

Bijendra Kumar Vs. State and ors.

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Court : Allahabad

Decided On : Oct-06-1979

Reported in : 1980CriLJ842

Judge : P.N. Bakshi, J.

Appellant : Bijendra Kumar

Respondent : State and ors.

Judgement :

P.N. Bakshi, J.

1. An order under Section 340 Cr.P.C. was passed by the Sub-Divisional Magistrate, Budhana directing a complaint to be filed against Vijendra Kumar for committing perjury by filing a false affidavit in his court. Aggrieved thereby an appeal was filed before the Sessions Judge, Muzaffarnagar, which has been dismissed on 5-3-1979. Hence this revision.

2. It appears that an application was filed by Vijendra Kumar under Section 14/16 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 in the court of the Prescribed Authority. On 18-2-1977 an order was passed summoning the opposite parties for 4-3-1977. The case was finally taken up by the Prescribed Authority on 8th March 1977. On that date it was noticed that the opposite parties had no intimation about the case. Consequently fresh notices

were ordered to be issued for 4-4-1977. By that date notice had not returned and so the case was directed to be put up on 7-4-1977 awaiting return of notices. On 7-4-1977 it was found that Janeshwar Dass refused to accept notices, whereas Dharmendra Kumar was residing at Merrut and as such it was directed that proceedings be drawn ex parte and the case was ordered to be listed for hearing on 12-4-1977. Ultimately an allotment order was passed on 12-4-1977. On 13-4-1977 an application was moved by the opposite parties for setting aside the ex parte order, on the ground that they had neither refused to accept notice nor had any knowledge of the allotment proceedings. An affidavit was filed in support of their allegations. Vijendra Kumar controverted these facts by filing affidavit, Paper No. 19/l. Shri Kesho Dass Goel, Advocate also filed an affidavit supporting Vijendra Kumar, vide paper No. 22. In these two affidavits it was alleged that the opposite parties had intimation of the case and that their counsel Sri P.C. Jain had inspected the file on 4-4-1977. This application for setting aside the ex parte order under Order 9, Rule 13. C. P. C. was decided on 11th July 1977. The Prescribed Authority held that notices were refused and that the file was illegally inspected by Sri P.C. Jain, Advocate. The restoration application was, therefore, rejected. Aggrieved thereby a revision was filed before the District and Sessions Judge, Muzaffarnagar which was allowed on 13th September 1977. The order of the Proscribed Authority was set aside.

3. It appears that during the pendency of the proceedings under Order 9, Rule 13 C. P. C. an application was filed on 24th June, 1977 under Section 340 Cr.P.C. by the opposite party alleging that. Sri Kesho Dass Goel and Vijendra Kumar have perjured by filing false affidavit, that the file was inspected by Sri P.C. Jain on 4-4-1977. It was alleged that on that date Sri P.C. Jain had not been engaged as counsel for Dharmendra Kumar and that he was actually engaged on 13-7-1977 when the file was inspected. The Prescribed Authority found that Vijendra Kumar had intentionally filed false affidavit in the case and he directed that a complaint be lodged against him. As for Sri Kesho Dass Goel. Advocate, the Court did not take any action against him. Aggrieved thereby Vijendra Kumar filed an appeal before the Sessions Judge, Muzaffarnagar. which has been dismissed on 5-3-1977. Hence this revision.

4. The sole point argued by the counsel for the applicant is that Order 9, Rule 13 C. P. C. did not apply to proceedings under Section 14/16 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 and therefore the Prescribed Authority had no jurisdiction to set aside the ex parte order dated 12th April 1977. He argues that the proceedings for setting aside the ex parte order were without jurisdiction and the affidavit of Vijendra Kumar, which was filed in these proceedings, cannot be deemed to have been filed in a judicial proceeding and therefore the Prescribed Authority has acted illegally in directing a complaint for perjury to be filed under Section 340 Cr.P.C. Rule 22 framed under the Act 13 of 1972 runs as follows:

22. Powers under the Code of Civil Procedure, 1908 (Section 34(1)(g))-

(The District Magistrate, the Prescribed Authority or the Appellate or Revising Authority shall, for the 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 under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely-

(a) the power to dismiss an application, appeal or revision for default and to restore it for sufficient cause;

(b) the power to proceed ex parte and to set aside, for sufficient cause, an order passed ex parte..).

This rule applies the Code of Civil Procedure with respect to any inquiry or hearing of any appeal or revision under the Act by the District Magistrate, Prescribed Authority or the Appellate or Revising Authority. The power to proceed ex parte and to set aside an ex parte order for sufficient cause has been conferred therein on such authorities. The applicant's counsel has argued that an application under Section 14/16 of Act 13 of 1972 would not be covered under Rule 22. He has relied upon Rule 32 framed under the said Act which runs as follows:

32 Application for setting aside an ex parte order or for restoration

(Sections 34(8) and 41).

(The District Magistrate, the Prescribed Authority or the Appellate or Revising Authority as the case may be, may for sufficient cause (a) set aside an ex parte order deciding an application for the determination of a dispute under Section 8 or for the determination of standard rent under Section 9 or for the release of any building or specified part thereof or any land appurtenant to such building under Section 21 or for allotment of a new building under Sub-section (2) of Section 24 or for restoration of any amenity under Sub-section (1) of Section 27 or for major repairs under Sub-section (4) of Section 28 or an appeal under Section 10, or Section 22 or a revision under Section 18;

(b) restore an application or an appeal or revision referred to in clause (a) as well as an application, for release of any building or part thereof or any land appurtenant to such building where such application or appeal or revision has been dismissed for default of appearance of the applicant or the appellant or revisionist, as the case may be, or his counsel.).

His submission is that ex parte orders can only be set aside when they are passed under Sections 8, 9, 21, 24(2), 27(1), 28(4) or under Sections 10, 18 or 22 of Act 13 of 1972. The application in the instant case was for release of the building under Section 14/16 of the Act. Section 16(b) refers to the release of whole or part of the building in favour of the landlord. If we consider Rule 32, (b) quoted above, I find that the application for release of the building or part thereof is included in that Rule. that Rule refers to restoration of an application or an appeal or revision arising out of an order for the release of any building, in other words, if the application of the landlord for the release of the building is dismissed in default, then an application for restoration of the same can be filed by him. If a Court has a power to set aside an order dismissing the application of the landlord in default, I see no reason why he should not be deemed to possess the power of setting aside an ex parte order passed against the tenant directing the release of the property in favour of the landlord. Moreover, Rules 22 and 32 must be read as complementary to each other. It is true that in Rule 32 fa) specific sections have been mentioned under which the powers exercisable under Rule 9. Rule 13 C. P. C. can also be exercised in those proceedings, but Rule 22(b) also applies the Code of Civil Procedure and confers powers on the District Magistrate, the

Appellate Authority, Prescribed Authority or the Revising Authority to proceed ex parte and also to set aside an ex parte order for sufficient cause in any inquiry, appeal or revision decided by those authorities. It is a cardinal principle of interpretation of statute that an attempt should be made to reconcile the various sections and rules incorporated in the statute, rather than to interpret them in a manner which would become irreconcilable. Reading Rules 22 and 32 together, I have no doubt in my mind that the powers had been vested in the authorities mentioned therein to set aside the ex parte order in case sufficient cause has been shown. As such, I am of the view that the proceedings before the prescribed authority, in so far as they related to the setting aside of the ex parte order were judicial proceedings and within the legal competence of the authority concerned. The Prescribed Authority had been vested with the power to set aside the ex parte orders, which he had done in this case. In my view, therefore, there is no substance in the contention raised by the applicant's counsel.

5. The Prescribed Authority being of the view that the false affidavit was filed by Vijendra Kumar in the restoration proceedings with the ulterior object of obtaining an order adverse to the landlord was fully justified in directing a complaint to be filed under Section 340 Cr.P.C.

For the reasons given above, I find no merit in this revision, which is hereby dismissed.