

Khushi Ram Dedwal Vs. Additional Judge, Small Causes Court/Prescribed Authority, Meerut and Others

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Court : Allahabad

Decided On : Jul-17-1997

Reported in : 1998(2)AWC995

Judge : R. Dayal and ;Sudhir Narain, JJ.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1), 34 and 34(1); Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 15(3); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 and 152 - Order XVIII, Rule 4 - Order XIX, Rules 1, 2 and 22; Jammu and Kashmir Commission of Inquiry Act - Sections 4

Appeal No. : C.M.W.P. No. 4097 of 1995, Connected with W.P. No. 8126 of 1995

Appellant : Khushi Ram Dedwal

Respondent : Additional Judge, Small Causes Court/Prescribed Authority, Meerut and Others

Advocate for Def. : S.C.

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

Judgement :

Sudhir Narain, J.

1. Both these writ petitions have been referred by the learned Single Judge to a larger Bench. The learned single Judge has not framed any question of law but noted certain different opinions in the case decided by certain Benches of this Court on the question of right of a party to cross-examine the deponent of an affidavit filed in the proceedings under the provisions of U. P. Urban Buildings (Regulation of Letting. Rent and Eviction) Act. 1972 (hereinafter referred to as the 'Act').

2. According to the learned single Judge, one view was that ordinarily the party should be permitted to cross-examine unless there are specific reasons to refuse such permission. Another view is that the party is not entitled to cross-examine a deponent of the affidavit unless there are exceptional circumstances shown by him before the authority concerned. In this connection, reference was made to the decision Rang Lal v. Prescribed Authority and another, 1982 (1) ARC 449, wherein an observation was made that in a case where an affidavit is filed the veracity or the creditability of the deponent cannot be tested unless he is subjected to cross-examination.

3. In Ashfaq Ahmad v. Prescribed Authority (Civil Judge, Rampur) and another, 1987 ARC 356, wherein an observation was made that if either party wants to cross-examine the deponents of the affidavits filed by the opposite party that prayer should not be refused without due regard to the provisions of Code of Civil Procedure.

4. Another view expressed in some of the cases is that the cross-examination should not be permitted as a general rule. It is to be exercised sparingly and only in exceptional cases in which the facts and circumstances of the case require. The reference has been made to the decision in Satish Kumar Sharma v. Prescribed Authority (A.C.J.M.) Dehradun and another, 1991 (1) ARC 438. It is necessary to examine the provisions of U. P. Act No. 13 of 1972. Section 34 provides the procedure to be followed by the authority under the Act for the purposes of holding any inquiry, hearing any appeal or revision under the Act. Section 34 reads as under :

'34, Powers of various authorities and procedure to be followed by them.--(1) The District Magistrate, the prescribed authority or any (appellate or revising authority) shall for the purposes of holding any inquiry or hearing (any appeal or revision) under this Act have the same powers as are vested in the civil court under the Code of Civil Procedure, 1908 (Act No. V of 1908), when trying a suit, in respect of the following matters namely.-

(a) summoning and enforcing the attendance of any person and examining him on oath ;

(b) receiving evidence on affidavits :

(c) inspecting a building or its locality, or issuing commission for the examination of witnesses or documents or local investigation :

(d) requiring the discovery and production of documents :

(e) awarding, subject to any rules made in that behalf, costs or special costs to any party or requiring security for costs from any party ;

(f) recording a lawful agreement, compromise or satisfaction and making an order in accordance therewith :

(g) any other matter which may be prescribed.'

Clause (a) provides for summoning and enforcing the attendance of any person and examining on oath. Clause (b) provides for receiving evidence on affidavits. Rule 22 of the Rules framed under the Act provides that the District Magistrate, the prescribed authority or the appellate or revising authority shall, for purposes of holding any inquiry or hearing any appeal or revision under the Act, shall have the same powers as are vested in the Civil Court, 1908 when trying a suit, in respect of the matters enumerated therein. Rule (f) provides the power referred to in Sections 151 and 152 of the Code of Civil Procedure, 1908, to make any order for the ends of justice or to prevent the abuse of the process of the authority concerned. Section 34 of the Act or Rule 22 of the Rules does not specifically provide that Order XIX, Rule 1 or Rule 2 of the Code of Civil Procedure will be

applicable. As Section 34 (b) of the Act confers the power on the authorities concerned to receive evidence on affidavits, the principle which is applicable under Order XIX, Rule 1 of the Code of Civil Procedure can be made applicable which empowers the Court to summon a deponent of an affidavit for cross-examination.

5. The Code of Civil Procedure is applicable to the suits. In a suit, a party has to adduce oral evidence and the evidence on affidavit is not permissible except under the circumstances provided under Order XIX, Rules 1 and 2 of the Code of Civil Procedure. A party has to lead oral evidence as provided under Order XVIII, Rule 4 of the Code of Civil Procedure. Order XIX, Rule 1 is an exception to the said Rule. A party can file an affidavit under Rule 1 only when the Court for sufficient reason order that any particular fact or facts may be proved on affidavits. Either the party may agree that the case may be decided on affidavits or for any other sufficient reason the Court passes an order to take evidence on affidavits. Under Rule 2 the Court does not decide the suit but decide only applications which are filed in the suit. Distinction between Rule 1 and Rule 2 of Order XIX was considered by Hon'ble P. N. Bhagwati. J., (as he then was) in *Bai Zabu Khima v, Amardas Balakdas*, AIR 1967 Guj 214, wherein it was held that Rule 1 applies to all the proceedings including the suits but Rule 2 applies only to applications and not to suits. Under Rule 1, reasons for taking evidence on affidavits have to be set out in the order but not under Rule 2.

6. Section 34 (1) (b) of the Act permits the authorities under the Act to receive evidence on affidavits and clause (a) confers power on the authorities for summoning and enforcing the attendance of any person and examining him on oath. The cross-examination of a deponent of an affidavit is thus not excluded. The authorities have power to permit any party to cross-examine the deponent of the affidavit. The exercise of power to permit cross-examination should be on the principle as laid down under Order XIX, Rule 1 of the Code of Civil Procedure, as amended by U. P. Act No. 57 of 1976 which came into force on 1.1.1977. The proviso to Rule 1 of Order XIX was substituted by U. P. Act No. 57 of 1976. Substituted proviso reads as follows :

'Provided that if it appears to the Court, whether at the instance of either party or otherwise and whether before or after the filing of such affidavit, that the production of such witness for cross-examination is necessary and his attendance can be procured, the Court shall order the attendance of such witness, whereupon the witness may be examined, cross-examined and re-examined.'

7. The Court has been given power under the said proviso for production of the deponent for cross-examination, if it is necessary. The provision itself is clear that the Court has discretion to permit for cross-examination and such discretion should be exercised only when cross-examination is necessary. The necessity for cross-examination will depend upon the facts and circumstances of each case. If an application is filed by a party for cross-examination of a deponent by an affidavit, he must give reasons why cross-examination is necessary. It is not in every case that once an application is filed for cross-examination it has to be permitted as a general rule. It is true that the veracity of averments made in affidavits can be tested by cross-examination but unless it is established that the veracity of facts stated in the affidavit is necessary to be tested by cross-examination, the party must give reasons as to which particular fact and under what circumstances and for what reasons such cross-examination is necessary in the context and facts and circumstances of the case. U. P. Act No. 13 of 1972 applies for determining certain rights of the landlord, tenant and such other persons who claim the benefit under the provisions of the said Act. This Act itself provides the manner in which the evidence is to be taken by the parties concerned. The purpose of the enactment of any of the provisions has to be taken into account while permitting a party to cross-examine the deponent of an affidavit.

8. The Hon'ble Supreme Court, in *State of Jammu and Kashmir and others v. Bakshi Gulam Mohammad and another*, AIR 1967 SC 122, considering similar provisions relating to receiving of evidence on affidavit in Jammu and Kashmir Commission of Inquiry Act, held that no person has right to cross-examine the deponent of an affidavit as a general rule. Section 4 (c) of the said Act provided as follows:

'The Commission shall have the power of a civil court, while trying a suit under the Code of Civil Procedure Court, 1977, in respect of the following matters namely :

(a) summoning and to enforce the attendance of any person and examining him on oath ;

(b)

(c) receiving evidence on affidavits.

It is not in dispute that the Code of Civil Procedure of Jammu and Kashmir State referred to in this section is in the same terms as the Indian Code of Civil Procedure. Order XIX, Rule 1 of the Indian Code.'

The Court interpreting Section 4 (c) held as under :

'If Section 4 (c) conferred a right to cross-examine every one who swore an affidavit as to the facts involved in the inquiry, then Section 10 (2) would become superfluous. An interpretation producing such a result cannot be right. It also seems to us that Order XIX, Rule 1 has to be read with Order XVIII. Rule 4 which states that the evidence of the witnesses in attendance shall be taken orally in open Court. It would appear, therefore, that Order XIX, Rule 1 is intended as sort of exception to the provisions contained in Order XVIII, Rule 4. The Act contains no provision similar to Order XVIII. Rule 4. Therefore, when Section 4 (c) of the Act gave the Commission the power of receiving evidence on affidavits. It gave that as an Independent power and not by way of an exception to the general rule of taking evidence viva voce in open Court. It would be natural in such circumstances to think that what the Act gave was only the power to take evidence by affidavit and did not intend It to be subject to the proviso contained in Order XIX, Rule 1. If it were not so, when the result really would be to require all evidence before the Commission to be given orally in open Court.. If that was intended, it would have been expressly provided for in the Act.'

9. The various Benches of this Court considered the rights of a party to cross-examine the deponent of an affidavit, in the proceedings under the Act. There is no divergent view that a deponent of an affidavit cannot be cross-examined or

there is no power with the authorities to permit cross-examination of a deponent. The only question remains as to what are the circumstances under which the cross-examination can be permitted..

10. In *M/s. Associated Cement Companies Limited, Kanpur v. Prescribed Authority/IXth Additional Munsif, Kanpur and another*. 1984 (1) ARC 137. Hon'ble R. M. Sahal, J. (as he then was) held that the discretionary power has to be exercised sparingly by the prescribed authority while deciding the release application under Section 21(1) (a) of the Act..

11. The same view was followed in *Smt. Gulaicha Devi v. Prescribed Authority (Munsif), Basti and another*. 1989 (1) ARC 407 ; *Satish Kumar Sharma v. Prescribed Authority (A.C.J.M.). Dehradun and another*, 1991 (1) ARC 438 and *Subhosh Chandra Sachdeva v. District Judge, Etah and others*, 1992 (2) ARC 253. In these cases, the decision in *Rang Lal v. Prescribed Authority and another*, 1982 (1) ARC 449, was considered and it was held that the prescribed authority had earlier allowed the application for cross-examination but later on without any justification refused permission to his cross-examine the deponent of the affidavits and in that context an observation was made that in a case where an affidavit is filed the veracity or credibility of witness cannot be decided unless the deponent of the affidavit is subjected to cross-examination. The decision in *Ashraf Ahmad v. Prescribed Authority (Civil Judge), Rampur and another*, 1987 (1) ARC 356, wherein on facts it was found that the dispute was relating to the oral gift on which the landlord was claiming the right in the property, the prescribed authority in those circumstances should have permitted the cross-examination. These two cases were distinguished on facts.

12. The proviso to Order XIX, Rule 1 has used the words 'cross-examination is necessary'. The effect of this proviso was considered by a Division Bench of this Court in *Assam Doss v. Prescribed Authority/Civil Judge, Mohanlalganj, Lucknow and another*, 1996 12) ARC 92, and it was held that if the prescribed authority is satisfied that the cross-examination is necessary, it can allow a party to cross-examine the deponent of an affidavit. The Court observed.

'In our view a conjoint reading of Rule 1 of Order XIX, Code of Civil Procedure and Section 34 of the Act makes it quite manifest that if the prescribed authority is satisfied that it is necessary for the ends of justice and to elicit truth that the deponent of the affidavit should be called upon to appear before it for the purpose of cross-examination, the prescribed authority has jurisdiction and power to ask such person to appear before it for that purpose.'

When cross-examination is necessary, it has to be decided in the context of factual backdrop of the case and in the context of nature of the proceedings under Act. The application under Section 21 (1) of the Act is to be decided expeditiously. Rule 15 (3) of the Rules framed under the Act lays down that every application under Section 21 (1) of the Act shall, as far as possible, be decided within two months from the date of its presentation. The Legislature did not provide that oral evidence to be adduced in support of the case as contemplated under Order XVIII. Rule 4, C.P.C. but the facts are to be proved on affidavits. If unnecessary cross-examination is permitted, that will only hamper the expeditious disposal of the cases. The Hon. Supreme Court emphasised this aspect in the case of State of Jammu and Kashmir (supra). Considering this provision Hon'ble R. M. Sanai J. as he then was, in the case of Radha Krishan v. Vth Additional District Judge, Jalaun at Oral and others, 1985 (1) ARC 427, observed that the primary objective of Act No. 13 of 1972 is expeditious disposal of the cases. It may be hindered if the parties are permitted to lead oral evidence. In the case of Smt. Gutaicha Devi (supra) the following observation was made :

'If oral evidence was contemplated to be filed and if the deponent of every affidavit was permitted to be cross-examined then it would not be possible to decide the release application under Section 21 (1) of the Act within a period of two months.'

It may be that when the case is being decided, a party files an application for cross-examination only to delay the proceedings. The Court has to examine in each case as to whether on the facts and circumstances of the case, cross-examination is necessary and the application filed for cross-examination is bona fide. If the matter relates as to the extent of the accommodation or the matter which could be verified on inspection, the cross-examination will be hardly

relevant. If the question arises regarding title of the property which can be decided on the basis of the documentary evidence, the cross-examination will not be relevant as the fact can be proved by documentary evidence which can be annexed with the affidavit.

13. The principle that a party is to be permitted to cross-examine on the principle of natural justice cannot be accepted in every case. Oral examination in all cases is not contemplated. Even in disciplinary inquiries in exceptional cases oral evidence may not be insisted upon as held in *Hira Nath Mishra v. Principal, Rajendra Medical College*, AIR 1973 SC 1260 and *State of Haryana v. Rattar Singh*, AIR 1977 SC 1512. If a party wants to cross-examine, he has to give the necessary facts in the application as to why the cross-examination is necessary. The prescribed authority will give the reasons either for allowing or refusing the cross-examination. The reasons disclosed in the order of the prescribed authority will show whether he acted fairly or not. Considering every aspect of the matter, the authority under the provisions of U. P. Act No. 13 of 1972 can permit the cross-examination of a deponent of an affidavit only when it is necessary in the case.

14. We return the reference to learned single Judge accordingly.