 is not proprietor of these Cinema Houses. He is only a partner of a' minor share. He has four sons and one of the sons is working in the shop. The version of respondent No. 3 that he will carry on the business in the shop in question has been believed and there is nothing to suggest that his version is false.

7. Learned counsel for the petitioner submitted that one Laxmi Narain was tenant of the first floor of this very building. He vacated in the year, 1985 and the said shop is available to respondent No. 3. The contention of respondent No. 3 was that he will carry on general merchandise business and the first floor which was in occupation of Laxmi Narain is not suitable for the said shop. This first floor shop was offered to the petitioner but it did not accept it. In case the petitioner has not accepted it on the ground that It was not suitable for it. It cannot now urge that it is suitable for respondent No. 3 to carry on general merchandise business.

8. It is further contended that shop No. 58/7 situate in Main Bazar. Tundla is available to respondent No. 3. It was found that respondent No. 3 has no concern with this shop. Another shop situate In Main Bazar. Tundla is in occupation of his son Pankaj Kumar who has a medical shop. He is married and aged about 29 years. It is further pointed out that the need of other sons of the landlord has been taken into consideration by respondent No. 1 unjustifiably and without pleadings. Admittedly, the application was filed in the year. 1983 when the age of his four sons was 14, 12. 9 and 8 years and after 15 years their age is 29, 27. 24 and 23 years respectively. The application under Section 21 of the Act is to be decided on the basis of the pleadings of the parties. The pleadings are only to ascertain as to what is the real controversy between the parties and, secondly, both the parties can adduce the evidence in respect of their contentions, The prescribed authority while deciding the application under Section 21 of the Act will, however, not be too technical in regard to the pleadings when the basic question as to bona fide need can be ascertained not only on the pleadings but also on the evidence adduced by the parties of which they were fully aware and contested the matter. The petitioner has not stated in the writ petition that two other sons of respondent No. 3 are

engaged in some business. It is, however, not necessary to go deep in this aspect as it has been found that respondent No. 3 will himself carry on the business in the shop in question.

9. The last submission of learned counsel for the petitioner is that it will suffer greater hardship in case the application is rejected. He has placed reliance upon Rule 16 (2) of the Rules framed under the Act which lays down the guidelines as to the manner in which the hardship is to be considered. These are only guidelines which are to be kept in mind while considering the hardship of the parties, as held in *Shiv Devraj v. Additional District Judge and others*. 1996 (1) ARC 559. The appellate authority has found that the application was filed in the year 1983. The Bata Company has sufficient source of income and could have found out alternative accommodation during the last 15 years. I do not find any merit in this writ petition.

10. The writ petition is accordingly dismissed.